

MAINE STATE LEGISLATURE

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PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1926 - JUNE 30, 1928

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1928

Section 29 of Chapter 14 aforesaid was amended by Section 27 of Chapter 123, Public Laws of 1887, so as to make "municipal officers" read "local board of health", as it now reads in said Section 97.

It will be noticed that said Section 95 enables the town to *establish* therein hospitals for the reception of persons etc; or its local board of health may license any building therein as a hospital, etc.

Said Section 97 enables the local board of health when small-pox or other disease dangerous to the public health breaks out in a town, to immediately *provide* such hospital etc., as they judge best etc.

It does not appear that either of the foregoing sections gives the local board of health the power to purchase property, in the name of the town, for the aforesaid purposes, their only powers being in the one case to *license* a building therein as a hospital, and in the other "to provide such hospital or place of reception for the sick * * * * * as they deem best."

The municipal officers do not appear to have any power to act in the premises except as they are authorized by the town, the language of the statute being "the town may establish."

In cases where the town has not established a hospital, as provided in Section 95, or where the local board of health has not licensed a hospital, as provided in said section, said board of health may in cases of emergency provide such hospital in accordance with the provisions of Section 97, and use same as long as the necessities of the case require, but in my opinion the statute does not give the board power to bind the town by the purchase of the property.

Yours very truly,

SANFORD L. FOGG,
Deputy Attorney General.

April 4, 1927.

State Highway Commission, Augusta, Maine.

GENTLEMEN: In answer to your request for an opinion from this Department as to whether it is necessary for the State Highway Commission to advertise for bids when purchasing machinery

and implements for highway work, this Department makes the following reply:

Chapter 13 of the Public Laws of 1911, inserted in the Revised Statutes as Section 104 of Chapter 2, provides:

"All materials and supplies purchased in wholesale quantities by the state, or on the credit of the state, for any state department or institution, shall be purchased by competitive bids under the direction of the governor and council, whenever in their judgment it is advisable to adopt such a method of purchasing supplies."

Section 36 of Chapter 49 of the Revised Statutes, provides that contracts for constructing, altering, repairing or equipping State buildings or public works shall be awarded to the lowest bidder who is financially responsible. This section, however, does not apply to construction or repairs amounting to less than one thousand dollars, or to emergency work or to State road work, as expressed therein.

Chapter 130, Section 7, Public Laws of 1913, which established the Highway Commission, as incorporated in the Revised Statutes as Section 6 of Chapter 25, and as amended by Chapter 258 of the Public Laws of 1917, and as further amended by Chapter 215, Public Laws of 1921, and Chapter 159, Public Laws of 1923, provides under each amendment that:

"The commission may from time to time purchase, lease or hire all machinery, tools, implements and property necessary for highway engineering and construction and for the administration and execution of its duties, and may contract for such labor, materials and property as it may deem necessary for the examination, building and construction of state and state aid highways."

As will be seen, the law relating to the rights and duties of the State Highway Commission in relation to purchasing materials, tools and implements for highways was passed after the law relating to supplies purchased at wholesale for State departments and institutions, and was a part of the act establishing the State Highway Commission.

The Supreme Court has often decided that the more recent provision of law controls in the event of conflicting provisions, and that the true intent can often be best ascertained by examining the original draft of the law. Further, the court has said that the purpose of revision of a statute is to condense as much as

possible and that a mere change of phraseology is not to be considered as a change of the law as originally enacted.

The original law as printed in the Public Laws of 1913, Chapter 130, Section 7, says:

"The commission shall have full power from time to time to purchase, lease or hire all machinery, tools, implements and property necessary for highway engineering and construction and for the administration and execution of its duties, and to contract for such labor, materials and property as it may deem necessary for the examination, building and construction of state and state aid highways."

For the reasons above stated, the statute and amendments relating to the duties of the Commission having been passed after the passage of the statute requiring bids from State institutions and departments, there does not seem to be any necessity for the State Highway Commission to advertise for bids when purchasing "machinery, tools, implements and property necessary for highway engineering and construction."

Respectfully yours,

RAYMOND FELLOWS,
Attorney General.

June 14, 1927.

State Highway Commission, Augusta, Maine.

GENTLEMEN: Attention: Mr. Paul D. Sargent, Chief Engineer.

Answering your inquiry of June 1st, about building driveway culverts, I beg to advise you that Chapter 22, Section 26, provides that the municipal officers of a town may, at the expense of the town, construct ditches and drains to carry water away from any highway or road therein, etc., and any wilful interference therewith shall be punished in the same way as provided by statute for obstruction in a travelled road.

In Chapter 215, Public Laws of 1921, it is provided that:

"In all state and state aid highway construction and maintenance, the commission shall have all the powers of municipal officers conferred by Section 26 of Chapter 22 of the Revised Statutes, relating to construction and maintenance of ditches and drains."