

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

January 29, 1954

To Honorable Burton M. Cross, Governor of Maine
Re: Appointment and Term of Office of Chairman, Highway Commission

Section 3 of Chapter 20 of the Revised Statutes, as amended by Chapter 398 of the Public Laws of 1953, provides that the term of office of the chairman of the Highway Commission shall be seven years and that the chairman shall be appointed by the Governor. The question has been raised if the Governor must first nominate a person as a member of the Commission and then subsequently appoint him as chairman, after confirmation.

The tenure of office of the members of the Commission, not including the chairman, is for a term of three years. The term of office of the chairman is for seven years. It is therefore the opinion of this office that, consistent with the intent of the Legislature, the Governor can simultaneously nominate a member and designate him as chairman.

JAMES G. FROST
Deputy Attorney General

February 2, 1954

To J. B. Dyer, Purchasing Agent
Re: Bureau of Purchase Law

This is in response to your memo relative to an interpretation of the Bureau of Purchases Law, particularly Sections 36 and 37 of Chapter 14 of the Revised Statutes. Your memo was in the following terms:

"In an effort to improve the purchasing procedure in the Bureau of Purchases regarding certain supplies and materials it appears desirable to place some of our commodities on a requirement contract which will result in the grouping of certain types of commodities required by our institutions, basing our bids on a total quantity of an item to be delivered by the successful vendor to any of our institutions as required. Of immediate interest to this office is a bid on clothing. It is desired to totalize the quantity of each similar piece of clothing instead of listing these items against each institution, awarding the bid to one vendor who would supply to each of our institutions all of our requirements of the same item of clothing. We feel that in doing this we may be able to purchase at the greatest possible economy and benefit to the state due to larger quantities being supplied.

"Section 37 of the R. S., 1944 states: 'The state purchasing agent, in requesting bids for institutional supplies, shall list the articles on which bids are requested under the names of the institutions for which they are desired. Bids shall be made on any or all of the articles listed, each bid being made for the supply of a specific article or articles to the particular institution without reference to those otherwise listed.' This section was enacted into law because up to the time that the administrative code was formulated the Governor and Council were responsible for purchases, supplies and materials for the institutions. Each institution operated as a separate function. At a later date the Institutional Service Department was established and the Bureau of Purchases became the central purchasing agency for all of the institutions.

“Section 26, in part, states: *‘Except as provided in this chapter, any or all supplies, materials, and equipment needed by one or more departments or agencies shall be directly purchased or contracted for by the state purchasing agent, as may be determined from time to time by rules adopted pursuant to this chapter, which rules the department of finance is authorized and empowered to make, it being the intent and purpose of this statute that the state purchasing agent shall purchase collectively all supplies for the state or for any department or agency thereof in the manner that will best secure the greatest possible economy consistent with the grade or quality of supplies best adapted for the purpose for which they are needed.’*

“Section 41, II, further states that the state purchasing agent, with the approval of the commissioner of finance, may adopt, modify, or abrogate rules and regulations prescribing the manner in which the supplies, materials, and equipment shall be purchased, delivered, sorted, and distributed.”

You have asked this office the following question: “Can the Bureau of Purchases, in purchasing in the best interest of the state, group items required by the several institutions into one item of identical nature without violating the intent of Section 37?”

The answer to your question is in the negative.

Section 36, which provides for collective purchasing of supplies for any department or agency, clearly contemplates that there may be exceptions to such method of purchasing as indicated by the clause above underlined. Section 37, which immediately follows, appears to be one of the exceptions contemplated, and without doubt is a procedure obviously different than the intent expressed in Section 36. However, such difference appears to be the express wish of the Legislature.

This section relating to the purchase of supplies for institutions was enacted by Chapter 124, P. L. 1933, two years after the enactment of the Administrative Code, and is still present some fifteen years after the Department of Institutional Service was established. (Chapter 223, P. L. 1939.)

It is presumed that the procedure outlined in Section 37 has been followed for these twenty-one years and this office could not render an opinion vitiating the clear intent of each statute.

The change should come through proper legislation.

JAMES G. FROST
Deputy Attorney General

February 12, 1954

To Harold J. Dyer, Director, Park Commission
Re: Descriptive Literature

We have your memo of January 25, 1954, in which you state that there has been a need for descriptive literature available to various State parks to provide visitors with information as to the area, its features and facilities. In view of the fact that such material, while informative, is an advertising and promotional medium, you ask if your department can expend money for