

MAINE STATE LEGISLATURE

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July 18, 1945

To J. J. Allen, State Controller and
H. M. Orr, Purchasing Agent.
From Ralph W. Farris, Attorney General

Subject: Purchases from Persons Holding Places of Trust in State Offices & Institutions.

I have your memo of July 17th, relating to the above entitled subject matter and calling attention to my ruling of January 9, 1945, in which I stated that it was my opinion that the provisions of Section 17 of Chapter 122, R. S. 1944, apply to members of the legislature. You ask my opinion as to the responsibility of the State Controller and the State Purchasing Agent in determining that transactions by the State are in compliance with the above statute.

I wish to state ^{that} this law has been on the statute books for many years and that I am of the opinion that my ruling should not enlarge the responsibility of your offices. I don't believe that the statute which you cite in your memo, which is subsection 3 of Section 16 of Chapter 14, R. S. 1944, requires you to go back and investigate contracts that come to your office to ascertain whether or not any of the contracting parties are within the provisions of Section 17 of Chapter 122, R. S. 1944.

In your memo of July 17th you ask two specific questions:

1. What is the responsibility of the State Controller and the State Purchasing Agent in determining that transactions by the State are in compliance with Section 17 of Chapter 122 of the Revised Statutes of 1944?

In answer to Question 1, I will say that in my opinion it is not the responsibility of the State Controller or the State Purchasing Agent to go back of the contract and raise questions of law which can only be decided by the courts.

2. If the State Controller and State Purchasing Agent are responsible for compliance with Section 17 of Chapter 122 of the Revised Statutes of 1944, how do we determine, in the case of corporations, if trustees, superintendents, treasurers or other persons holding a place of trust in any State office or public institution of the State, have a direct or indirect pecuniary interest in any contracts made in behalf of the State?

Perhaps my answer to Question 1 answers Question 2. However, my opinion is that your responsibility does not go beyond what you find on the face of the contract as to its regularity and legality.

As I stated at the outset of this memo, this law has been on the statute books for many years, and in answer to questions propounded to the Supreme Court in 1911, the Justices of the Supreme Court had this to say in regard to this statute:

"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. . . .

"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."

This language, in my opinion, does not mean that the head of every department of the State government is supposed to investigate every contract made with persons outside the State government, to see whether or not they come within the provisions of this statute. Because, in the language of the court, of "the great variety of situations that might arise," under this statute, it would be impossible for heads of departments to do this and carry on the duties of their several offices.

Ralph W. Farris
Attorney General

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