

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1914.

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HIGHWAYS.—AUTHORITY TO CLOSE.

20th August 1914.

*Paul D. Sargent, Chief Engineer, State Highway Commissioner,
Augusta, Maine.*

DEAR SIR: In reply to your favor of the 11th instant as to the authority of towns to close roads while in process of construction or repair, and also as to the liability of the town in case they are left open to travel and prove to be unsafe, I will quote the language of the court in the case of *Jacobs v. Bangor*, 16th Maine, 190, which seems to cover all the questions asked in your letter from Lovejoy:

"When a highway is defective, it becomes the duty of the town immediately to repair it. And if the repairs are of such a character as to require it to be wholly obstructed, as in building or repairing a bridge may be the case, it would be justified in closing it until the repairs can be made. When the town concludes, that the repairs can be made without interrupting the travel, and proceeds to repair without making known that the way is not in a condition to be used, or that there is danger in using it, its liability for injuries, as in other cases, must be regarded as continuing; although it may not have been guilty of any other neglect than that of permitting the way to be out of repair. Its general liability under the statute is not in such cases suspended. And it cannot reasonably claim that it should be, unless there is a necessity for it; and then travellers should have notices of such necessity, that they may avoid the danger. If the way is not closed, and no notice is given, travellers may expect that it is practicable to pass it safely; and that they will have the usual protection which the law affords. The traveller cannot, however, when he perceives that a way is under repair and much incumbered for that purpose, and that but a narrow and difficult passage is open for him, claim to drive with the same rapidity, and to exercise only the same attention which would be allowable in a smooth and unincumbered way. He is bound to exercise that degree of watchfulness, and caution which men of ordinary prudence would under such circumstances."

It is clear from the above that towns have the authority to close up a road if in their judgment it is necessary. The Court laid down the same rule in *Kimball v. Bath*, 38th Maine, 219. If the towns allow the way to be used they must see to it that it is safe for a traveller using due care; on the other hand, a

traveller using a way that is undergoing repairs must exercise care in proportion to the dangers that obviously exist from the condition of the way.

Very sincerely,
SCOTT WILSON,
Attorney General.

ALMS HOUSES.—NOT WORK HOUSES OR HOUSES OF CORRECTION.

2nd October 1914.

*James F. Bagley, Sec., State Board of Charities and Corrections,
Augusta, Maine.*

DEAR SIR: Your favor of the 1st inst., in relation to the use of almshouses for work houses or houses of correction was duly received.

The statutes are a little confusing as to what is meant by almshouses. The index of the Revision of 1883 under that title refers to work houses and in 1903 refers to town farms. I am inclined to think, however, that the latter is what is meant and that almshouses or place provided by the town for the support of its poor does not *ipso facto* become a work house or house of correction, and I am of the opinion that there should be a vote of the town before any part of it is used for that purpose, or at least for the purpose of receiving those committed by any Court.

It may be that the overseers of the poor of a town may set to work paupers who are being cared for at their town farms or almshouses so long as they remain there, but that is more or less of a voluntary matter on the part of the pauper so far as his stay is concerned, and I think before a town farm can be used as a work house or house of correction, the town should so vote and that a Court could not commit to a town farm until the town had set apart a part of it as a work house or house of correction and until it is so done or has built a work house or house of correction, there is no such institution in the town although it may have a town farm.

Very sincerely,
SCOTT WILSON,
Attorney General.