

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

KENNEBEC JOURNAL PRINT

1910

Mar. 1, 1909, and which I have above quoted in full, are not conditions which the town would have an authority to impose and insist upon. The town has a right to vote to discontinue the free high school. Until that vote is passed I think the statute plainly imposes the duty of furnishing a building in which the school may be held.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL.
Waterville, Me., March 30, 1909.

Subject: State aid to plantations—Plantations required to pay state and county taxes to receive state aid under provisions relating to towns—Plantations not required to pay state and county taxes to receive state aid under provisions relating to unincorporated places.

Hon. Paul D. Sargent, Augusta, Maine.

SIR:—Your request for advice upon the question of authority of county commissioners to assess taxes for the purpose of expenditure on ways under the State road law, so-called, approved March 26, 1907, has received consideration. With the hope of making the situation more clear I have first considered

I. WAYS IN UNINCORPORATED PLACES.

County commissioners, upon the petition of responsible persons, under the provisions of R. S. C. 23, Sec. 43 and C. 9, Sec. 56, may lay out, alter, or discontinue a highway on any tract of land in their county not within any town or plantation required to raise money to make and repair highways. The attendant expense is to be borne by the owners of the land over which the highways pass, excepting in case of lands reserved for public uses, and by adjoining townships benefited thereby, such expense to be apportioned according to the judgment of the commissioners. The assessment of expense is to be made by the commissioners who may, in certain instances, require the county to pay a portion of the expense. The com-

missioners are also charged with the duty of fixing the time when the work shall begin and of appointing an agent or agents, not members of the board, to superintend the work and to faithfully expend the money. When such ways have been constructed it becomes the duty of the commissioners annually, in the month of September, to inspect the same, make an estimate of the amount needed to put them in repair so as to be safe and convenient for public travel and assess an amount sufficient for such repair. This assessment is to be upon the lands within the unincorporated place and may also be in part upon the county.

Under the State road law, so-called, enacted March 26, 1907, to take effect January 1, 1908, the county commissioners are required to set aside, from the money thus raised and appropriated, 33 1-3 cents on each thousand dollars of the valuation of the unincorporated township for permanent improvement of highways. It is apparent that the duties thus indicated, so far as highways in unincorporated places are concerned, are solely incumbent upon county commissioners.

II. WAYS IN ORGANIZED PLANTATIONS.

Some confusion has arisen regarding ways in organized plantations by reason of the fact that our statutes make two distinct provisions for organizing plantations under general law, one of which may, for convenience, be called compulsory and the other voluntary, so far as the inhabitants of the plantation are concerned. The civic and municipal duties imposed upon these plantations differ according to the form of organization. The legislature may also organize plantations by special act, and has frequently done so, but unfortunately in many instances those special acts have not clearly set forth the civic and municipal duties of the new plantation. Without going into details of plantation organization at this time it may be said that those plantations which are organized under the provisions of R. S. C. 4, Sec. 114, for convenience herein called compulsory, are required by law to pay state and county taxes, and have like powers and are subject to like liabilities and penalties as towns respecting ways; the statutes also provide that the assessors in such plantations have like powers and perform like duties as municipal officers of towns respecting

ways. On the other hand the statutes provide that plantations organized by voluntary proceedings are not required to pay state and county taxes unless by special act of the legislature, and there is no statute which provides that plantations paying no state and county taxes shall have like powers and be subject to like liabilities and penalties as towns respecting ways; nor any statute which provides that assessors of such plantations shall have like powers and perform like duties as municipal officers of towns respecting ways. It becomes apparent therefore that in determining the question as to whether any given plantation has control over its ways as towns do, we must first ascertain the history of its organization and whether, by virtue of that organization, or by special order of the legislature it is required to pay state and county taxes. Moreover if that plantation was organized by special act of the legislature we must examine that act to see if by the terms thereof the plantation was created with liabilities of compulsory or of voluntary plantations, or in other words whether or not it must pay state and county taxes. Taking into account all the legislation upon the subject, including the State road law, I am of the opinion that in the case of those plantations required to pay state and county taxes the inhabitants and assessors thereof act with the same authority and under the same provisions as pertain to inhabitants and municipal officers of towns, but in the case of plantations organized under voluntary proceedings and not required by special act of the legislature to pay state and county taxes the inhabitants and assessors do not act with the same authority and under the same provisions as pertain to inhabitants and municipal officers of towns. I am of the further opinion that state highway aid in the latter class of cases should be given under the rules relating to unorganized places.

This opinion in no way conflicts with that given by this department in 1906 and found on pages 31 and 32 of the biennial report of 1905-6, for in that opinion no attempt was made to distinguish between plantations organized under different provisions of statute but only enunciated the general doctrine that plantations are entitled to state highway aid.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.