

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

Section 218 (f) of the Social Security Act provides:

"Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification, but in no case prior to January 1, 1951, and in no case (other than in the case of an agreement or modification agreed to prior to January 1, 1953) prior to the first day of the calendar year in which such agreement or modification, as the case may be, is agreed to by the Administrator and the State."

Section 2 of Chapter 395, Maine Public Laws 1951, reads:

"Effective date. The provisions of this act shall be retroactive to January 1, 1951, with respect to any political subdivision that shall elect to accept its provisions as of that date."

Section 3-III of Chapter 395, Maine Public Laws, 1951, reads:

"(The Federal-State) agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the 1st day of January, 1951."

The problem presented is the possible implication present in the foregoing provisions of the Maine law that an agreement or modification entered into in 1954 could be made retroactive until 1951.

The Constitution of the State of Maine, Article IV, Part Third, Section 16 (Murchie Constitution), provides that no act or joint resolution of the legislature, with several exceptions not here pertinent, shall take effect until ninety days after the recess of the legislature passing it. The effective date of the State Act herein discussed would, ordinarily, be August 20, 1951. However, the above quoted Section 2 provides that this Act shall be retroactive to January 1, 1951, thereby permitting political subdivisions desirous of securing the coverage offered by the Act to take, for a starting point, January 1, 1951, instead of August 20, 1951.

Application of Section 3-III, Chapter 395, Maine Public Laws, 1951, above quoted, is restricted by Section 3 of that chapter, which states that Sections 3-I, II, III and IV are in effect "except as may be otherwise required by or under the Social Security Act as to the services to be covered. . ."

It is our opinion, therefore, that Section 2 of Chapter 395, Maine Public Laws, 1951, and Section 3-III of Chapter 395, Maine Public Laws, 1951, are restricted by Section 3, Chapter 395, Maine Public Laws, 1951, and Sections 2 and 3 are effective only in so far as they are not prohibited by the Social Security Act.

JAMES GLYNN FROST
Assistant Attorney General

July 24, 1951

To H. M. Orr, Purchasing Agent
Re: Demurrage

Your memo of July 18, 1951, in which you inquire whether the contract now in existence between the State of Maine and Maine Oxy-Acetylene Sup-

ply Company permits an increase of demurrage charges from 2 cents per day to 3 cents per day, has been received.

Paragraph 5 of the contract permits the demurrage charge of 2 cents, and reads as follows:

“Buyer shall return each cylinder when empty to Seller not later than ninety days after its delivery by Seller; Provided that if any loaned cylinder is not returned within thirty days from date of shipment Seller reserves the right to make a demurrage charge of two cents per day for all time over thirty days that such cylinder is out of Seller’s possession, which demurrage charge Buyer agrees to pay, or cause to be paid, on demand. Buyer shall pay, or cause to be paid, promptly on demand to Seller, at Seller’s then established valuations and rates, for loss of or damage to any said cylinders or fittings resulting from any cause after delivery thereof by Seller and until return to Seller.”

You state that the Maine Oxy-Acetylene Supply Company claim that their supplier has passed the charge along to them, and authorization to charge the State the additional amount is within paragraph quoted below:

“The obligation of Seller to delivery and Buyer to accept deliveries hereunder are subject to strikes, riots, war, fires, acts of God, accidents, Governmental orders and regulations, curtailment of, and failure in obtaining, sufficient electrical power, lack of transportation facilities, and other similar or different contingencies beyond the reasonable control of Seller or Buyer, as the case may be.”

Paragraph 6 has reference only to the delivery and acceptance of the product with reference to which this contract was executed, and the unforeseeable and uncontrollable circumstances which might alter plans concerning the delivery and acceptance of that product.

It is our opinion that this paragraph (6) does not contain authority to increase demurrage rates. Demurrage is a sum charged only when the Buyer (State) fails to return the empty cylinder within the time stated in the contract. That is, after delivery and after acceptance of the product, demurrage charges may be made when the cylinder is not duly returned. Paragraph 6, as we have stated, has reference only to delivery by Seller and acceptance by Buyer of the product, and in no way makes mention of situations which occur *after* delivery and acceptance.

It is a paragraph common to contracts, excusing performance when impossible because of unforeseen and uncontrollable circumstances which intervene and make performance impossible, attributable to such happenings as are recited: strikes, riots, war, etc.

We feel, therefore, that the increase in demurrage rates from 2 cents to 3 cents cannot be justified by paragraph 6 of the contract.

JAMES G. FROST
Assistant Attorney General