

# MAINE STATE LEGISLATURE

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RICHARD J. DUBORD  
ATTORNEY GENERAL



GEORGE C. WEST  
DEPUTY ATTORNEY GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

August 13, 1965

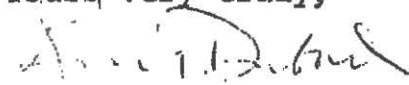
David H. Stevens; Chairman  
State Highway Commission  
State Office Building  
Augusta, Maine

Dear Mr. Stevens:

I have reviewed the attached memorandum dated July 26, 1965, from Asa C. Richardson, your Chief Counsel, to Deputy Attorney General George C. West, pertaining to the interpretation of Chapter 406, Public Laws of 1965.

You are hereby advised that we are adopting this memorandum as an official opinion of this office in toto and the State Highway Commission may consider it as such.

Yours very truly,

  
Richard J. Dubord  
Attorney General

RJD:H  
Enclosed

*revised  
SKC  
8-18-65  
A. Richardson advised*

No ✓

# STATE OF MAINE

Inter-Departmental Memorandum Date July 26, 1965

To George G. West, Deputy Atty. Gen. Dept. Attorney General  
From Asa C. Richardson, Chief Counsel Dept. State Highway Commission  
Subject Implementation of Chap. 406, Public Improvements-Wages

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FACTS: 1. 26 M.R.S.A. 1303, provides in part:

"The wages for a day's work paid to laborers employed in the construction of public works, including state highways, shall be not less than the prevailing rate paid by the state for similar work done by the State Highway Commission. Any contractor who knowingly and willfully violates this section shall be punished by a fine of not less than \$100. Each day that the contractor employs a laborer at less than the wage minimum herein stipulated shall constitute a separate violation of this section."

This section establishes a minimum wage rate to be followed in public works contracts other than the minimum set by 26 M.R.S.A. 664:

"-----it is declared unlawful for any employer to employ any employee except as otherwise provided in this subchapter at the rate of less than \$1 per hour."

Further, Section 1303 effectively establishes the State Highway Commission as the agency which shall determine the rates paid under all public works contracts.

2. Chapter 406, Laws of 1965, repeals Section 1303 as it relates to rates established by the State Highway Commission on the effective date of the enactment, namely, September 3, 1965.
3. Chapter 406, Laws of 1965, provides in part:
- A. In section 1305 - "-----the policy of the State of Maine that a wage of no less than the prevailing hourly rate of wages for work of a similar character-----shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements."
- B. In section 1306: "Any public authority----- (contracts over \$5,000) shall before advertising for bids----- ascertain from the Commissioner of Labor and Industry the fair minimum rate of wages----- and such schedule of wages shall be attached to----- the specifications-----. The Commissioner of Labor and Industry----- shall assemble the data----- and shall file wage rates. Rates shall be established and filed as hereinafter provided on January 1st of each year. These rates shall prevail----- until the new rates are filed, the rates for the preceding year shall remain in effect; provided that such rates shall not remain in effect for a period longer than 15 months----- This provision shall not affect the construc-

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tion of a public improvement then underway-----."

C. In section 1308: "The Department of Labor and Industry from time to time, shall investigate and determine the prevailing hourly rate of wages in this state.

"3. Appeal. Any person affected-----may appeal to the Minimum Wage Rate Board-----by filing a written notice-----within 10 days from the filing of the copy of the determination with the Secretary of State-----."

"5. Rates pending appeal. The rates of the preceding year shall remain in effect pending the appeal-----."

D. In section 1309: "In all cases where a fair minimum rate of wages has been established as herein provided, and construction of a public improvement is let to contract, the contract shall contain a provision requiring the successful bidder and all of his subcontractors to pay a rate of wages-----."

E. In Section 1303: "Section 1304 to 1313 shall apply only to contracts for construction on public improvements let after the effective date of this Act, and to construction on public improvements for which there has been determined the fair minimum wage rate as provided in sections 1304 to 1313, and such determination has not been appealed from as may be provided by sections 1304 to 1313."

F. "Section 3 Appropriation"-----the sum of \$1,000 to carry out the purposes of this Act.

4. The Commissioner of Labor and Industry has requested of the Governor and Council additional funds - in substance determining that this enactment cannot be implemented by the Department until the additional funds are received.

## QUESTIONS:

1. Can a public authority let contracts after September 3, 1965, and before the Department of Labor and Industry determines and files a fair minimum rate?
2. Can a public authority use the "prevailing rate paid by the State for similar work done by the State Highway Commission "pending determination and filing of the fair minimum rate by the Department of Labor and Industry?
3. Will September 3, 1965, be the last advertising date, or last

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award date on which the rates as determined under existing law are applicable?

4. What rate schedule will be used between September 3, 1965 and January 1, 1966?
5. In section 1306 - does "then underway" mean: Advertised, bids opened, or actually awarded?

## ANSWERS:

1. Yes.
2. No.
3. September 3, 1965, shall be the last date on which invitations to bid (advertisement) shall contain the rates as now established under Section 1303. Any contract advertised before September 3, 1965, shall be awarded subsequently and such contracts executed pursuant to the award shall contain the rate as advertised.
4. There is at this time no fair minimum rate to be used in invitations to bid between September 3, 1965 and the date of Labor and Industry filing a new rate with the Secretary of State, therefore, no rate need be included in the advertisement except, 26 M.R.S.A. 664 is still applicable.
5. "Then underway" means any contract which when advertised included the rate established under existing Law (Before Sept. 3, 1965) and any contract advertised before the filing required by the Department of Labor and Industry.

## OPINION

1. The legislature assuredly did not intend to stop the construction of public improvements pending the determination and filing a fair minimum rate by the Department of Labor and Industry. However, the intent of the Legislature is not clear. Did the Legislature intend that Section 1306 apply whether or not a rate had been established pursuant to section 1308, or did it intend that 1306 not apply until such a rate had been determined. Assuming the former to be the answer it would work a hardship in that no contracts could be let until the rates are filed. In fact of the impossibility of performance on the part of Labor and Industry the latter must apply to avoid the chaos of interrupted programs for months to come and the resulting in inconvenience to the people of this State. Further, Section 1313, seems quite clear in that Sections 1304-1312 are inoperative until the fair minimum wage rates are filed. This section 1313 would seem to clarify the conflict of section 1306 which requires that the public authority shall ascertain the rate before advertising for bids.

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2. Compliance with the existing provisions of Section 1303 is not required after September 3, 1965, the effective date of repeal by amendment, as the same relates to the rates established by the Highway Commission.
3. Section 1308 relates to "rates for the preceding year shall remain in effect, "however this refers to rates established by Labor and Industry and not to those established by the Highway Commission. The repeal of that part of 1303 effectively dispenses with any rate barring Section 664, pending filing by Labor and Industry.
4. Section 1313 clearly makes 1304-1312 inoperative until filing, therefore with the repeal of 1303 there are no rates after September 3, 1965 and before filing.

## COMMENT.

Any invitation to bid (advertisement) published prior to September 3, 1965, must contain the prevailing rate established by the State Highway Commission as provided in the present law. Any bid made in response to this advertisement must comply with the advertised rate. No advertisement thereafter can contain the present rate.

ASA C. RICHARDSON  
Chief Counsel

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