

# 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

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-

sive with the exterior limits of the way and that any obstruction placed within the limits of the way amounts to a nuisance both at common law and by statute.

The public is not necessarily limited to the travelled part of the right of way, but have the right to go outside the travelled part without hindrance and our court has held that any traveller whose rights are interfered with by any obstruction may remove same to secure his passage for himself, agents and servants, provided in the removal of the obstruction he uses due care so as not to do any more damage to the same than is necessary to secure passage over the way.

Yours very truly,

SANFORD L. FOGG,  
*Deputy Attorney General.*

August 30, 1928.

*State Highway Commission, Augusta, Maine.*

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

Answering your letter of August 27th, in regard to the erection of stop signs under the provisions of Chapter 138, Public Laws of 1927, which act provides that the State Highway Commission may designate certain state and state aid highways as through ways, and it is further provided that no such designation of a through way shall become effective to traffic at such point of intersection until the State Highway Commission shall have caused suitable warning signs and signals to be erected at or near points of intersection.

It is my opinion that the State Highway Commission is not compelled, personally or by its employees, to erect the stop signs, but that the Commission may employ the selectmen of a town to erect these signs.

You will note that the designation of through ways is confined to state and state aid highways which, in the case of ways in villages, may not be applicable. The chief thing to ascertain is as to whether or not any particular way is in fact a state or state aid highway. If it is, the Commission have the right to designate such highway as a through way whether in village, city or open