

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., May 24, 1910.

Subject: State Roads..Contract for Construction—
Parties thereto.

Hon. Paul D. Sargent, Augusta, Maine.

SIR:—I am in receipt of your favor of May 20, 1910, in which you ask my advice as to whether in making contracts for state road work the State Commissioner of Highways should assume entire charge of letting contracts, or whether contracts should be let through the municipal officers, or whether contracts should be let jointly by the municipal officers and the State Commissioner of Highways.

You state four distinct cases under which contracts may be let for the construction of state roads. Those four cases are as follows:

FIRST: When, as in the case of the Rockland-Rockport trunk line work, a portion of the money is subscribed by individuals, a portion of the money comes from appropriations by municipalities and a portion of the money is furnished by the State.

SECOND: When a portion of the money is appropriated by one or more municipalities and the balance is furnished by the State.

THIRD: When all of the money is furnished by the State.

FOURTH: There might be another case arise where part of the funds were subscribed by individuals or municipalities and the remainder furnished by the State."

According to my view of the statute certain general principles govern in all of these four cases and without attempting to state an answer to each distinct case I respectfully advise as follows:

Evidently the legislature did not take into consideration the existence of any condition of affairs arising over a contribution to the joint fund for state road work by individuals or by corporations other than municipal corporations. No provisions having been made for such a contingency I think that these elements of the problem should be disregarded and that the fact that a portion of the joint fund has been contributed by individuals or by corporations other than municipal cor-

porations should not be taken into account at all in letting contracts for the state road work.

The expense of constructing a state road may be borne entirely by the state as provided in P. L. 1909, Chap. 69, Sec. 13; or the expense may be borne by what has been denominated a joint fund; that is, a fund composed of moneys furnished by the state and by the municipalities. As I have just said if this joint fund is increased by private contributions I do not regard this latter element as a factor in the problem.

If the construction of a piece of state road is to be paid for out of the joint fund, then we turn to Chap. 69, P. L. 1909, Sec. 8, and find that when the location and general character of the proposed work has been determined upon, and when the plans and specifications have been made, these plans and specifications are to be forwarded to the selectmen or other officers having jurisdiction over highways in the town in which the particular work is to be done. The act then makes it the duty of these officers to advertise for bids upon the work and each bidder is required to accompany his bid with a certified check as a guarantee "that if the work is awarded to him, he will enter into a contract with said board for the same."

Thus you will see that in the expenditure of a joint fund, except in a case hereinafter to be pointed out, a contract must be with the selectmen or other officers having jurisdiction over the highways in the town in which the work is to be done. To be sure the selectmen or other local officers having jurisdiction and the State Commissioner of Highways have a joint supervising authority, which they must exercise, over the acceptance or rejection of any bids, but the contracting parties must be the town on the one side and the bidder on the other.

The exception to this rule which I have just referred to is found in the later provision of Sec. 8 of Chap. 69, P. L. 1909, where provision is made that a town may have an opportunity to bid on the construction work and the part of the section just referred to provides that where a contract is let to a town "the board of local officers having jurisdiction over highways in such town shall forthwith execute a contract *in behalf of said towns* with the State Commissioner of Highways *in behalf of the state*, to fulfill etc. In such an instance you will see that the contracting parties must be the town on the one

side and the state on the other. This condition also relates to the expenditure of a joint fund.

I think these general principles will furnish an answer to the first, second and fourth cases stated in your letter.

The only case remaining to be discussed is the third, "when all the money is to be furnished by the state." Here we should refer to the provisions of Sec. 13 of Chap. 69 of P. L. 1909. While the requirements as to the parties to the contract are not as plain in this section as in the preceding sections of the act and while it might be assumed that if the state should furnish all the money then the contract should be with the state, yet the legislature has not so provided. It has provided that the state may expend by the State Commissioner of Highways an amount of money sufficient to cover all the expense of a given piece of work but the legislature did not say that the party who did the work was to contract with the state. On the other hand the legislature in the last few lines of Sec. 13 distinctly provided "that the same general provisions made for the construction and maintenance of other state roads under this act shall apply to roads constructed under authority of this section, except that the whole cost of construction would be paid by the State."

It is my opinion therefore, that in those cases where the state pays the entire cost of construction that there should be the same location and general character of the proposed work determined upon, plans and specifications should be made and forwarded to the town officers, bids should be advertised by those town officers and contract entered into between the town officers and the bidder if the town does not do the work; the contract should be entered into between the town and the state if the town were to do the work.

I feel that my construction of the statute is not only in harmony with what the legislature intended but will also promote a uniformity in awarding contracts for the work whether done by a joint fund or by the state alone and much contention and misunderstanding may be prevented by adhering to the provisions of the act as I have viewed them.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.