

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**

Am in memory.

20/3-5
J 2/5 LW

March 5, 1971

David H. Stevens, Chairman

Highway

George C. West, Deputy

Attorney General

Davis-Bacon Act and Minimum Wages

SYLLABUS:

The suspension of the Davis-Bacon Act by presidential proclamation does not take the State from under its jurisdiction as relates to federally aided highway projects.

FACTS:

1. The Davis-Bacon Act of March 3, 1931, as amended, (40 USC A 276a) provides that federal contracts in excess of \$2,000 for the construction of public works shall contain provisions for minimum wages to be determined by the Secretary of Labor.

2. In 23 USC 113 there are requirements that on highway construction projects for Federal-aid systems, the primary, secondary and interstate the wage rates shall be not less than those prevailing rates determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

3. On February 23, 1971, President Nixon suspended those provisions of the Davis-Bacon Act which require wage determination by the Secretary of Labor.

4. Under the provisions of 26 M.R.S.A. 1303 the Department of Labor shall determine a wage rate applicable to all public works projects in Maine.

QUESTION:

Shall the Federal-aid-highway construction project contracts entered into by the State of Maine after February 23, 1971 require a minimum wage determination as required under 26 M.R.S.A. 1303 during the suspension period established by President Nixon's proclamation?

ANSWER:

No.

OPINION:

"Whenever a public works construction is built in whole or in part by federal funds and is under the jurisdiction of the Davis-Bacon or other Federal Act which requires the Secretary of Labor to establish the minimum wage and such minimum wages are established by him, sections 1304 to 1313 shall not apply." 1967, c. 403. 26 M.R.S.A. 1314.

"Sec. 113. Prevailing rate of wage

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the initial construction work performed on highway projects on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System, authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid systems, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of August 30, 1935, known as the Davis-Bacon Act (40 U.S.C. 267a). . . . " 23 USC

A federal aid highway project is under the jurisdiction of the Davis-Bacon Act and thus exempted from a State wage determination under the provisions of 26 M.R.S.A. 1314. The criteria of Section 1314 is "under the jurisdiction of the Davis-Bacon Act," and not whether a rate is, in fact, determined by the Secretary of Labor.

Because this question can be wholly resolved by the exception provided in Section 1314, it is unnecessary to discuss the question of the supremacy doctrine relating to the provisions of the State law on minimum wages in relation to the Davis-Bacon Act.

George C. West
Deputy Attorney General

GCW:H