



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-23

January 23, 1985

Mahlon A. Martin, Director
Department of Finance
and Administration
P. O. Box 3278
Little Rock, AR 72203

Dear Mr. Martin:

This is in response to your letter of August 28, 1984,
requesting an opinion. Your question is as follows:

May a State agency require a vendor, who has breached
on a scheduled (pre fiscal year-end) delivery date, to
reimburse that agency for funds it was unable to expend
(in the prior fiscal year) as a direct result of that
breach?

We understand that the agency accepted the commodities and
accompanying invoice but failed to process the latter prior
to the end of the fiscal year. Thus it appears not only
that the agency has waived the breach, the vendor's delay in
performance, but also that the agency was at fault in not
processing the payment before fiscal year-end. The request
does not indicate the invoice was received too late to be
processed before fiscal year-end. Based upon the above, it
appears that the agency cannot require the vendor to reim-
burse funds not used in the prior fiscal year because the
agency waived the vendor's breach and the agency's inaction
was the proximate cause of any alleged damage.

The foregoing opinion, which I hereby approve, was prepared
by Assistant Attorney General Thomas S. Gay.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Clark".

STEVE CLARK
Attorney General

SC:TSG:jkb