

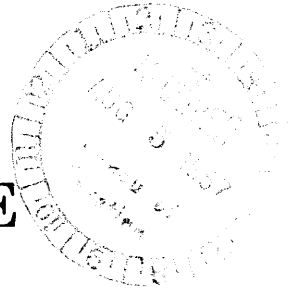
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

certain sum of money because of the simultaneous amendment of the "stipend" fund. See Legislative Record, 1953, p. 2531.

This Legislative intent can be seen even more clearly in the Record at pp. 2533-2535, where the intent of Mr. Childs' offer of House Amendment "A" is discussed. Upon being questioned by Mr. Center, it appears that no amendment was intended to permit Gorham to hold races longer than the 4-week period, except after Labor Day.

It would thereby appear that the Legislative intent, as set forth in the Legislative Record, is consistent with the words of the statute, and with our conclusion.

JAMES GLYNN FROST
Deputy Attorney General

February 15, 1956

To David H. Stevens, Chairman, State Highway Commission

Re: Acceptance of Second Lowest Bid on Shovels

You have requested my opinion as to whether or not the Commission can accept the bid of the second lowest bidder under the following facts:

1. that certain specifications were set up to furnish a basis for competitive bids,
2. that the lowest bidder was only a small amount lower than the next lowest bidder,
3. that the shovel of the second bidder was considerably superior in grade and quality (far beyond the price differential),
4. that the second shovel was much better adapted for the uses required by the Commission, and
5. that the date of delivery of the shovel of the second bidder was a week or two in advance of the delivery by the first bidder.

My answer is, Yes. The intent of the competitive bid statute was to achieve economy and not to compel the purchase of the cheapest priced item. It is not of necessity economy to buy the cheapest product.

The statutes applicable to this problem are section 36 and section 42 of chapter 16 of the Revised Statutes of 1954. Section 36 of said chapter says in part:

"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 purposes for which they are needed.*"

You will note the words,

"consistent with the grade or quality of supplies best adapted for the purposes for which they are needed."

The facts in this case plainly come within the purview of this language. It is apparent that the grade or quality of the product can be considered as well as the

use of the product for the purposes for which the department needs it. It is proper to consider not only the grade or quality of the shovel, but also its comparative efficiency for the work it is to be used for. For example, if the price of one was 20% higher and the quality was 50% higher, the higher priced shovel could be accepted without doubt.

Moreover, section 42 of said chapter says in part:

“shall be awarded to the lowest responsible bidder, *taking into consideration* the qualities of the articles to be supplied, their *conformity with the specifications*, the purposes for which they are required, and *the date of delivery.*”

It would seem obvious that when the quality of one article is superior to another and it is better fitted for the purposes required and the date of delivery is sooner and the price differential is reasonably in favor of the purchase, the better article could and should be purchased.

Moreover, it must be remembered that the administrative code was aimed mainly at bulk transactions that could be fairly standardized. The field of heavy road equipment with the varying sizes, weights, adaptability, durability, etc., of the machine does not lend itself to standardization except in a comparative manner.

It is my opinion that there is clear language in the statutes to authorize consideration of the superior values and uses of one type of equipment over another and that the Commission is not compelled to buy the equipment that meets the minimum specifications.

L. SMITH DUNNACK
Assistant Attorney General

February 20, 1956

To Paul A. MacDonald, Deputy Secretary of State

Re: U. S. Government Employee Convicted of Drunken Driving

We have the following fact situation: X was convicted of operating under the influence of intoxicating liquor. His license was revoked under the provisions of Section 150 of Chapter 22, R. S. 1954.

He is employed by the U. S. Government and part of his duty is apparently to drive fire fighting equipment located at Fort Williams. The question involves his right to operate the U. S. Government fire fighting equipment upon the highways of the State of Maine.

In the first instance the State of Maine could not have required him to have a license to operate U. S. Government equipment over its highways. *Johnson v. Maryland*, 254 U. S. 51. This being true, the State of Maine is powerless to suspend any right that may be granted him by a federal law to operate over the highways in this State while under orders from the Federal Government. His right to operate in all other capacities stands suspended.

If he operates U. S. Government equipment pursuant to an order from his superior on the highways of the State of Maine, it is our opinion that he is not violating the laws of this State.

ROGER A. PUTNAM
Assistant Attorney General