

MAINE STATE LEGISLATURE

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July 2, 1958

C. T. Barnard, Architectural Aide Bureau of Public Improvements
 Frank F. Harding, Attorney General Attorney General

Contract to obtain services of negotiator to purchase land adjacent to State House and State Office Building

On June 27, 1958, you sent this office, for approval, a contract dated June 27, 1958, whereby the State of Maine, through the Bureau of Public Improvements, was to obtain the services of a negotiator to purchase land adjacent to the State House and State Office Building. Under the terms of the contract we are asked to approve, the negotiator is to receive for his services 2 % of the amount of the purchase price he agrees the State will pay for land for which he negotiates the purchase.

The contract is herewith returned without approval.

The only apparent authorization for the contract is Council Order No. 1055 passed and approved June 11, 1958. The contract is not in conformity with the Council Order. Nowhere in that order is there authorization to contract with a negotiator on the basis of a fee to be determined by a percentage of the amount of money he is able to spend. The statement of fact, which is a part of the Council Order, made by the Bureau of Public Improvements, says, in part:

"Sufficient funds for the payment of the above contract will be available in Appropriation No. 6365, if an accompanying Order, this date, is approved."

This statement would appear to contemplate the payment of a sum certain rather than the payment set forth in the contract of which you request approval.

A report from the Bureau of the Budget is now with the Council Order. That report reads in part as follows:

"The Department" (presumably the Bureau of Public Improvements) "informs this office that the negotiation fee would be 2 % of the top appraisal, which amounted to approximately \$385,000.00 for the 29 properties, and the maximum fee would not exceed \$8,000."

This, too, would seem to contemplate the payment of a sum certain, to be set in advance and not to exceed a set maximum. The contract submitted for our approval contains nothing to bring it within the context of the last above-quoted statement.

Memo to G. T. Barnard

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July 2, 1958

We do not know what knowledge, or understanding the Governor and Executive Council had in passing Council Order No. 1055. Assuming, as we must, that they relied upon the words comprising the Council Order with its Statement of Fact, made by the Bureau of Public Improvements, and the report made by the Bureau of the Budget, based in part, apparently, upon representations of the Bureau of Public Improvements, the contract submitted to us does not conform in letter or in spirit to the Order passed by the Council and approved by the Governor in reliance upon the named documents.

Please do not submit to us for approval another contract in which the compensation to be paid by the State is to be determined by a percentage of the amount of the State's (taxpayer's) money the contracting party is able to spend.

Frank P. Harding
Attorney General

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