

# MAINE STATE LEGISLATURE

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# STATE OF MAINE.

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

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## STATE ROADS. REIMBURSEMENT TO TOWNS BY STATE.

R. S. Chap. 23., Secs. 99-105 inclusive, P. L. 1905, Chap. 115.

In February, 1905, an inquiry was submitted to us from the governor and council under communication made to them by the commissioner of highways, asking, in substance, if towns would be reimbursed for the amount expended for state road construction regardless of the amount appropriated by the towns.

On February 15, 1906, opinion was rendered to the governor and council as follows:

Referring to the inquiry of Hon. Paul D. Sargent, Commissioner of Highways, to you under date of December 14, 1905, and referred by you to me relative to the reimbursement of towns for amount expended in permanent improvement of State roads, so called, I have the honor to report as follows:

I have examined carefully, Revised Statutes, chapter 23, sections 99 to 105 inclusive and the amendments to the same appearing in the Public Laws of the year 1905. Revised Statutes, chapter 23, section 100 before the amendment of 1905 read as follows:

"Towns establishing State roads as aforesaid may, on complying with the conditions hereinafter set forth, receive from the State one-half of the amount actually expended in permanent improvement of said roads, not exceeding two hundred dollars a year; provided that no town shall receive such State aid unless its appropriation and expenditure for such road shall amount to at least one hundred dollars and shall have been exclusive of and in addition to the amount regularly raised in such town for highways and bridges; and provided also, that the amount so expended shall be used before the first day of September in permanent improvement of a continuous portion of said road, and in a manner satisfactory to the county commissioners of the county wherein said road is located. Such aid shall be paid from the State treasury on and after the first day of January, upon certificate by the governor and council as provided by the following section."

Said section 100 as amended by chapter 115 of said laws of 1905, approved March 21, 1905, reads as follows:

“Towns establishing State roads as aforesaid may, on complying with the conditions hereinafter set forth, receive from the State one-half of the amount actually expended in permanent improvement of said roads, not exceeding three hundred dollars a year; provided, that no town shall receive such State aid unless its expenditure for such road shall amount to at least one hundred dollars, and shall have been exclusive of and in addition to the amount regularly raised in such town for highways and bridges; and provided, also, that the amount so expended shall be used before the first day of October in permanent improvement of a portion of said road, and in a manner satisfactory to the county commissioners of the county wherein said road is located. Said permanent improvement shall be on a continuous portion of said road for at least one year. Such aid shall be paid from the State treasury on and after the first day of January, upon certificate by the governor and council, as provided by the following section.”

It will be perceived that before this amendment no town should receive State aid unless its *appropriation* and *expenditure* for such road should amount to at least \$100, etc., etc. Under the amendment, it appears that the town may receive such aid if its *expenditure* for such road shall amount to at least \$100, etc., etc. Manifestly the legislature purposely removed the word “appropriation” from said section 100. In my opinion, as the law now stands, the amendment is effective to carry out the manifest intention of the legislature so far as this point is concerned and a town may receive State aid if its *expenditure* shall amount to at least \$100, etc., etc.

That I am right as to the apparent intention of the legislature would appear from the fact that under Resolves for said year 1905, chapter 166, the legislature endeavored to reimburse very many towns where probably they had actually *expended* money when they had not technically complied with the provisions of the statute for reimbursement so far as the town appropriation was concerned. The legislature, therefore, of 1905, reimbursed certain towns as noted and amended the general law as stated. It will be further noticed that the legislature intended their amendment to go into effect at once because contrary to the general custom, chapter 115 of the laws of 1905 was passed to take effect when approved. The clause making laws go into

effect upon their approval is not generally added to a public law unless there is some special reason or intention for it.

Section 101 of said chapter 23 as amended by chapter 115 of the laws of 1905 still requires municipal officers of towns improving State roads, so called, to make returns annually under oath to the county commissioners of their county of the amount appropriated and expended by their town in the permanent improvement, etc., upon said State roads. Although municipal officers under this section must make returns of the amount appropriated, yet to my mind this cannot read the word appropriation into said section 100 as now amended, in the face of its express removal by the legislature as above stated. The two sections (sections 100 and 101) can and do stand together and need not be in necessary conflict. Towns may receive aid if they have expended the proper amount, while the municipal officers must still make returns of the amount appropriated (which may be something or nothing) and the amount expended, etc., etc.

Of course, this opinion has only reference to the question of expenditure and appropriation; other provisions of the statute must still be complied with. For example, the expenditure must be exclusive of and in addition to the amount regularly raised in the town for highways and bridges. The amount so expended must be used before the first day of October for the permanent improvement of the roads in a manner satisfactory to the county commissioners of the county in which the said road is located. The permanent improvement shall be on a continuous portion of the road for at least one year, etc., etc. The *only* question submitted to me has been with reference to *expenditure* and *appropriation*.

#### STATE ROADS. PLANTATIONS INCLUDED UNDER PROVISIONS OF

R. S. Chap. 23, Secs. 99-105 inclusive, and amendments thereto.

In May, 1906, the commissioner of highways submitted to us the question as to whether or not the State road law, so called, applies to plantations.

On May 16, 1906, opinion was rendered to the commissioner of highways, as follows: