

MAINE STATE LEGISLATURE

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July 17, 1945

To
Hon. Robert W. Haskell

I received your letter of July 16th stating that the Legislative Research Committee had heard something of the problem presented by an interpretation of existing statutes that prevents normal business transactions between the State and State employees, including members of the legislature, and that the committee would be glad to receive from me a brief outline of the problem, with statutory references, along with such suggestions as I might make to permit retention of the obvious intent of the provisions but possibly permit normal transactions.

In the first place, I want to state to the committee that the only ruling that I have made in this matter is as follows:

"January 9, 1945.

"To Joseph P. Grenier, Superintendent of Printing

In answer to your inquiry today, it is my opinion that the provisions of Section 17 of Chapter 122 of the Revised Statutes apply to members of the legislature.

Ralph W. Farris
Attorney General"

On June 26, 1945, State Auditor Fred M. Berry asked me the same question and I sent him a copy of my ruling to the superintendent of public printing. Since June 26th, the newspapers have published several articles with headlines saying that legislators were "banned" from doing business with the State, etc.

Section 17, Chapter 122, R. S., 1944, reads as follows:

"No trustee, superintendent, treasurer, or other person holding a place of trust in any state office or public institution of the state or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation hereof is void; and if such officer or person receives any drawbacks, presents, gratuities, or secret discounts to his own use on account of such contracts, or from the profits in any materials, supplies, or labor furnished or done for the state or such institution or such quasi-municipal corporation, he shall be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months."

My opinion in this matter is merely advisory and has not the binding force of law. The question would seem to be, in regard to members of the legislature, whether or not they hold a place of trust in any State office. There are several decisions in other States holding that a member of the legislature is a State officer, and it is generally held that a public office is a public trust. Members of the legislature subscribe to support the Constitution of the State and of the United States. Members of the legislature elect the Executive Councillors, the Commissioner of Agriculture, the State Auditor, the State Treasurer, the Attorney General, and the Secretary of State; and it seems to me that they hold an important place of trust in a State office. However, I will say that the employees of the State do not come within the purview of this statute, because they do not hold a public office.

Another question which arises is whether they are pecuniarily interested directly or indirectly in the contracts which they make in behalf of the State. There is another statute which prohibits members of a city government from being interested directly or indirectly in any contract entered into by such city government while they are members thereof, and contracts made in violation of said statute are void. That will be found in Section 78 of Chapter 80, R. S. 1944.

On August 5, 1911, Governor Frederick W. Plaisted asked the members of the Supreme Court whether or not a contract awarded by the State of Maine for doing certain printing for the State through the Waterville Sentinel Publishing Company was valid, the Secretary of State being a stockholder and treasurer of said corporation at the time the contract was awarded, although he had nothing to do with the awarding of the contract, or whether the provisions of this statute would make void this contract between the State and the Waterville Sentinel Publishing Company. In answer to the question the Supreme Court held:

"The statute was not intended as simply an affirmation of a principle of the common law but as a more comprehensive legislative rule founded in public policy."

I quote further from the answer of the Justices:

"The legislature must be presumed to have had in contemplation all of the contracts which might have been made by the different state officers, and to have enacted the statute for the purpose of removing any temptation on their part to bestow reciprocal benefits upon each other, and to prevent favoritism, extravagance and fraudulent collusion among them under any circumstances which might reasonably be anticipated as likely to arise under the different state governments during the years to follow."

I further quote from the Opinion of the Justices:

"But it was obviously impractical to anticipate and specify in the statute the great variety of situations

that might arise, and in order to accomplish the purpose of the statute and prevent the mischief designed to be remedied, the legislature was compelled to declare in general terms that no state officer should have a pecuniary interest in any contract made in behalf of the state."

Your committee can readily see the predicament I should be in as Attorney General, should I rule that the members of the legislature did not hold a place of trust in a State office, and on the strength of my decision they were to go ahead and make large contracts with the State, and some competitor who was not a member of the legislature or of the State Government should claim that favoritism had been shown and take his case to the law court, and all the contracts in which it might be decided that members of the legislature had a pecuniary interest might be declared void.

Your committee could study this statute and I would glad advise you as to the legal effect of any contemplated legislation which your committee might recommend to the legislature. However, a recommendation by your committee for a clarification of this statute, so as not to include members of the legislature might not appeal to a majority of the members of the legislature, and they might frown upon any change in this statute.

I might call the committee's attention to 130 Maine, page 36, Tuscan vs. Smith, which opinion was dated January 23, 1931, and which held as follows:

"Town officials are in a position of trust for the public. A contract in which such an official is pecuniarily interested and which places him in a situation of temptation to serve his personal interests to the prejudice of the interests of the town is illegal."

I should be glad to appear before your committee at any time and discuss this statute and its many ramifications.

Ralph W. Farris
Attorney General

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