

# 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

"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.

Your attention is called to the provisions of Chapter 60, of the Revised Statutes, Section 27, which provides that companies incorporated for the transmission of intelligence, heat, light or power by electricity shall first obtain a written permit from the municipal officers before constructing lines upon and along highways, and the same section provides, after the erection of the lines "such officers may direct any alteration from the original permit."

It is the opinion of this department that as nothing is paid for the valuable privilege of occupying and using the soil of public roads and highways, that the Telephone Company has no further or other rights except to occupy the right of way by permission of the municipal officers and that such right is a mere revocable license. The primary duty of the State is to maintain streets and highways in a safe and proper condition for public travel and the State can at all times regulate the size and location of the poles, height of wires from the surface of the ground and their location in the streets. The State also has power for good cause to terminate the right to occupy any particular street or streets, and leave the Company to find a new location.

American Rapid Telegraph Co. v. Hess 13 L. R. A. 454.

Postal Telegraph-Cable Co. v. Ingraham. (U. S. District Court District of Maine) 228 Federal, 393.

Readfield Telephone & Telegraph Co. v. Cyr, 95 Maine 287.  
37 Cyc. 1633-1638.

Yours very truly,

RAYMOND FELLOWS,  
*Attorney General.*

August 30, 1928.

*State Highway Commission, Augusta, Maine.*

GENTLEMEN: Attention: Lucius D. Barrows, Chief Engineer.

Your letter of August 28th, regarding your authority to give permission to erect a fence within the limits of a highway, received.

My understanding of the law is that you do not have authority to grant such permission. The rule as laid down both by our statutes and courts is that the easement of the public is co-exten-