

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1914.

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WATERVILLE  
SENTINEL PUBLISHING COMPANY

1915

## HIGHWAYS.—CHANGE OF GRADE.

19th December 1914.

*Lyman H. Nelson, Chairman, State Highway Commission,  
Augusta, Maine.*

DEAR SIR: Your favor under date of November 25th, relating to the interpretation of Section 14 of Chapter 130 of the Public Laws of 1913 was duly received.

As a general proposition the power to change the grade of highways resides absolutely in the state, and at common law there was no damage in case of the state exercising this authority. However, it is customary for the state to provide a remedy for abutters in case they are damaged by reason of the change of grade of any street or highway in front of their premises as in Sec. 68 of Chapter 23, R. S. The authority to construct and repair highways does not necessarily, I think, carry with it the power to change the grade, at least in any substantial manner or to such an extent that an abutter would be injured.

After examining the provisions of Chapter 130, known as the State Highway Law, especially the provisions of Section 14, I have come to the conclusion that it was not the intent of the legislature to authorize the Commissioners to change the grade of highways except after hearing and that it would not be safe for a contractor to proceed to re-construct a highway which involved a substantial change of grade without the highway commission first fixing the new grade in accordance with the provisions of Section 14. I appreciate this may entail some inconvenience but as a practical matter, it can probably be worked out without very much trouble.

For instance, I think you can use release agreements, such as you suggest for the purpose of adjusting the matter so that you can safely fix the grade at your convenience and it may be that no trouble would ever arise if the change was made after settling with all parties interested without any further proceedings, but I could not recommend it as the hearing contemplates not only the fixing of damages but whether public necessity requires the change of grade. It would seem as though it was the intent of the legislature that a change of grade could not

be legally made by the commission until they first found after hearing that public necessity required it.

It should not be understood that this would mean that every slight variation in the grade of reconstructing an old way would require a hearing. Every act of repair entails the filling up of slight depressions and the cutting down of slight elevations which would not within the meaning of this statute be considered a substantial change of grade in the highway itself. I could not in a written opinion define where the line must be drawn, but I think common sense would in most cases tell you where the change was of such a substantial nature that it would be unsafe to proceed without taking the steps provided in Section 14.

Very sincerely,

SCOTT WILSON,

*Attorney General.*

#### BANGOR POWER COMPANY BONDS.

23rd December 1914.

*Hon. Harry M. Smith, Bank Commissioner, Augusta, Maine.*

DEAR SIR: In reply to a letter of yours under date of November 17th, relative to the Bangor Power Company bonds and endorsement by Bangor Railway & Electric Company, I will say that it does not seem to me that endorsement by the last named company can make those bonds a Railroad bond and a legal investment for Savings Banks.

Very sincerely,

SCOTT WILSON,

*Attorney General.*