

MAINE STATE LEGISLATURE

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January 29, 1975

John L. Kötner, Construction Engineer

Public Improvements

Martin L. Wilk, Deputy

Attorney General

Sidney and Oakland Schools

This will respond to your memorandum dated January 24, 1975, requesting our advice with respect to the matter referred to above. Specifically, you have inquired whether it is a "conflict of interest" for a school director doing business as a masonry contractor to have entered into a subcontract with a general contractor who has been awarded a contract, after advertisement for sealed bids, by the board of school directors of which the masonry contractor is a member. While it is not unlawful, per se, for the masonry contractor to have entered into a contract with the subcontractor, his doing so could lead to difficulties, particularly in the event a dispute arises between the school directors and the general contractor.

20 M.R.S.A. § 309-C provides, in pertinent part:

"A contract made by the school directors during the term of a school director who is pecuniarily interested, either directly or indirectly, is void excepting for such contracts as the school directors shall advertise for sealed bids by publication at least 5 days prior to the date set for closing of bids in a newspaper having general circulation in the territory embracing the School Administrative District."

Assuming the bid solicitation procedures were properly followed, the foregoing statute makes it clear that a contract between the masonry contractor director and the general contractor awarded the bid by the S.A.D. would not be void.

Despite the foregoing, it is not uncommon for disputes to arise between an owner and a general contractor, a general contractor and his subcontractor and perhaps even a subcontractor and an owner. That being the case, we would advise the department to discourage such practices in the future. And, even though the masonry contractor has disqualified himself from serving as a director in any manner with respect to the project, his continued membership as a director could influence the judgments of the other directors with respect to the project in question.

If we may be of any further assistance, please let us know.

MARTIN L. WILK
Deputy Attorney General

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