

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, 1918

MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

the certificate of a Public Utilities Commission of any other State than Maine as sufficient evidence of the compliance with the requirements of our banking laws. There is no more reason why an electric railroad bond of another State should be accepted as legal upon the certificate of the Public Utilities Commission of the State wherein it is located than there is why the bond should be deemed legal upon the certificate of the Bank Commissioner of such other State.

This amendment provides, in the latter part of Clause 2, that the *Bank Commissioner of this State*, that is, the State of Maine, shall investigate upon application, shall charge for such investigation, and the amounts collected therefor shall be added to the appropriation for the *banking department*. This provision clearly indicates that the legality of investment in electric railroad bonds of the States named in this amendment is to be determined by the *Banking Commissioner of the State of Maine*, and I must advise that such bonds are not legal investments for savings banks, etc., unless a certificate of the *Bank Commissioner of Maine* is filed with the Secretary of State, certifying that either thirty-three and one-third per cent. of the mortgage debt of the road shall have been paid in, in cash and expended, etc., or as an alternative that annual dividends of five per cent. of capital stock to the amount of one-third of the bonded debt has been earned and paid for a period of five years next prior to the date of the certificate, and in addition to one of the foregoing alternatives that the average net income, for a period of three years next prior to the making of such bonds legal, shall have been not less than one and one-half times interest charges, etc.

Yours very truly,

GUY H. STURGIS,

Attorney General.

MAINTENANCE OF STATE AND STATE AID HIGHWAYS—DUTIES OF STATE HIGHWAY COMMISSION.

Portland, Maine, 11th June, 1917.

Mr. Paul D. Sargent, Chief Engineer, State Highway Commission, Augusta, Maine.

DEAR SIR: In your letter of June 2d, referring to Chapter

25, Revised Statutes, Sections 8, 17, 25, 26 and 27, you inquire as follows:—

“Can we neglect the maintenance work in any town or refuse to touch it or can we relieve any town from the provisions of the law?”

“If any town neglects to co-operate with commission in this work is the commission justified in employing a patrolman to do the maintenance directed by the Statutes and in case we do this, how shall we proceed to collect from the town for their share of the cost of the work?”

By Section 8 of Chapter 25, it is provided that State Highways shall be continually maintained under the direction and control of the commission, but at the joint expense of the State and the town. The charge against the town for maintenance of its State Highways shall be the actual cost of such maintenance not exceeding an average of \$60.00 per mile per year. But the commission may grant such town such financial assistance in the matter of such maintenance as the commission deems advisable. By Section 25 of the same chapter, the commission is required to provide for a system of patrols for all State Highways to which Section 8 may apply.

Section 17 of Chapter 25 provides that State Aid Highways shall be continually maintained under the direction and control of the commission, but at the joint expense of the State and the town. The charge against such town for such maintenance shall not, however, exceed 50% of the actual cost of such maintenance, nor shall it exceed an average of \$30.00 per mile per year. Section 25 also provides that the commission shall provide for a system of patrols for all State Highways to which Section 17 may apply.

From an examination of these various provisions, it appears that it is the duty of your commission to provide a system of patrol, and maintain the same for all State Highways and State Aid Highways, to which Sections 8 and 17 of Chapter 25 may apply, and that you cannot neglect the maintenance work or relieve any town from the provisions of the law respecting such Highways.

Of course, that portion of the expense of maintaining State Highways and State Aid Highways due from the several towns is to be collected as provided in Section 9 of Chapter 25, which in turn refers to Section 24 of this chapter.

In Section 26 of Chapter 25, wherein it is provided that towns shall co-operate with the Highway Commission in the employment of a regular road patrolman, appears a provision, however, that such patrolman is to perform maintenance work upon such mileage of road in addition to the State Highway or State Aid Highway, as shall be *mutually agreed upon* by the Municipal Officers of the town *and* the State Highway Commission. I am unable to find any Statute directly authorizing the Highway Commission to designate the mileage of road to be patrolled, in case the Municipal Officers of the town refuse to agree thereto, and apparently no provision has been made for such a contingency.

Municipalities are jealous of their long existing right to maintain the roads within their town limits, and to determine the amount of their annual expenditure therefor. By recent Statutes the Highway Commission has been given control of State Highways and State Aid Highways, leaving to the town only the burden of annually contributing a certain amount for maintenance, which amount is determined, not by vote of the municipality, but by the decision of the Commission. The rights and powers of municipalities to regulate their highway expenditures and control the construction, repair and maintenance of highways came from Statute authority. Any curtailment, limitation or withdrawal of those rights by the State must be by the same authority, an Act of the Legislature, and any Statute attempting so to do must be construed strictly, in so far as it infringes upon the rights of towns to control the highways within their borders, keeping in mind, of course, the intent and purpose of the Statute itself, which is to establish a uniform and better highway system in the State. I cannot advise that the Highway Commission has a right to employ patrolmen upon roads other than State Highways or State Aid Highways, and charge the municipality therefor, unless the mileage of road so patrolled has been agreed upon by the Municipal Officers of the town affected.

Upon State Highways and State Aid Highways, undoubtedly, the Commission has a right to maintain a patrolman, regardless of the consent or approval of the town in which such highway is situated, and the proportionate part of the expense of such

patrol maintenance can be collected of the town as before suggested.

Yours very respectfully,

GUY H. STURGIS,
Attorney General.

STATE BOARD OF EXAMINERS FOR EMBALMERS—
RELATIVE TO STATE DEPARTMENT OF HEALTH.

4th October, 1917.

State Department of Health, Augusta, Maine.

GENTLEMEN: We have your letter asking about the appointment of members of the State Board of Examiners for Embalmers' license.

Chapter 197, Public Laws of 1917, created a State Department of Health and conferred upon it all the duties before imposed by law upon the State Board of Health. There was created in that act a Public Health Council which takes the place of the old State Board of Health provided for in Chapter 19, Section 1. There was also created a Commissioner of Health whose duties correspond to those of the secretary of the old State Board of Health under Chapter 19, Section 4.

Chapter 19, Section 26, Revised Statutes, provides for a Board of Examiners for Embalmers, of which the secretary shall be the same person as the secretary of the old State Board of Health, and one other member who must be a member of the old State Board of Health.

When Chapter 197, Public Laws of 1917 went into effect, the secretary of the old State Board of Health automatically ceased to exist officially.

Inasmuch as under Chapter 197, Public Laws of 1917, the Commissioner of Health thereby created corresponds to the secretary of the old State Board of Health, he also becomes automatically secretary of Board of Examiners for Embalmers. There is also, for the same reason, a vacancy in the Board of Examiners for Embalmers because that member, who was also a member of the old State Board of Health, has ceased officially to exist. The office should be filled by the Governor by appointment.