



OFFICE OF LEGAL AND LEGISLATIVE SERVICES
Finance and Administration Cabinet
Capitol Annex Building
Frankfort, Kentucky 40601
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TO: Don Speer, Director
Division of Purchases

FROM: Charles D. Wickliffe
General Counsel

DATE: April 5, 1990

SUBJECT: Legality of Agencies Using KRS 45A.300

This is responsive to your March 8, 1990, memo advising that the Department of Parks has procured materials and supplies utilizing a price contract established by the University of Kentucky. You asked whether this is legal.

State universities are authorized by 1982 House Bill 622, to elect to undertake various activities including, inter alia, the procurement of materials and supplies, etc., independent of control by the Finance and Administration Cabinet, but subject to the provisions of the Model Procurement Code. The University of Kentucky's Board of Trustees elected to accept the "benefits" of House Bill 622 in 1982, and it is presumed that the price contract utilized by the Department of Parks was awarded by the University's purchasing department in accordance with the authority of House Bill 622.

The short answer to your question is that it was and is not legal for the Department of Parks, or any other agency, to use a State university price contract. Universities are not authorized to buy for anyone other than themselves. The Department of Parks and other State agencies are not authorized to submit purchasing requisitions to the Universities or to issue purchase orders against State university contracts. Such acts are ultra vires since not authorized by law.

A possible exception would be that in the event of a bona fide emergency it would make sense for a State agency to utilize a State university contract for the needed item if it is not otherwise available under a previously established state price contract. In that event, the agency should notify the Division of Purchases of the emergency and advise that the item is available under a university price contract. If the Division of Purchases concurs that an emergency exists, the agency could then be authorized to request the university having the item on contract to order it from the vendor for supply to the agency with the cost to be interaccounted from the university to the agency.

A handwritten signature in cursive script, reading "Charles D. Wickliffe".