

MAINE STATE LEGISLATURE

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October 1, 1919

To Public Utilities Commission
Re: Succession to Rights of Previous Company

Replying to your oral request for the views of this office upon the subject matter of the letter from the Dover & Foxcroft Water District to your Commission under date of September 29th, we wish to say that before expressing ourselves definitely, it would be necessary to know some further facts, as the course of legislation does not disclose all that has taken place.

We do not find that either the Water District, or its predecessor, the Dover & Foxcroft Village Fire Company, was ever given any specific statutory authority to make excavations in highways, unless it can be inferred from the grant of the right of eminent domain, which, to our mind, is somewhat questionable, as the almost invariable course has been to insert a specific provision of this character. Strange as it may seem, the general statutes give no such authority to water companies in towns, although rights of this character are given to gas and electric companies and telephone and telegraph companies under Sections 13 and 14, Chapter 60.

If there is no statutory authority which the water district has acquired in any other manner, it would seem that its rights must rest entirely upon some principle of estoppel or acquiescence. Upon general principles, it would seem that when a company had been permitted without any objection to lay a system through public highways and make connection with its customers, no Court thereunder would grant an injunction against such excavations as would be unreasonably necessary to keep the system in proper condition, nor would it permit any public official arbitrarily to interfere with such repairs. I assume there would be no question that the work should be conducted with due care. If there were a failure to observe this duty, the remedies to be sought would necessarily depend upon the particular facts.

The principle facts upon which we desire to be further enlightened are as to whether or not the Water District has in any way succeeded to the right of the Dover & Foxcroft Water Company. This last named corporation, by Section 5, Chapter 31, Private & Special Laws of 1887, was given the following rights:

"Said company is hereby authorized to lay, construct and maintain, in, under, through, along and across the highways, ways, streets, railroads and bridges in the towns of Dover, Foxcroft and Sangerville, and to take up, replace and repair all such pipes, hydrants, and structures as may be necessary for the purposes of its incorporation; to enter upon and excavate any highway, or other way, in such manner as least to obstruct the same; to enter, pass over, and excavate any lands; to take and hold, by purchase or otherwise,

any real estates, rights of way or of water;
and in general to do any acts necessary, convenient or proper for carrying out any of the purposes hereinbefore specified."

By Chapter 339 of the Private & Special Laws of 1889, the Maine Water Company was authorized to take over the Dover & Foxcroft Water Company. It appears that there was a contract existing between the Water Company and the Fire Company and several provisions in the course of this legislation lead us to think that possibly the Water District may have succeeded to the rights of the Water Company through some form of purchase of their contract. If that is the case, then the rights which the Water Company had under the provision above quoted, would inure to the benefit of the Water District, and there would be no question as to its legal right to do whatever might be reasonably necessary.

Should you desire any further investigation of the legal phase of this situation, we would be glad to attend to it upon being advised as to the circumstances connected with the transaction between these two companies.

Fred F. Lawrence
Deputy Attorney General