

MAINE STATE LEGISLATURE

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SEVENTY-NINTH LEGISLATURE

HOUSE

NO. 298

House of Representatives, February 28, 1919.

Reported by Mr. Perkins from Committee on Claims and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Jordan of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND NINETEEN

RESOLVE, in Favor of the Inhabitants of Scarboro, Reim-
bursing Them for Expenses Incurred in Defense of Suits
for Damages Alleged to Have Been Received upon the State
Highway in Scarboro.

Resolved: That the sum of thirteen hundred twenty-nine
2 dollars and six cents be and hereby is appropriated to be
3 paid to the inhabitants of the town of Scarboro to reim-
4 burse them for legal expenses incurred and paid by them
5 in the defense of suits affecting the liability of the state
6 and said town, which said suits were brought against the
7 said inhabitants for alleged injuries and damages received
8 by various parties in an accident which occurred upon a

9 part of the State road between Portland and Saco near
10 the Nonsuch River in Scarboro.

STATEMENT OF FACTS

The recently constructed concrete State highway between Portland and Boston crosses the town of Scarborough. It was built by the state, and the state has entire authority, responsibility and control over it. About May 17th, 1916, an extraordinary rain occurred which made a washout in this road near the Nonsuch River in Scarborough. The night of the washout the town authorities put up barricades and lights and placed two watchmen there. The next day a representative of the State Highway Commission which had received due notice came and took charge, as he stated, by order of the State Highway Commission. The town authorities offered to supply the commission with men and teams for the immediate repair of the washout. They were informed that the commission would postpone repairs until arrangements could be made with the Cumberland County Power & Light Co. in regard to the track of the trolley car line at the place. The town arranged for a detour around the place and put up notices. In the meantime the Highway Commission by its agent took entire charge of the place and made provision for the protection of travellers. It assumed and continued in complete control. On May 31st, while the Highway Commission was in charge, an automobile with five passengers ran into the excavation and three persons were killed, and the other two claimed to be seriously injured. Early in 1917 five damage suits were brought against the town. The town authorities, within the statute period, gave due notice to the Highway Commission and were referred to the Attorney General, who informed them that the Act establishing the commission made no provision for the defence of such suits, although the state is made liable for such damages to the extent of \$4000.00. The commission, therefore, declined to take upon itself the defence of the suits and notified the town to assume the defence.

The town engaged counsel, trial was had in the U. S. Circuit Court in October, 1917, and successful defense made, and thereby both state and town were protected from payment of damages in the suits. The town, under advice received as aforesaid, incurred and paid the expense stated in the accompanying resolve. It also incurred additional expenses not included in the amount stated, and it claims that it is justly and legally entitled to reimbursement from the state for at least the amount paid out as stated in the resolve.