

# 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

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1928

possible and that a mere change of phraseology is not to be considered as a change of the law as originally enacted.

The original law as printed in the Public Laws of 1913, Chapter 130, Section 7, says:

"The commission shall have full power from time to time to purchase, lease or hire all machinery, tools, implements and property necessary for highway engineering and construction and for the administration and execution of its duties, and to contract for such labor, materials and property as it may deem necessary for the examination, building and construction of state and state aid highways."

For the reasons above stated, the statute and amendments relating to the duties of the Commission having been passed after the passage of the statute requiring bids from State institutions and departments, there does not seem to be any necessity for the State Highway Commission to advertise for bids when purchasing "machinery, tools, implements and property necessary for highway engineering and construction."

Respectfully yours,

RAYMOND FELLOWS,  
*Attorney General.*

June 14, 1927.

*State Highway Commission, Augusta, Maine.*

GENTLEMEN: Attention: Mr. Paul D. Sargent, Chief Engineer.

Answering your inquiry of June 1st, about building driveway culverts, I beg to advise you that Chapter 22, Section 26, provides that the municipal officers of a town may, at the expense of the town, construct ditches and drains to carry water away from any highway or road therein, etc., and any wilful interference therewith shall be punished in the same way as provided by statute for obstruction in a travelled road.

In Chapter 215, Public Laws of 1921, it is provided that:

"In all state and state aid highway construction and maintenance, the commission shall have all the powers of municipal officers conferred by Section 26 of Chapter 22 of the Revised Statutes, relating to construction and maintenance of ditches and drains."

Section 13 of Chapter 25 of the Revised Statutes, provides that the Commission may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require and may lay out, establish and open a new highway as a state or state aid highway.

Section 80 of Chapter 24 of the Revised Statutes, provides that:

"No road commissioner without written *permission from the municipal officers* shall cause a water course to be so constructed by the side of a way as to incommode any person's house", etc.

You will notice by this section, the municipal officers are not precluded from constructing necessary water courses in public ways so that said section is not in conflict with the provisions of Section 26 of said Chapter 22, the road commissioner being the only person precluded by Section 80, where he acts without permission of the municipal officers.

Section 81 of said Chapter 24, indicates that the abutter on a public highway shall not change the drainage thereof or deposit within or along any ditch or drain in a public way any material that shall obstruct the flow of water in such ditch or drain or otherwise obstruct said way; provided, however, that with the written consent and in accordance with specifications of the legal authorities having supervision of such ditch or drain any person may, to provide egress and regress to and from lands occupied by him, lawfully construct and maintain a bridge across such ditch or drain.

I do not find any statute which requires the municipal officers of a town, or the Highway Commission in the case of state and state aid highways, to construct driveway culverts for abutting owners along the highways. It does not appear that our court has ever passed on this particular question, but the court said in the case of *Sherburne v. Inhabitants of Sanford*, 113 Maine, page 72, that:

"It is well settled that when land is taken for a way and damages are assessed, the damages are presumed to include not only the value of the land taken, but the diminished value of the remainder of the tract caused by the taking. And the likelihood that surface water from the road may be turned into the adjacent lands is one of the elements to be considered in assessing land damages. And after the assessment, it is to be conclusively presumed that it was taken into consideration, but

there is one consideration, the consequences of which are not presumed to have been considered in the original assessment. And that is this. After a road has been built and grade practically established, and when it may be presumed that the adjoining owners have adjusted their property, their fences, buildings, walks, and so forth, to that grade, if a town raises or lowers the road to the injury of the adjoining owner, it must pay the damages."

I can imagine cases where in making drains and ditches along the side of the highway, it might be equitable for the Commission to arrange with the owner to bear a fair portion of the expense of constructing the necessary driveways over said ditch or drain, and I have in mind such as lead to one's house or lawn. I think in most cases amicable arrangements can be made to the satisfaction of the abutting owner.

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

Yours very truly,

SANFORD L. FOGG,  
*Deputy Attorney General.*

March 26, 1928.

*State Highway Commission, Augusta, Maine.*

GENTLEMEN: Answering a question which recently arose as to whether or not a town can raise to be expended on third class highways in any one year, the sum of \$3,500., and whether if such an amount is raised and expended by the town in any one year, the State can pay to such town its part of the state highway fund that year and each succeeding year for several years until said yearly fund amounts to the amount expended, namely, \$3,500., and also as to whether or not said sum can be raised by the town at a special meeting, I am pleased to inform you that Section 57 of Chapter 4 of the Revised Statutes, provides that "The voters at a legal town meeting may raise the necessary sums for the support of schools and the poor, making and repairing highways, town ways and bridges." Under this provision, it is my opinion that the amount may be raised at any legal town meeting.

The matter of third class highway fund is largely governed by Chapter 263, Public Laws of 1919, Special Session, as amended