

MAINE STATE LEGISLATURE

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February 2, 1944

To J. J. Allen, Controller, Dept. of Accounts & Control

From Frank I. Cowan, Attorney General

I have your memo of January 27th in regard to the provision in the State Highway contract providing for payment to a third person in certain circumstances. I have not the contract before me, unfortunately; but, as I recall, it is in such form that on proper proof of a debt by the contractor to a sub-contractor or material-man in connection with the particular job, for which the contract is made, the State can make a payment directly to the sub-contractor or material-man and charge it to the contractor. It is the matter of proof that is important. An execution is ordinarily sufficient, although it must be borne in mind that an execution is not necessarily conclusive, since a writ of error can be brought to set aside a judgment on which an execution has been issued. Writs of error may be brought any time within six years after the judgment sought to be reversed, to avoid it; but if the person entitled to the writ is under a disability, the writ of error may be issued any time within five years after the removal of such disability, which may very well be a matter of a great many years. So, as a practical matter, it will be found that at times you can rely on a judgment and an execution issued thereon, and at times it will seem absolutely necessary to get a direct order, as Mr. Marshall suggested. Mr. Marshall's advice was the absolutely safe way.

Frank I. Cowan
Attorney General

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