STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

September 27, 1967
Soil and Water Conservation Committee

Charles L. Boothby Executive Secretary

Administration of Contracts by Soil and Water Conservation Districts.

FACTS:

In your memo of August 25, 1967, and from information supplied as a result of our conversation of September 22, 1967, the following factual situation exists: A Soil and Water Conservation District advertised for bids for construction work, to wit: the construction of a small pond in the Town of Bridgewater. The lowest bid submitted was greater in amount than the amount of federal funds and town monies which the District possessed for expenditure for the project. The process of advertising for bids having been utilized by the District and having resulted in the submission of bids which precluded said District from exercising its power of acceptance, the District has asked you, as Executive Secretary of the State Committee, to negotiate a contract on its behalf. That situation has prompted you to ask the following question:

QUESTION NO. 1:

Is it within the authority of Soil and Water Conservation Districts to award a contract based upon a negotiation of the contract price?

ANSWER:

Yes.

QUESTION NO. 2:

Are there any limitations as to the amount or other limitations upon such negotiated contracts?

ANSWER:

No.

A soil and water conservation district is an agency of the State and also a public body corporate and politic. 12 M.R.S.A. § 6. As pointed out in an opinion of this office rendered on October 31, 1949, such districts are easily distinguishable from those agencies of the State which act as part of the executive branch of state government however.

> "It is to be noted that these districts may sue and be sued. While it is true that the statute states that a district organized under the provisions of the chapter shall constitute an agency of the State, it is to be noted also that such district is a public body corporate and politic, so that it is easily distinguished from State agencies created and acting as part of the executive branch of the State government. In other words, the districts are agencies for the carrying out of soil conservation projects, but are not agencies of government as those words are used when applied to the operation of the executive departments as such. . . ." *1949-1950 Atty. Gen. Reports, p. 119.*

12 M.R.S.A. § 6 subsection 8 provides that districts shall have the power:

". . . to make and execute contracts and *other instruments necessary or convenient to the exercise of its powers;* to borrow money and to execute promissory notes, bonds and other evidences of indebtedness in connection therewith; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers."

There is no statutory language which dictates that districts as quasi-municipal corporations must utilize the process of advertising for public bids as the sole means of soliciting offers as a condition precedent to the execution of all contracts. This is particularly true where the subject matter of the contract does not involve the construction of a state project nor the expenditure of state funds.

The law governing the execution of state contracts for public improvements is set forth in 5 M.R.S.A. § 1741-1750.

5 M.R.S.A. § 1741 entitled "Definitions" reads in part as follows:

"Whenever the words 'public improvement' or 'public improvements' shall appear in chapters 141 to 155 they shall be held to mean and include the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof, or constructed, acquired, or leased, in whole or in part with state funds. . . ."

5 M.R.S.A. § 1743 provides for competitive bidding on state contracts for public improvements and reads in part as follows:

"Any contract for any public improvement involving a total cost of more than $3,000, except contracts for professional, architectural and engineering services, shall be awarded by a system of competitive bidding in accordance with chapters 141 to 155 and such other conditions and restrictions as the Governor and Council may from time to time prescribe. . . ."

Contracting by a soil and water conservation district for the construction of a small pond, which construction will in no manner involve the expenditure of state funds, does not constitute the proposed project of the district a state "public improvement" as that term is defined in 5 M.R.S.A. § 1741 above quoted. The utilization of a system of competitive bidding for the awarding of contracts as set forth in 5 M.R.S.A. § 1743 is therefore not applicable to such a project.

When a district, although properly designated as a state agency, seeks to execute contracts which call neither for the constructing of a state "public improvement" as that term is defined in 5 M.R.S.A. § 1741 nor the expenditure of state funds, we conclude that said district is free to negotiate in any manner contracts designed to carry out proper corporate objectives or purposes.

PHILLIP M. KILMISTER
Assistant Attorney General

October 5, 1967
Water Improvement Commission

Raeburn W. Macdonald, Chief Engineer

Ability of WIC to require discharge license of individual discharging "new pollution" through "grandfathered" private sewer into natural watercourse.