

MAINE STATE LEGISLATURE

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PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1926 - JUNE 30, 1928

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1926

PRESS OF MERRILL & WEBBER CO.
AUBURN, MAINE

providing necessary detour roads was made mandatory and limited to state highway construction.

"Whenever it becomes necessary to close a state highway to travel on account of construction, before such state highway is closed the commission shall establish the most practical detour road around the state highway to be constructed, have the same properly signed at all intersecting roads or streets indicating the principal town or city in either direction and cause the detour road to be put in proper condition to withstand the travel and maintained in such condition until the state highway being constructed is open to travel. If the commission neglects to so sign, establish or maintain such detour road the same shall be done by order of the governor and council."

From all the foregoing, it clearly appeared to be the duty of the commission and in case of their neglect, the duty of the governor and council to establish and maintain in connection with state highway construction, a detour road whenever it is necessary to close a state highway to travel on account of such construction.

The detour is evidently considered a part of the state highway construction and that the cost of same may properly be charged as an expense incidental to such construction. I do not find in the statutes any provision whereby a town or city can be charged any part of such detour construction.

It is, therefore, my opinion that the town of Farmingdale cannot lawfully be held, to pay any part of the detour rendered necessary by the closing of the state highway through said town on account of its construction.

Yours very truly,

SANFORD L. FOGG,

Deputy Attorney General.

April 9, 1925.

To the House of Representatives of the State of Maine.

In response to your order of April 8, 1925, asking the opinion of the Attorney General as to whether the Governor and Council were legally authorized to adopt a policy by which no state highway shall be constructed in any town unless such town shall in advance agree to bear one-half of the expense of detours as provided in order of the Governor and Council, No. 88, dated March 23, 1921, I hereby submit the following answer.

Section 6 of Chapter 25 of the Revised Statutes, as amended by Chapter 258 of the Public Laws of 1917, and further amended by Chapter 215 of the Public Laws of 1921, provides that:

"Whenever it becomes necessary to close a state highway to travel on account of construction, before such state highway is closed the commission shall establish the most practical detour road around the state highway to be constructed, have the same properly signed at all intersecting roads or streets indicating the principal town or city in either direction and cause the detour road to be put in proper condition to withstand the travel and maintained in such condition until the state highway being constructed is open to travel."

The statute says that the Commission shall establish the most practical detours whenever a state highway is closed, and cause the detour to be put in proper condition to withstand the travel and maintain the same in such condition until the main highway is open to travel. The original act establishing the State Highway Commission, Chapter 130, Section 7 of the Laws of 1913, provided that "the Commission may establish detour roads during the construction and repair of state or state aid highways, and may authorize the expenditure of such sums as it deems necessary to make the same safe for travel."

There is nothing said in the original law, nor does the statutes, as amended, permit the passage of a council order "that no state highway shall be built in any town which will not enter into written agreement with the State Highway Commission for putting detours into suitable condition and for their constant care", as stated in the order of March 23, 1921.

Chapter 25 of the Revised Statutes, as amended, defined and fixes the duties of the Governor and Council and the duties of the Commission, in regard to construction and maintenance of state and state aid highways. The "general policy" is established by the legislature, and it is not the province of the Governor and Council to pass any orders contrary to the constitution, and the laws passed by the legislature.

It might be legal and desirable, for a town to enter into a contract with the Commission to pay a portion of the cost of a certain detour, but it was not the intention of the legislature to limit the building of state highways only to those towns who were willing to enter into an agreement to pay half the cost of any or all detours within the town.

The answer to the question is, therefore, that the Governor and Council were not legally authorized to establish such a general policy.

Respectfully submitted,

RAYMOND FELLOWS,
Attorney General.

July 15, 1925.

S. N. Tobey, Esq., Treasurer, Augusta State Hospital, Augusta, Maine.

DEAR MR. TOBEY: In your letter of July 2nd, you ask for an "opinion regarding the case of Alexander E. Edgecomb, a patient in this institution, who has at a bank in Saco the sum of \$209.00, whether or not, when this money comes into my hands, as treasurer of this institution, I can apply the whole or any part of it to liquidate said patient's board in this institution."

Section 30 of Chapter 145 of the Revised Statutes provides that "the state may recover from the insane, if able, or other persons legally liable for his support, the reasonable expenses of his support in either insane hospital."

Under this statute, you undoubtedly have the right to recover from the insane provided he had money or property for the reasonable expense of his support and maintenance. In view of this provision of the law, it is my opinion that when money belonging to the insane person comes into your hands as treasurer, you can safely apply whatever is necessary of the same to liquidate the patient's board in the institution.

In cases where the insane person has quite an amount of property, I think it would be perhaps best that a guardian should be appointed and it would then be his duty to look after the payments to the hospital for the expenses and care of his ward.

Trusting that the foregoing will give you the information you desire, I am,

Yours very truly,

SANFORD L. FOGG,
Deputy Attorney General.