

# 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**

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