

MAINE STATE LEGISLATURE

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February 23, 1933

TO WHOM IT MAY CONCERN:

Oral inquiry has been made of this department regarding public officers having a pecuniary interest in public contracts. In response to this inquiry I am enclosing a copy of Section 11, of Chapter 131 of the Revised Statutes of Maine.

In addition to the provisions of Sections 11, I would call attention to the case of Lesieur v. Inhabitants of Rumford reported in Volume 113, Page 317 of the Maine Reports. In this case the Court says, in effect, that, --

It is well established as a general rule that one acting in a fiduciary relation to others is required to exercise perfect fidelity to his trust.

The law, to prevent the neglect of such fidelity and to guard against any temptation to serve his own interests to the prejudice of his principal's, disables him from making any contract with himself binding on the principal.

The invalidity of a contract entered into in violation of this rule does not necessarily depend upon whether the fiduciary intended to obtain an advantage to himself, but rather upon whether it affords him the opportunity and subjects him to the temptation to obtain such advantage.

The test is not whether harm to the public welfare had in fact resulted from the contract, but whether its tendency is that such harm will result.

The members of a local board of health of a town, when making a contract under the statute for the care of persons in quarantine, act in a fiduciary capacity, and anything having a tendency to prevent their exercising the utmost fidelity is contrary to public policy and will not ^{be} recognized as lawful and enforceable through the administration of the law.

That a contract between a local board of health and one of its own members for the care of a person in quarantine with smallpox, is of no binding force as a contract, because in violation of public policy.

From the foregoing it would appear that a contract made by members of a school board with one of its members would be improper.

Very truly yours,

Deputy Attorney General

SLF J