

# 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**

I note the amendment on page 2 of Professors Wendell and Zimmermann especially provides for re-incarceration of parolees and authorizes the prisoner to be kept by the receiving State on a contract basis; and again I am doubtful whether or not we could work this out with our legal committees of the incoming legislature. Perhaps the possible alternative form on page 3 could be worked out. Having been a member of the Interstate Cooperation Committee when I was in the Senate, and being at present a member of the Executive Committee of the National Association of Attorneys General, I have found that many of the legal profession serving on legislative committees resent any ready-made legislation for their consideration.

These are the best suggestions I have for you to take up at the conference on August 8th.

I note in the membership of the Joint Committee on Detainers, that all three Attorneys General named to represent the National Association of Attorneys General, have not been in that office in their respective States of New Hampshire, Utah and Ohio, since January 1, 1949, but it is possible that they will serve on this committee and they are able lawyers. They formerly served with me on committees of the National Association of Attorneys General.

RALPH W. FARRIS  
Attorney General

July 26, 1950

To David B. Soule, Insurance Commissioner  
Re: Method of Placing Insurance

Under date of July 21, 1950, you submitted a memorandum to this office in which you detailed the administrative procedure which has been followed in connection with the placing of insurance on State property. In your memorandum you inquire as to whether or not it would be possible, under the provisions either of existing Council Orders or of a Council Order to be drafted, to eliminate the necessity for final approval of insurance matters by the Governor and Council. Presumably, this would be through the medium of the alternative of delegating the responsibility of final approval to some department head.

Chapter 11 of the Revised Statutes of 1944 specifically sets forth certain duties of the Executive Department which, though by no means covering all the duties of that department, are so clearly set forth as to constitute these duties as among the primary duties of that department. Section 12 of Chapter 11 states in part that insurance upon public buildings and other property belonging to the State shall be placed thereon by the several department heads "subject to the approval of the governor and council, or by the governor and council."

In view of the fact that the statute gives the authority to the Governor and Council to place insurance on State property, whether or not the head of a department has so recommended, it appears clear that this is a legislative mandate of a duty imposed upon the Executive Department, which duty cannot be delegated.

If it is desirable to relieve the Governor and Council of the responsibility of giving final approval to the placing of insurance, it appears to this office that this can be accomplished only by amendatory legislation.

JOHN S. S. FESSENDEN  
Deputy Attorney General

July 26, 1950

To H. M. Orr, Purchasing Agent  
Re: Rode-Rite Asphalt

I have your memo of July 24th, in which you state that on July 19, 1950, your office opened a bid covering one million gallons of Rode-Rite treated cut-back inverted emulsified asphalt. The Maine Bituminous Corporation bid a low price, but scratched out "Rode-Rite" and admitted that they were not bidding on that product. You state that it was your understanding that the treatment which they proposed to use was claimed to be just as good, but they could not furnish samples or show the Highway officials any of this material in use.

You further state that the specifications on the bid were drawn up by the Highway Commission, and that it was their desire to purchase the Rode-Rite treated asphalt, apparently for the reason that they were satisfied with this proven product.

You state in the second paragraph of your memo that Mr. Philip Corey, who represents the Maine Bituminous Corporation, has requested that the matter be referred to this office for an opinion as to the legality of asking for bids for a trade-named article without leaving it open for bidders to submit a bid on a similar material claimed to be equal, and you would appreciate it if I would give you an opinion on this point as soon as possible, as the Highway Department is anxious to apply this material.

Under the provisions of Chapter 20 of the Revised Statutes the Highway Commission has wide discretion in making purchases; and if they decide that they want a certain material, which has a trade name, they have a right to put out bids for the trade-named article which they have used and which has proven satisfactory to them.

Anyone who strikes out any part of a bid and makes a bid on a product which has not been tried out by the Highway Commission is not entitled to consideration, and the bid should be thrown out, as the bid was not on the product which was called for by the State Highway Commission.

RALPH W. FARRIS  
Attorney General