

MAINE STATE LEGISLATURE

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No ✓

January 4, 1966

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Public Improvements

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Use of Fair Minimum Wage Rates

FACTS:

The Bureau of Public Improvements has two contracts out for bid. Both were first advertised in December. One is to be opened Wednesday, January 5th, and the other to be opened January 19th.

The Department of Labor and Industry has filed its fair minimum wage rate under P.L. 1965, Chapter 406.

There is to be an appeal filed against all the wage rates based on the Department not filing separate rates for building construction and for heavy or highway construction. (When the appeal will actually be filed is not known. It must be within 10 days from the filing by the Department of Labor and Industry.)

QUESTION:

May the Bureau of Public Improvements open the bids on January 5 and January 19 and award contracts without requiring the bidders to use the filed wage rates?

ANSWER:

Yes.

There is no real problem here if an appeal is filed immediately. The filing of an appeal, in effect, suspends the operation of the law as to the rates on which an appeal is filed. See section 1313 which says, "and such determination has not been appealed from as may be provided by sections 1304 to 1313" and section 1308, subsection 5, "the rates for the preceding year shall remain in effect, pending the appeal of a determination of the Commissioner of Labor and Industry."

The real question relates to the opening of bids on January 5 and 19 if no appeal to all the rates is filed by those dates. The answer appears to lie in an interpretation of section 1306.

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This section provides that on public improvements having an estimated cost of \$5,000 or more the public authority shall secure the fair minimum rate of wages from the Commissioner of Labor and Industry before advertising for bids. The schedule of wages is to be made a part of the specifications and printed on the bidding blanks. In the instant case this could not be done as the rates were not to be filed until after the advertising had been started.

The rates are to be established and filed by the Commissioner with the Secretary of State (section 1308, subsection 2) on January 1 of each year. Section 1306 then states:

"These rates shall prevail as the minimum wage rate on all public improvements on which bids are asked during the year beginning with the date when such new rates are filed." (Emphasis supplied)

From this language it must be concluded that the rates filed on January 1, 1966 apply only to contracts which result from bids which are advertised in 1966. In the instant case the "bids are asked" by advertising in 1965 prior to "the year beginning with the date when such new rates are filed." Hence, the rates filed on January 1, 1966 cannot apply to bids to be opened on January 5, and 19, 1966.

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