

MAINE STATE LEGISLATURE

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June 16, 1927

To Hon. Charles E. Gurney, Chairman, Public Utilities
Re: Jurisdiction - Approval of Location of Railroad and Arrowsic
Road Crossing - Carlton Bridge.

This department is in receipt of request for an opinion relative to the jurisdiction of the Commission in the matter of petition to the Public Utilities Commission "R.R.#1364", dated May 2, 1927, filed by the Directors of the Kennebec Bridge.

In reply, I call your attention to the fact that the only provision in Chapter 89 of the Private and Special Laws of 1925 which created the board known as the Directors of the Kennebec Bridge, giving in express terms any authority to the Public Utilities Commission relative to the Kennebec Bridge, is contained in Section six; which section authorizes and directs the Commission to establish and promulgate the tolls to be charged and collected by the Directors. This in itself, under the familiar principle of statutory construction that "an enumeration of powers excludes others", would seem to be sufficient to show that the Public Utilities Commission has no jurisdiction to pass upon the location of rails or ways in and upon the bridge or the property acquired by the Directors for approaches thereto.

There is, however, another phase to the situation. The Legislature of 1925 by the said chapter 89 created an administrative body to represent the State itself in the construction of a state bridge. The directors by the express terms of the act have full authority, with the advice and consent of the Governor and Council, to make all contracts for the construction and maintenance of the bridge and its approaches.

"The state shall always have exclusive control over said bridge and the construction, operation and maintenance thereof, . . . subject to . . . any contract. . . with respect to the use of said bridge for railroad purposes."
(Section 5).

It is difficult to see, under these circumstances, how any order under the petition filed containing anything contrary to provisions of contracts made by the Directors could be enforced unless there was some express legislative authority.

~~It is difficult to see, under these circumstances, how any order~~ the opinion, therefore, of this Department that the Commission has no jurisdiction.

Raymond Fellows
Attorney General