

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

December 14, 1966

David H. Stevens, Chairman

State Highway Commission

Asa C. Richardson, Chief Counsel

State Highway Commission

W. H. Hinman, Inc. I-95-9(31), T 1 R 6

**FACTS:** The Commission on September 29, 1965 awarded W. H. Hinman, Inc., the low bidder, a contract which included an item of work commonly referred to as "Selective Clearing and Thinning."

The "proposal" and the "estimated quantities" both described the quantity of work as follows:

<u>"Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>
201.12	Selective Clearing and Thinning	145	Acres"

Item 201.09 provides the method of measurement of work performed for the basis of payment and provides in part as follows:

"Selective Clearing and Thinning will be measured by the acre determined from horizontal dimensions acceptably cleared or thinned within the limits shown on the plans or staked by the Engineer-----." (Underlineation added for emphasis.)

Sheet No. 11 and other Sheets following Sheet 11 of the Project Plans depicted specifically "Selective Clearing and Thinning Limit" lines and the area within the limit was computed to be 70 acres. Sheet No. 11 listed under "General Notes" the following:

"6. Selective clearing and thinning operations to be performed within limits indicated on the plans unless otherwise directed by the engineer."

On September 29, 1965, the date of award, there had not been staked out any area apart from the above described 70 acres wherein it was intended such area be thinned and cleared. If any area was staked it was subsequent to the advertising and award date. In 1966 the Commission personnel staked a "Selective Clearing and Thinning" area beyond the limits shown on the plan and the contractor refused to clear any area beyond the 70 acres shown on the plan unless and until a basis of payment be arranged.

**QUESTION:** Can the Commission require the contractor to do selective clearing and thinning outside the limits shown on the plans?

**ANSWER:** No.

December 14, 1966

David H. Stevens, Chairman

State Highway Commission

Asa C. Richardson, Chief Counsel

State Highway Commission

W. H. Hinman, Inc. I-95-9(31), T 1 R 6

PAGE #2

OPINION: "Specifications are to be clear, concise description of what is to be required of the contractor as far as materials and workmanship are concerned. Specifications are only one part of the contract document. Between specifications and drawings the materials for and the character and details of the work to be done are to be made clear and definite for all concerned. The Engineer and the owner should never forget that when the specifications fail to show all requirements as adequately as necessary to reveal clearly what is included, the contractor's obligation is limited to performance of only what is actually called for in such incomplete specifications." (Contracts, Specifications and Law for Engineers by Dunham and Young.) (Emphasis added by underlineation.)

"The Commission shall make all surveys, plans, estimates, specifications and contracts for all proposed work and shall, except as otherwise provided in Chapters 1 to 19, advertise for bids for the same-----".  
23 M.R.S.A. 753

When public contracts are required to be let only on competitive bidding it is essential that plans, specifications and estimates be prepared sufficiently definite and explicit to enable the bidders to prepare their bids intelligently on a common basis.  
43 Am. Jur. 35

The rule requiring public authorities to give out plans and specifications is one rooted in sound principles of public policy and is rigidly adhered to by the courts which require that the specifications be so framed as to secure fair competition upon equal terms to all bidders. The rule is one that is not to be frittered away by careless or indifferent application to specifications that are not clear, precise and definite on matters material to the proposals on which bidders are invited to compete. Plans and specifications so general as to leave a wide margin for difference in type and cost of the proposed work do not meet legal requirements of publication of plans and specifications for proposed public works.  
(Underlineation added for emphasis). 43 Am. Jur. 36

In this case the contractor's refusal was conditional. In his letter of August 26, 1966 it reads in part - "-----for performing work beyond the limits as shown on the plans and that he should not do such work until payment had been arranged for." (Underlineation added for emphasis.) Here the contractor would not be entitled to additional payment or payment arrangements other than those expressly provided in the specifications unless the specifications did require the work by definite, explicit terms.

December 14, 1966

David H. Stevens, Chairman

State Highway Commission

Asa C. Richardson, Chief Counsel

State Highway Commission

W. H. Hinman, Inc. I-95-9(31) T1 R 6

PAGE #3

"A contractor for public work is not, however, entitled to recover compensation additional to the agreed contract price where it is shown that the contract actually contemplated his performing the work-----".  
43 Am. Jur. 114

In our "Method of Measurement" provision relating to basis for payment Item 201.09 it reads in part: "Areas not shown on the plans, or not staked out for clearing or thinning will not be measured for payment." (Underlines added.)

In summary it can be fairly concluded that in the absence of our specifications clearly and definitely setting forth the specific area for clearing and thinning above and beyond the 70 acres shown within the clearing and thinning limit lines at the time of advertising the Commission could not then quite arbitrarily designate an area where additional work shall be done without making arrangements for additional compensation. To do so is to violate public policy. Further, it would appear that our own specifications, namely 201.09, prohibits the Commission from making payment for the additional work on 75 acres staked out a year or more after the award and it seems sheer folly to assume we could get specific performance from the courts in any litigation to compel the contractor to do this proposed work in said area of 75 acres outside the limits shown on the plan. In my opinion such a suit against the contractor would be a mere hopeless gesture.

---

ASA C. RICHARDSON, Chief Counsel

ACR/ek