

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

December 6, 1949

To Hon. Frederick G. Payne, Governor of Maine
Re: Penobscot Boom

With reference to the correspondence from William Eggleston relative to his appointment as Commissioner of the Penobscot Boom, you are advised that the Penobscot Boom Corporation was created by Special Act of the legislature, which corporate powers have been amended by sundry Private and Special Acts. Among them is Chapter 298 of the Private and Special Laws of 1854, which provides in Section 25 for the appointment of the commissioners by the Governor and Council. It is interesting to note that in Chapter 47 of the Private and Special Laws of 1842 the appointment of the commissioners for the Penobscot Boom required that the Governor and Council shall appoint "three competent and disinterested men," etc. I have found no provision of law to the effect that a commissioner may not be a director of the corporation.

However, it would be competent for the by-laws of the corporation to provide that a person may not be a commissioner and a director at the same time; and if the by-laws do so provide it might be a carrying forward of the intent expressed in the 1842 amendment to the effect that the commissioners should be "disinterested men."

By-laws of corporations are not on file in the Corporation Division of the Secretary of State's office, as there is no requirement to that effect.

If Mr. Eggleston is correct with respect to the corporate by-laws, he would of course have a choice as to whether he would remain a director of the corporation or accept the appointment as commissioner.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 6, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: Contracts for Repairs and Construction of State Buildings

In your memorandum of December 6, 1949 you request a statement from this office as to the meaning of the word "contract" as used in Chapter 176, Section 5, of the Public Laws of 1943, particularly in connection with the procedure being followed with respect to Governor and Council approval of expenditures made for repairs and construction of State buildings.

Chapter 176, P. L. 1943, became Chapter 58 of the Revised Statutes of 1944, which is the chapter which provides for the office and duties of the superintendent of public buildings. Section 5 thereof reads as follows:

"All contracts for repairs and construction of state buildings shall be examined and approved by the superintendent of public buildings prior to their submission to the governor and council for their final approval and acceptance."

It would appear that Section 5 must be read in connection with Section 43 of Chapter 14, R. S. 1944, which section reads as follows:

"All contracts for construction or repairs of buildings at the expense of the state involving a total cost of more than \$3,000 shall be awarded

by a system of competitive bids in accordance with the provisions of the following section and such other conditions and restrictions as the governor and council may from time to time prescribe."

While we do not quote herein, attention is also directed to Sections 44, 45, 46, 47, and 48 of Chapter 14, which sections are designed to implement Section 43 quoted herein. A reading of the pertinent sections of Chapter 14 makes it appear obvious that contracts requiring the prior approval of the superintendent of public buildings and final approval by the Governor and Council are those contracts involving construction or repair of State buildings when the cost of the same exceeds \$3,000, which contracts must be awarded by a system of competitive bids in accordance with the provisions of law. This system contemplates the performance of contracts by independent contractors and not repair and construction work performed by persons directly employed by the State. It follows therefore that mere expenditures for supplies and materials for the use of State employees in maintenance, repair and construction work within the regular scope of their duties, either in the respective departments or under the supervision of the superintendent of buildings, do not need Governor and Council approval, any more than the purchase of consumable supplies for the use of any other State employees.

I think that it should go without saying that supplies for the use of State employees in repairing, maintaining and doing minor construction work on State buildings are to be purchased in accordance with the State's standard practice as provided in Chapter 14.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 19, 1949

To Fred M. Berry, State Auditor

Re: Contract between State of Maine and M.C.R.R., Carleton Bridge

I received your memo of December 9th calling my attention to the new contract which was consummated with the M.C.R.R. relating to their share of the cost of the Carleton bridge, which reduced their annual payment from \$76,569.90 per year to \$70,000. per year. In arriving at the new figure of \$70,000. the amount deposited in the Kennebec Bridge Sinking Fund and recorded on the State's books at June 30, 1948, of approximately \$102,000. was considered. You state in the second paragraph of your memo that since this contract was made, you have analyzed the figures of the Sinking Fund and found that a credit of \$30,865.57 was included in the account as of June 30, 1942, which credit appears to be in error, and if it is, you state that the new annual payment of \$70,000. should be changed by a subsequent act of the legislature. In the third paragraph of your memo of December 9th, you call my attention to the fact that this error was occasioned by a journal entry having been made as of June 30, 1942, by former Finance Commissioner Mossman; that this amount of money was the balance in the Carleton Bridge Operating Account at June 30, 1942 and was transferred to the account "Sinking Fund to Retire Kennebec Bridge Bonds." You state that the only explanation that can be found as to why this transfer was made is as follows: