

# MAINE STATE LEGISLATURE

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October 1961.

Opinion relative to members of the Legislature as  
salesmen of vendors.

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Section 17 of Chapter 135 Public Law of Maine 1954, as amended by Public Law of 1959, Chapter 251, Section 2 reads as follows:

"Sec. 17. Public officers forbidden to have pecuniary interest in public contracts; contracts void.--No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the state, or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation hereof is void; and if such officer or person receives any drawbacks, presents, gratuities or secret discounts to his own use on account of such contracts, or from the profits in any materials, supplies or labor furnished or done for the state or such institution or such quasi-municipal corporation, he shall be punished by a fine of not more than \$500 or by imprisonment for not more than 12 months. This section shall not apply to purchases of the state by the governor and council under authority of chapter 1, section 2b-4".

FARRIS

Previous opinions by Attorney General Ralph W. Farris in 1945 and 1950 interpreted that members of the legislature fell within the prohibition of the above cited section.

It is to be noted that Attorney General Farris's decisions both dealt with contracts between the State of Maine and persons who fell within the prohibited class as listed in Section 17 above. In his opinion of January 17, 1950 Mr. Farris even in respect to contracts made limitations surrounding emergency purchases by State departments from someone in which members of the legislature had financial interests.

Under the provisions of Chapter 61, Revised Statutes of Maine 1954 in Section 8 the Commission was given the following powers and duties:

"IV. To buy and have in their possession wine and spirits for sale to the public. Such wine and spirits shall be purchased by the commission directly and not through the State Purchasing Agent and shall be free from adulteration and misbranding. The commission shall in their purchases of liquors give priority, wherever feasible, to those made from the agricultural products of this State."

From the above it will be seen that previous opinions of Attorney General Ferris have no application to purchases by the State Liquor Commission from vendors.

You are well aware of the fact that the Commission provides vendor with a sheet Form 14 entitled "Vendor's Specification and Price Question".

Upon the filing by the vendor of this Form 14 and at intervals when they wish to purchase the state issues a purchase order to the vendor which contains certain conditions of purchase amongst which is:

"It is hereby warranted in consideration of this order that the above state price represents the lowest tax-paid price f.o.b. distillery, or point of final shipment, offered any purchaser for this class merchandise. Provided, however, the vendor shall be deemed to have complied with this warranty notwithstanding any difference in net realized price on merchandise sold to different purchasers when such differences are due to State law or administrative requirements affecting such items as freight, handling or delivery charges, discounts or cash discounts."

From the foregoing it will be clear that liquor purchased from vendors is not subject to the provisions of the Revised Statutes relating to the Burden of Purchase. It is also clear that no vendor can receive at the hands of the Commission any special price premium or inducement which affects in any way the minimum price which the vendor agrees to sell its merchandise to the Commission.

You are further aware of the fact that the Commission makes a selective listing of liquors each year and in making such listings drops from the list merchandise which

does not come readily out of its stores.

All of the foregoing relates to contracts.

In the instant case the consideration is not contracts of a vendor with the liquor Commission but the legality of a member of the legislature acting as a salesman for a vendor. No contract whatsoever is entered into between the Commission and a salesman of a vendor.

In the light of the foregoing it would appear entirely clear that there is no obstacle in the path of the Commission assuming the right and privilege of a vendor to nominate and appoint its own salesman who is entitled to call on the Commission even though such salesman is a representative of the legislature. This opinion is confined solely to the legality of a member of the legislature acting as a salesman of a vendor who sells liquor to the liquor Commission. ✓

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