

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

This opinion does not in any way affect the rights of certain institutions to continue functioning under their statutes, which may permit instalment paying for board and room.

JAMES G. FROST
Deputy Attorney General

June 9, 1952

To Clyde N. Manwell, Park Planner
Re: Fire Insurance on Buildings under Construction

This will acknowledge receipt of your memo of May 22, 1952, to which you attached a paragraph from your standard specifications covering the contractor's responsibility for work. You state that it is your opinion that this paragraph protects you with respect to fire coverage while buildings are under construction.

The paragraph referred to reads in part as follows:

"Until final acceptance of the work by the Engineer, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to the work by the action of the elements, or from any other cause whatsoever. . . The Contractor shall bear all losses resulting to him on account of the amount or character of the work . . . or on account of the weather, elements, or other causes. . ."

"Injury or damage by the action of the elements" is a somewhat uncertain expression. Injuries to buildings by wind, rain, frost and heat are spoken of as injuries by the elements, but courts have stated that unless fire is caused by lightning or other superhuman agency, then the injury is not within the meaning of "element".

It is the opinion of this office that to protect such property properly, the provision should be expressly stated in the specifications. Paragraph 11 does not adequately protect the State, in that there is no positive provision placing the liability upon the contractor in the event the building is consumed by fire resulting from causes other than an "Act of God".

While you are perhaps right in your opinion that you are covered by this paragraph, in that we feel that a court of law would so interpret paragraph 11, we also feel that the burden is upon the State to provide expressly for such fire coverage, because suit should not be necessary in order to interpret the provisions of our contracts.

We would therefore recommend that a provision be inserted in paragraph 11 expressly placing the liability upon the contractor in case fire should consume or damage the building prior to the time it is completed.

JAMES G. FROST
Deputy Attorney General

June 10, 1952

To Marion B. Stubbs, State Librarian
Re: Files of the State Paper

This will acknowledge your memo of May 21, 1952, in which you state