

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

AUGUSTA
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have been delegated, authorizes the doing of any act in the highway, including the digging down or raising the soil to any extent that is necessary or proper to make and keep the way safe and convenient for the public travel. All acts done for the purpose of repairing the way are of this character, although they may require the removal of the soil from one part of the way to another; and it is accordingly well settled that the public in the case of a highway, or a turnpike corporation or a railroad company in the case of a turnpike or railroad, has the right, acting through proper officers, for the purpose of repairing the same highway, turnpike or railroad, to take earth, gravel or stones from one part and deposit them on another, although if the officer applies them to *other uses* he may become liable as a trespasser."

The last cited case affords an interesting view of the English law upon the same subject which is in harmony with the decisions above cited. It will also be noticed on page 222, Vol. 125, Mass. Reports, from which we have just been citing, that the court makes this general observation: "In New England, at least, the same rule has been applied by law and usage to the taking of materials from one highway for the repair of another within the jurisdiction of the same municipal authorities," and quotes as one of its citations, *Hovey vs. Mayo*, 43 Me., 322.

I have thus endeavored to answer your question in the language of courts of last resort whose reputation for judicial learning is unquestioned.

STURGIS BILL. PAYMENT OF CERTAIN FEES TO COMMISSIONERS AND DEPUTIES BY COUNTIES TO STATE TREASURER.

In October, 1906, the question was submitted to us by the State treasurer as to whether or not under the laws of 1905, chapter 92, familiarly known as the Sturgis Bill, the fees taxed for the commissioners and deputies in the bills of cost under section 6 of said act, should be paid over by the counties to the State treasurer whether they were collected from the respondents or not.

On November 2, 1906, opinion was rendered to the State treasurer as follows:

Relative to your inquiry as to whether or not under laws of 1905, chapter 92, familiarly known as the "Sturgis Bill," the fees taxed for the commissioners and deputies in the bills of cost under section 6 of said act, shall be paid over by the counties to the State Treasurer whether or not they are collected from the respondents, I respectfully write you as follows:

I have examined the act in question, and have taken time to make inquiry as to the practice of various counties thereunder, with reference to the point in question.

It would seem as if the act provides that these fees shall be taxed and shall be paid directly to the State Treasurer. I do not find in the act any express provision that the paying over of these fees shall be dependent upon their collection by the county. In fact there are certain cases such as proceedings practically in rem where intoxicating liquors are libeled and no claimant appears, where the county would not collect these fees from anybody. I am informed also that it is the practice of the counties quite generally to pay over these fees without reference to their collection from other sources. Under all these circumstances, I should advise that the counties should pay over these fees to the State Treasurer, irrespective of the contingency of their collection from other sources.

SAVINGS BANKS. REQUIREMENTS OF CERTAIN BONDS IN ORDER TO MAKE THEM LEGAL INVESTMENT FOR.

In October, 1906, the question was submitted by the State bank examiner as to whether or not R. S., chapter 48, section 23, subdivision fifth, as amended by the laws of 1905, chapter 103, relative to certain requirements as to bonds of certain corporations necessary to make them legal investments for savings banks in this State, applied to both preferred and common stock, and also whether or not the earnings therein specified should be upon the entire capital stock of the company or upon its issued stock.

Opinion was rendered on October 31, 1906, to the bank examiner, as follows:

"I am in receipt of your inquiry as to R. S., chapter 48, section 23, subdivision fifth, amended by laws of 1905, chapter 103.