

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

It is our opinion that damages must be assessed either by the municipal officers or the county commissioners with reference to the construction of such roads.

Yours very truly,

SANFORD L. FOGG,

Deputy Attorney General.

May 19, 1926.

State Highway Commission, Augusta, Maine.

GENTLEMEN: In re Farmingdale "Detour Road".

I am pleased to acknowledge the receipt of your letter of the 17th, with enclosures, regarding the policy of the State Highway Commission concerning detour roads around state highway construction work, and the order of the Governor and Council relating to the case of "detours" during 1921.

In your letter you state: "It would seem to me that the commission have perfect authority under the provisions of Section 6, Chapter 25, Revised Statutes, to make and enforce rules and regulations similar to the enclosed." By this you refer to the requirement that the town shall assume and pay one-half the expense of construction and maintenance of necessary detours while state highway construction work is being carried on.

I assume that your understanding is based on the first paragraph of Section 6 of said Chapter 25, Revised Statutes, wherein it is provided that "the commission may from time to time make and shall enforce rules and regulations relating to construction and maintenance of all state and state aid highways".

The foregoing powers of the commission are made "subject to the provisions of this chapter".

It was further provided in the aforesaid section that "the commission may establish detour roads during construction or 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." The authority thus granted was merely permissive related to state aid as well as to state highways.

By Chapter 258 of the Public Laws of 1917, which was amendatory of said Chapter 25, Revised Statutes, the matter of

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.