

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

WATERVILLE
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1909

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

have the honor to reply that I have given the subject matter examination, and advise as follows:

It is my opinion that all parts of R. S., chapter 23, including sections 1 to 15 inclusive, and amendments thereof and additions thereto, relating to ways, and sections 99 to 105 inclusive, and amendments thereof and additions thereto, relating to State roads should be construed together, while any or all of the same may be in force. Similarly I believe that all parts of R. S., chapter 23, and amendments thereof and additions thereto, should be construed so far as possible (except parts expressly repealed) with the so-called State road law of 1907, namely, chapter 112, of the Public Laws of 1907. Bearing these principles in mind, upon a careful consideration of all the statutes in question, it is my opinion that R. S., chapter 23, sections 1 to 15 inclusive, and any amendments thereof or additions thereto, giving the county commissioners authority to alter highways, have not been repealed, and that county commissioners, therefore, have authority in proper cases, on procedure before them, to make alterations in question.

STATE ROAD LAW.—ARTICLES IN TOWN WARRANT.

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

DEAR SIR:—I have the honor to acknowledge receipt of your communication of the 31st, making inquiry for your official use as to proper form of articles, which should be inserted in the warrants for town meetings under section 5, of chapter 112, of the Public Laws of 1907, entitled "An Act to provide for State aid, and for the expenditure of other public moneys, in the permanent improvement of main highways or State roads."

Upon an examination of the section in question, it would seem as if the two things required by the towns are first, to adopt the provisions of the act in question, and second, to appropriate and set apart for the permanent improvement of the main highways such sum of money as is contemplated and directed by said section. I would, therefore, suggest for your consideration as proper, the following articles, namely: