

MAINE STATE LEGISLATURE

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April 17, 1968

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Public Improvements

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Contracts executed prior to October 7, 1967 (the effective date of P. L. 1967, c. 203)

SYLLABUS:

Contracts executed prior to October 7, 1967 are not subject to the provisions of P. L. 1967 c. 203. However, an existing dispute may be submitted to arbitration under this section by a written agreement entered into after October 7, 1967.

FACTS:

The State of Maine entered into a contract to erect a building. Certain matters are in dispute between the State and the contractor. The contract was executed prior to October 7, 1967. The contract has no provision relative to arbitration contained in it.

QUESTION #1:

Is a contract executed prior to October 7, 1967 between the State of Maine and a contractor subject to the provisions of P. L. 1967 c. 203 (5 M.R.S.A. § 1749)?

ANSWER #1:

No.

REASON #1:

Since P. L. 1967 c. 203 became effective on October 7, 1967, any contract executed prior to this date is not subject to its provisions.

The law as to the retroactive effect of statutes is clear in this State. The rule is stated in Bowman v. Geyer, 127 Me. 351, 143 A. 272 (1928):

"In the absence of any contrary provisions all laws are to commence in futuro and act prospectively, and the presumption is that all laws are prospective and not retroactive."

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Statutes are construed to have a prospective construction unless, as is stated in the Bowman case:

"The purpose and intention of the legislature to give them a retroactive effect is expressly declared or is necessarily implied from the language used."

In P. L. 1967 c. 203 no legislative intent to give a retroactive effect to this legislation is expressly declared or necessarily implied in the language. Therefore, it should be given prospective application only.

QUESTION #2:

Can an existing dispute, arising under a contract executed prior to October 7, 1967, be submitted to arbitration under P. L. 1967 c. 203 (5 MR.S.A. § 1749) by supplemental written agreement?

ANSWER #2:

Yes.

REASON #2:

P. L. 1967 c. 203 reads as follows:

"If, in the construction of any public work, including buildings, highways, bridges, dams and drainage structures, which the State of Maine does by contract, there arises a dispute between the State of Maine and the contractor which cannot be settled, then this dispute shall be submitted to arbitration and both the State of Maine and the contractor shall be bound by the decision of the arbitrator.

The membership of the American Arbitration Association shall be used as arbitrators and the procedures used for arbitration shall be in conformity with the Construction Industry Arbitration Rules as administered by the American Arbitration Association.

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Nothing in this section shall apply to the construction, improvement or repair of any and all ways, roads and bridges with appurtenances which, by law, are under the supervision of the State Highway Commission."

Under a legally sufficient supplemental agreement, executed after October 7, 1967, an existing dispute may be submitted to arbitration under P. L. 1967, c. 203.

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