STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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.

FACTS:

As I understand from your memorandum of September 28, 1967, the operator of a trailer park proposes to construct a sewer line to serve the park and to tie in such line with existing domestic sewer lines. These domestic sewer lines were constructed prior to August 8, 1953 and presently empty raw sewage directly into the St. John River.

QUESTION:

May the Water Improvement Commission validly require a discharge license of an individual who proposes to discharge untreated sewage into a river by way of an artificial watercourse constructed prior to the effective date of the statute imposing the license requirement?

ANSWER:

Yes.

OPINION:

The sewage to be discharged from the trailer park will eventually go into the St. John River without any treatment whatever. It will therefore constitute a new source of pollution to the river. The whole thrust of the license statute, Me. Rev. Stat. Ann., Tit. 38, § 413 (1964), is to protect the state's waters by requiring that such new sources be scrutinized by the WIC, which has the power to deny a license to discharge or to grant a license hedged with restrictions sufficient to maintain classification standards.

The fact that the sewage in question here initially flows into a "grandfathered" man-made watercourse prior to entering the river is immaterial. It is not the intital discharge into the man-made watercourse which is in issue, but rather the ultimate discharge into the river. It is this ultimate discharge which constitutes a new source of pollution to the river and must be licensed in order to be valid. *See,* in this regard, opinion of this office dated June 4, 1965, copy of which is hereto appended.

1961-62 Me. Ops. Att'y Gen. 166 is overruled to whatever extent it held that a discharge of the type contemplated here was not subject to license. A wholly different question would be presented if the discharge here was into an artificial watercourse leading to a treatment plant whose final effluent did not constitute a new source of pollution to the receiving body of water.

ROBERT G. FULLER, JR.
Assistant Attorney General

October 6, 1967
Banks and Banking

Irl E. Withee, Deputy Commissioner

Whether or not the Limitations of 9 M.R.S.A. § 6.4 Apply to Regulations Promulgated under 9 M.R.S.A. § 3856

FACTS: