

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, 1928

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

by Chapter 216, Public Laws of 1923. Section 3 of said Chapter 216, provides for the apportionment among towns as follows:

"The administration and expenditure of the third class highway fund shall be under the general supervision of the state highway commission and shall be apportioned among the various towns according to the number of miles of third class roads contained therein, as determined by the highway commission, provided, that such towns shall have appropriated for the current year in addition to the appropriation for state aid work and appropriation under the so-called bridge act, an amount not less than four mills on the valuation of such town, for roads and bridges, summer and winter."

Section 5 of said Chapter 216, provides that the apportionment of the fund shall be made in accordance with the returns made on or before April 15th, annually. Said section being as follows:

"The apportionment of the third class highway fund herein created shall be made in accordance with the returns which shall have been made by the several towns desiring participation on or before April fifteenth of each year, and no town whose selectmen or other officials authorized by law have not made the returns required by the state highway department on or before said April fifteenth shall be entitled to any apportionment of said fund."

There appears to be no provision whereby the State Highway Commission is authorized to enter into any binding agreement with the towns to the effect that if the town raises in any one year an amount of money in excess of the amount required by the statute to be raised in order to secure the state stipened for the purpose of completing any given third class road which has been properly designated, that the State will pay during the years following any given amount as the State's contribution based on the larger expenditure as aforesaid. Any arrangement entered into by the town with the State Highway Commission could, in my judgment, be nothing more than a gentleman's agreement and that a conditional agreement, because the legislature might change the third class highway apportionment or it might repeal all the provisions of the statute with reference to the same.

The second question which arose was as to whether or not a town can at a special meeting appropriate money for state aid work.

Section 19 of Chapter 25 of the Revised Statutes, provides as follows:

"Annually between the fifteenth day of July and the fifteenth day of August in each year, municipal officers shall prepare and file with the commission suggestions for the improvement during the calendar year of state aid highways located in each town accompanied by plans so far as practicable, setting forth the location of the highway and the nature of the improvement desired. The commission shall examine and report thereon with its recommendations to such municipal officers on or before the twentieth day of February following. Such report shall be submitted to the voters of such towns at the next regular meeting of such town. The municipal officers shall insert in the warrant for each annual town meeting an article calling upon the voters to vote 'yes' or 'no' on the question of the appropriation of money necessary to entitle the town to state aid for state aid highways for that year. If any such town then appropriates money for work contemplated in such report and for the purpose of securing state aid as provided in this chapter the municipal officers shall forthwith notify the commission of the amount so appropriated.*****"

It will be noticed that there are certain things that must be done at the annual town meeting, namely, that the report of the Commission with its recommendations shall be submitted and that there shall be inserted in the warrant for such annual town meeting an article calling upon the voters to vote "yes" or "no" on the question of the appropriation of money necessary to entitle the town to state aid for state highways for that year.

If all the provisions of said section which are required to be done before or at the annual meeting are complied with and the only thing left is the appropriation of the money necessary for the work contemplated, it is my opinion that the necessary money may be appropriated at any legal town meeting.

Yours very truly,

SANFORD L. FOGG,

Deputy Attorney General.

July 20, 1928.

State Highway Commission, Augusta, Maine.

GENTLEMEN: Attention: Hon. Clyde H. Smith, Chairman.

This department is in receipt of your inquiry relative to the rights of a Telephone Company to maintain its poles along the right of way of a highway when the State Highway Commission has determined that public convenience and necessity require the widening of the road beyond the limits previously occupied.