

MAINE STATE LEGISLATURE

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NINETY - NINTH LEGISLATURE

Legislative Document

No. 615

S. P. 232

In Senate, February 11, 1959.

Referred to the Committee on Judiciary, sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Martin of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

AN ACT Relating to Determination of Damages Caused by Taking of Land for Highway Purposes.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 23, § 21, amended. The 3rd and 4th sentences of the 3rd paragraph of section 21 of chapter 23 of the Revised Statutes are amended to read as follows:

'The commission or any party claiming an interest in the land taken by eminent domain may petition the "joint board," so called, ~~which shall be composed of the members of the commission and the~~ county commissioners of the county wherein such material or land is located, for a determination of the damages caused by the taking. The ~~joint board~~ county commissioners shall order a time and place for a hearing to be held in the county where the property lies on such a day as will not conflict with other damage hearings in which the commission is a party that may have been set in other counties, and shall cause 30 days' notice to be given of the said time and place by posting copies of the petition with their order thereon in one conspicuous place in each town in which any such property lies, by publishing said petition and order in some newspaper, if any, in said county and by giving written notice by registered mail to the State Highway Commission to be sent to the State House and to the holders of record titles to the land to be sent to said owner's place of abode, if known, otherwise to the abode or address as set forth in said records or by causing service of such notice to be made upon the proper parties.'

Sec. 2. R. S., c. 23, § 21, amended. The last paragraph of section 21 of chapter 23 of the Revised Statutes is amended to read as follows:

'The ~~joint board county commissioners~~ shall meet at the time and place appointed, and view the property and hear the interested parties present. They shall then determine the damages. The ~~board county commissioners~~ shall notify the interested parties by registered mail of ~~the their final decision of the board,~~ or in case of the refusal of any party to accept the notice, shall cause the notice to be served by a deputy sheriff. ~~Verbal notice shall not be considered as official or binding'~~

Sec. 3. R. S., c. 23, § 22, amended. Section 22 of chapter 23 of the Revised Statutes, as amended by section 1 of chapter 424 of the public laws of 1955, is further amended to read as follows:

'**Sec. 22. Proceedings on damage claims.** Whenever the commission shall change the grade of any state or state aid highway as provided in this chapter to the injury of an owner of adjoining land, he may within 6 months after completion of the work according to the records of the commission apply to the commission in writing for a determination and assessment of his damages; and if the commission is unable to settle such damages at what it deems a reasonable amount, the commission or interested parties may apply to the ~~joint board county commissioners~~ in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases.'

Sec. 4. R. S., c. 23, § 23, amended. Section 23 of chapter 23 of the Revised Statutes is amended to read as follows:

'**Sec. 23. Appeals from decisions of the county commissioners.** Any person ~~aggrieved by said decision of the joint board may appeal therefrom to the Superior Court in the county where the land is situated within 30 days after the date of the receipt of the notice of award.~~ The appellant shall file notice of his appeal with the State Highway Commission at Augusta by registered mail within the time above limited. The State, acting by and through the State Highway Commission or any person aggrieved by said decision of the county commissioners may appeal therefrom to the Superior Court in the county where the land is situated by filing notice of his appeal with the county commissioners by registered mail within 30 days after the date of the receipt of the notice of award, and by sending by registered mail to the adverse party or parties a copy of such notice within the said 30 days, and at the first term of the court held following the expiration of the said 30 days shall file a complaint setting forth substantially the facts upon which the case shall be tried like other cases. The court shall determine the ~~same issue~~ by a committee of reference, or by itself, if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The clerk shall certify the final judgment of the court to the commissioner, which shall enter the same of record, and order the damages therein recovered to be paid by the Treasurer of State. The party prevailing recovers costs to be taxed and allowed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party said claimant fails to recover a greater sum as damages than was allowed to him by the ~~board county~~

commissioners. The committee **of reference** shall be allowed a reasonable compensation for their services to be fixed by the court upon the presentation of their report and paid by the Treasurer of State upon the certificate of the clerk of courts.

Pending the hearing on the complaint, the owner may make application to a Justice of the Superior Court, in term time or vacation, citing the facts of the pending appeal from the condemnation proceeding, for an order directing the State Highway Commission to pay forthwith the sum allowed by the county commissioners, or such part thereof as the court deems proper for or on account of the just compensation to be awarded in said proceeding. The court, on motion by the State, shall require the posting of a good and sufficient bond for the payment by the owner of any excess in the payment over the final award. If the compensation finally awarded on the appeal in respect of said lands, or any parcel thereof, shall exceed or be less than the amount of money so received by any person entitled, the court shall enter judgment for the amount of the deficiency or excess to the appropriate party. The acceptance thereof by the person entitled under his said application to said justice as a payment pro tanto will be without prejudice to any right to have the remainder thereof assessed by the Superior Court on his appeal.'