

# MAINE STATE LEGISLATURE

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March 4, 1920

To Paul D. Sargent, Chief Engineer, SHC  
Re: Procedure in Laying out New Highway (including grade crossing).

You have asked our opinion as to the procedure to be followed by the State Highway Commission in the laying out of a new State Highway in the town of Corinna, including the general principles to be followed by the Commission in similar cases.

A careful examination of the statutes discloses but one section under which the Commission may act in the laying out of highways. This section is Section 13 of Chapter 25 of the Revised Statutes. Prior to the enactment of this law in 1913, it was the uniform policy of the State that town and private ways should be laid out by the municipal officers and highways by the county commissioners, the jurisdiction of each tribunal depending upon a proper petition therefor. The statutes in each case provided carefully for the various steps to be taken for the protection of all parties.

This section giving authority to the State Highway Commission is extremely meager in its details. It provides that the Commission "may lay out, establish and open a new highway as a State or State Aid highway." In the last sentence of the section it provides as follows:

"Whenever the commission shall lay out, establish and open a new highway as a State or State Aid highway, it shall first fix and award the damages sustained by the owner of any land through which said highway passes and any person aggrieved by such award may have the damages determined as hereinbefore provided in cases of altering, widening or change of grade."

These are all the provisions of statute relative to procedure. There is no provision for notice and hearing upon the laying out and no provision for record of proceedings in the Registry of Deeds of the county, Section 11, authorizing the taking of land, change of location or alignment and similar purposes, carefully provides for a survey, plan and record in the Registry of Deeds, but there seems to be no connection between the two sections.

We believe that it will be far safer in all of these cases to proceed under the general law wherever possible and have those highways laid out upon petition to the county commissioners under the provisions of Sections 1 to 10 of Chapter 24, which very carefully prescribe the details of procedure to be followed and carefully guard the rights of all parties. After the road is laid out by them, the State Highway Commission can designate it as a State

highway and exercise full authority. Should such proceedings be impracticable in any given case, we should certainly advise that you take no action in the direction of laying out any State or State Aid highway until after a public hearing of which as full notice has been given as is reasonably possible.

It was laid down in a very early case in this State that in all proceedings of this character, prior notice was necessary to the validity of the location of a public way. In the case of Harlow vs. Pike, 3 Me. 438, it was noted that the statutes then existing did not require notice by selectmen before locating a town way, but the Court held that the plain principles of justice required the giving of such notice. This case was cited with approval in Leavitt vs. Eastman, 77 Maine 117, and we think at the very least that your procedure should be in accord with that prescribed for county commissioners in Section 2 of Chapter 24 under which thirty days' notice of the time and place of meeting is given by posting copies of the petition and order in three public places in each town in which any part of the way is, serving one on the clerks of such towns, and publishing it in some newspaper. Inasmuch as a petition is not necessary for your action, the notice would simply be of your intention to lay out the way, but it should set forth as carefully as possible the intended location, including the course and the termini. Your records should show the fact of notice and the method of giving it. If the land owners are not too numerous, it would be wise to send each a copy by registered mail. We feel that if your procedure omitted this notice, there would always be a chance to question the validity of the location.

You also call our attention to the fact that the new highway which you contemplate locating will cross the tracks of the Maine Central Railroad at grade and upon your petition to the Public Utilities Commission for authority for the maintenance of such a crossing, the Commission feel that they were without jurisdiction until after the way had been legally located. You suggest the embarrassment arising from the fact that the law requires that you first fix the award for damages sustained by the land owners before the way is laid out, established and opened and if, after the location of the way, the petition to the Public Utilities Commission should be acted upon unfavorably, you would not proceed with the construction of the way, in which case you would have awarded damages which would never be in fact sustained, but to which apparently the land owner would be entitled under the law. This anomaly in the language of the statutes affords a further reason in this particular case for apply to the county commissioners. The only suggestion we would make is that no award of damages be made until after the way is laid out and the Public Utilities Commission renders its decision upon petition for authority to cross the railroad tracks. Both the amount of damages and the amount of land taken might be affected by this decision. The award would have to be made before the road was actually opened for travel, but as we read the law, it would not have to be upon the formal laying out of the way. . . . The situation at best is not a satisfactory one so far as the provisions of the statutes are concerned.

Fred F. Lawrence  
Deputy Attorney General