

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

sub-standard grade sardines shall have the words "BELOW STANDARD IN QUALITY, GOOD FOOD—NOT HIGH QUALITY" is not a proper requirement. A valid rule and regulation cannot be promulgated where such rule and regulation is inconsistent with the statute.

JAMES GLYNN FROST
Deputy Attorney General

March 18, 1958

To David H. Stevens, Chairman, State Highway Commission

Re: Sale of Buildings on Condemned Land

You have requested my opinion as to the power of the Commission to sell at auction buildings on land condemned for highway purposes.

It is true that the legislature has given broad general powers to the Commission and that the statutes should be interpreted to achieve the purpose of creating a connecting highway system. However, the legislature laid down definite rules in regard to purchases and sales. When the Code was enacted under Tudor Gardiner's leadership, a stringent control was set up with the intent to take away from all departments the power to buy and sell and to place this power in the hands of a central bureau of purchases, great emphasis being placed on the system of publicly advertised bids. This theory of a public bid system is similar to that lately promulgated by the Federal Bureau regarding right-of-way cases. It seems that there is a willingness to stick to a graft-proof system and pay more, rather than risk possible collusion.

The only provision in the highway laws relating to sale of property is in Section 24 of Chapter 23:

"The governor and council on recommendation of the commission *may* sell and convey in behalf of the state the interests of the state in property taken or acquired by purchase under this chapter and deemed no longer necessary for the purposes hereof, . . ."

It will be noted that the Commission can recommend sales, but the Governor and Council "may" sell. Nothing is said about procedure; but, since this provision was enacted in 1913 and the Code in 1931, since the Code was intended to set up a new and complete control of the financial system, and since the Code emphasized the bid system, there can be no question but that the Governor and Council would insist on the bid method. . . . The Attorney General's staff understands that the bidding rule applies to all departments.

When the Commission takes land and buildings and contracts with a bidder for a construction for the clearance of the land, releasing title to the buildings and trees thereon, it is considered as salvage under the clearance part of the contract and therefore outside the rule requiring bids. In other words, the trees, houses, bushes, walls, etc., are considered as obstructions to the work, and it is part of the project to remove them.

I have carefully examined the statutes and can find no provisions for the auction of State property. On the other hand, the statutes definitely provide for sealed bids.

L. SMITH DUNNACK
Assistant Attorney General