

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

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It would also seem clear, technically, that under section 8 of said chapter 112, when the work is of a sufficient size the law requires competitive bids.

STATE ROAD LAW.—CONTRACT WORK.

*Hon. Paul D. Sargent, State Commissioner of Highways,
Augusta, Maine:*

DEAR SIR:—I have the honor to inform you that this department has considered the subject matter of your recent inquiry concerning your right as State Commissioner of Highways to insist upon *contract* work under section 8, of chapter 112, of the laws of 1907, in the expenditure of sums properly raised by the towns entirely outside of the so-called "joint fund" specified in the State road act, to wit, said chapter 112, of the laws of 1907.

We have looked through the act with much care and we do not find any *specific authority* for you to *so* assume control of any fund except the so-called "joint fund." We advise that you should not attempt to exercise authority beyond what is clearly given. We therefore recommend that your administration in this matter should be confined to the "joint fund."

For the same reason where a town by an independent and distinct vote has raised money entirely outside the "joint fund" and to be devoted to drainage, since the State road act above referred to does not clearly provide that you can insist upon contract, etc., as noted in said section 8, we would similarly advise that you should not attempt to assume authority to so require the contract work, etc., covering the drainage.

STATE ROAD LAW.—COMPLETION OF CONTRACT.

*Hon. Paul D. Sargent, State Commissioner of Highways,
Augusta, Maine:*

DEAR SIR:—Your inquiry as to the liability of a town to complete its contract made for the construction of a section of State road under Public Laws, 1907, chapter 112, section 8, has been duly received and we have given the same consideration.

We understand the case you have at hand is where the municipality, having made a binding contract for the construction of a given amount of State road for a specific sum, and having expended the contract price and being able to complete only a part of the road, desires to stop work and have the portion built accepted as and for a full completion of their contract covering the entire amount.

Upon considering this matter in connection with the State road law, so-called, and the full spirit thereof, we can hardly advise you to accept such part performance in behalf of the municipality and excuse performance of the rest. Said Public Laws, 1907, chapter 112, section 8, apparently intends to provide for the submission of bids for construction work, the acceptance thereof and the making of a binding contract in connection therewith. It provides for bids and contracts both in behalf of individuals and municipalities. A contract made with either is intended to be a valid and binding contract. There seems to be no authority in the act in question, to excuse performance of the contract either on the part of the individual or the municipality. If one can be excused, why not the other? If municipalities claim they can be relieved from full performance of such contracts, individuals may ask for the same relief. We see no reason why one should be bound to performance of the contract and the other excused. We believe it was the spirit and intent of the act in question that whoever made a valid contract in the premises should be fully bound thereby and it seems to us that as highway commissioner it would be an unwise policy for you to attempt to excuse a municipality for non-performance of any binding contract into which it had properly and legally entered.

STATE ROAD LAW.—ALTERATION OF LOCATION
BY COUNTY COMMISSIONERS.

*Hon. Paul D. Sargent, State Commissioner of Highways,
Augusta, Maine:*

DEAR SIR:—Relative to your inquiry as to whether or not highways which are State roads, so-called, can be altered by county commissioners under R. S., chapter 23, sections 1 to 15 inclusive, and any amendments thereof or additions thereto, I