

MAINE STATE LEGISLATURE

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April 26, 1939

Honorable Bertram E. Packard
Commissioner of Education
State House
Augusta, Maine

Dear Doctor Packard:

On several occasions we have discussed orally the law relating to contracts between public officials and the political subdivisions with which they are connected and by which they are elected or employed.

This department has on many occasions in the past issued rulings and decisions bearing upon this question and there are many decisions by our Courts with reference to such dealings. Section 61 of Chapter 5 of the Revised Statutes provides that:

R.S. 1944
Chap. 80
§§ 77 + 78

"No member of a city government shall be interested, directly or indirectly, in any contract entered into by such government while he is a member thereof; and contracts made in violation hereof are void."

This provision was interpreted and analyzed in the case of Bangor v. Ridley, reported in 117 Maine, Page 297. In this case the defendant, while he was an alderman of Bangor under contract with city departments, furnished teams and drivers who performed certain services, his prices being found to be just and reasonable. The plaintiff city brought an action for money had and received and recovered back from the alderman all of the money which had been paid him for such services.

While, as you will notice, this quoted section does not apply directly to towns, our Court in the case of Lesieur v. Mumford, reported in 113 Maine, Page 317, found that a doctor acting as town physician was not entitled to

recovery on a contract made with the Board of Health for services rendered to paupers, he being one of the three members of the Board of Health at the time the contract was made. In this case the Court said, in part, that:

"It may be assumed that the contract in question is not expressly prohibited by statute*****. Nevertheless, where the contract is not prohibited by statute and stipulates for nothing that is malum in se or malum prohibitum, if it clearly appears to be in violation of some well established rule of law, or that its tendency will be harmful to the interest of society, it is against the policy of the law to uphold and enforce it.

"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, and 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 his principal."

The later case of Tuscan v. Smith, reported in 130 Maine, Page 36, as the same general effect and contains these words:

"It is unnecessary to discourse on the duties of public officials. Their obligations as trustees for the public are established as a part of the common law fixed by the habits and customs of the people. Contracts made in violation of those duties are against public policy, are unenforceable and will be cancelled by a court of equity."

Basing my opinion on these decisions and upon the general trend of other decisions of our Courts, I have no hesitancy in advising you that members of a school committee or other town officials should not enter into contracts with the school boards of which they are members, or with other town officials and that such contracts are unenforceable and contrary to public policy as defined by our statutes and decisions.

Very truly yours,

Franz U. Burkett
Attorney General

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