

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

We have examined the suggested contracts attached to your memo and find that on the whole they are not inconsistent with the law. However, in Exhibit A and Exhibit B the thirty-day written notice and the notice on or before May 1st, respectively, may require some modification to distinguish them from the ninety-day notice requirement contained in Chapter 203.

JAMES G. FROST
Assistant Attorney General

December 3, 1951

To Irving W. Russell, Superintendent of Public Buildings
Re: Formal Contracts

In your memo of October 17th you inquire as to the necessity of obtaining formal contracts in cases where construction or repair of buildings involves a total cost of more than \$3000.

The question as propounded is not one which can be explicitly answered without a better knowledge of just what facts gave rise to the question. To the necessity of there being a contract in instances where construction or repair of buildings involves a total cost of more than \$3000, the answer is, "Yes." See opinion of the Attorney General dated September 28, 1909. What in fact constitutes a contract is another question.

Section 43, Chapter 14, R. S. 1944, spells out the requirements leading to a valid contract relative to the construction and repair of buildings at the expense of the State involving a total cost of more than \$3000, stating that the contract shall be awarded by a system of competitive bids, and in subsequent sections the provisions to be followed with respect to such competitive bids are described.

An unconditional acceptance, by the proper authorities, of a bid submitted pursuant to a proposal or advertisement for bids for such a contract as you inquire about (for public work, etc.) upon the basis of plans, specifications, and terms of such proposal, and offering to do the work in accordance with the specifications, converts the offer into a binding contract. The need for an unconditional acceptance is necessary to meet the requirement of a valid contract that there be mutual consent. See *Howard v. Maine Industrial School for Girls*, 78 Maine 230. Under the above circumstances, there is a binding contract even though a formal bidder's contract has not been executed. Thus, a contractor, his bid having been unconditionally accepted, can enforce the contract, even though a "formal" contract has not been executed. Once these provisions have been complied with and the bidder's offer is accepted, unconditionally, a valid contract results.

If, however, the acceptance is conditional, depending upon whether the bidder must comply with a further requirement, such as a forfeiture bond, fulfillment of a performance bond, or other condition or restriction prescribed by the Governor and Council, then in such case there is not, at that point, a binding contract, until such condition is complied with.

Notwithstanding the legal aspects of the circumstances involving bids and specifications outlined above, we recommend that in all instances involving

repair or construction of buildings the total cost of which exceeds \$3000, ultimately formal contracts be executed. We cannot overestimate the solemnity involved when parties undertaking an agreement affix their signatures to an instrument under seal, said instrument crystallizing all that the agreement previously set out, and for that reason we recommend that such formal contracts be made.

JAMES G. FROST
Assistant Attorney General

December 3, 1951

To Irving W. Russell, Superintendent of Public Buildings
Re: Advertising for Bids

Your letter of November 7, 1951, relative to advertising for bids has been received by this office.

Section 44 of Chapter 14, R. S. 1944, states:

"The trustees, commissioners, or other persons in charge of such construction (involving a total cost of more than \$3000) shall advertise for sealed proposals not less than 2 weeks in such papers as the governor and council may direct; . ."

Your question is: "Are we definitely tied down in advertising of newspapers or can we also advertise with the F. W. Dodge Corporation, commonly known as the Dodge Reports, whose services are subscribed to by the contractors throughout the industry?"

It is our opinion that you may extend your advertising to include advertising in the Dodge Reports, with the approval of the Governor and Council. While newspapers are the common medium for such advertising, in the face of the fact that advertising in the Dodge Reports will reach more contractors, we feel that, though you may not limit advertising to such Reports, you may include them, along with your newspaper advertising, as the medium which you will use.

JAMES G. FROST
Assistant Attorney General

December 4, 1951

To Commissioner of Finance and Treasurer of State
Re: Chapter 201, P&SL 1951

We have your memo of November 8, 1951, relative to Chapter 201 of the Private and Special Laws of 1951.

You quote that portion of Article IX, Section 14, Constitution of Maine, which states:

"The credit of the State shall not be loaned in any case."

You then ask: "The Economic Advisory Committee asks the Attorney General if, after considering the above limitation, in his opinion, the state could legally issue the \$27,000,000.00 in bonds authorized by the 95th Legis-