

# MAINE STATE LEGISLATURE

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April 11, 1924

To Hon. Percival P. Baxter, Governor of Maine  
Re: Powers of Commission

The questions which you ask regarding the relative power of the Governor and Council and the State Highway Commission as to approving locations for road work and the letting of contracts are by no means easy.

The act creating the State Highway Commission and defining its authority in general gave it unlimited power over all matters pertaining to designation, location and building of state and state-aid highways.

By Section 6 of Chapter 25 of the Revised Statutes, authority was given to the Commission to "direct the expenditure of all moneys for the construction and maintenance of state and state aid highways", and by Section 3 of the same chapter it was provided that they should exercise all powers expressly or impliedly given by said chapter.

In 1917 by Chapter 258 of the Public Laws, the power of the Commission as to the expenditure of all moneys for the construction of all state and state aid highways was restricted and made subject to the approval of the Governor and Council, and this is the law now in force. Other sections of Chapter 25, however, which should have been amended if it had been the intention of the legislature to limit the power of the Commission to such acts as were approved by the Governor and Council, were left without amendment and the consequence is that there are contradictions and inconsistencies between several sections of the statutes.

By Section 7 of Chapter 25, the Commission is made sole arbiter of the designation of state and state aid highways. By Section 10, as amended by the act of 1917, the Commission has power to let contracts after advertising for bids for the construction of all state and state aid highways, except as elsewhere herein and otherwise provided. And the same section gives the Commission power, with the approval of the Governor and Council, to let contracts for state highway construction, or do the same for and in behalf of the State without advertising for bids, if the same be for the best interests of the State.

It will be seen that it is very difficult to tell just what part of the authority given the Commission is to be exercised untrammelled and what part is subject to the approval of the Governor and Council, but it is my opinion that the Legislature of 1917 intended by the amendment to make expenditures for the building of state and state aid highways subject to the approval of the Governor and Council. This view is borne out to some extent by the head note inserted over Section 6, which reads, "Governor and Council to supervise expenditures." While it is true that the head notes are no part of the statute, still in cases where the meaning is obscure, they may tend to throw some light upon the intention of the legislature.

William H. Fisher  
Deputy Attorney General