

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1929-1930

circumstances one way or the other might make a difference. For instance, if a new bill of lading was issued, it would be quite plain that the intrastate shipment had begun. If merely a notation is made on the original bill of lading, this is not so clear. Again, if the original shipment has come to rest and stayed at the branch for any appreciable length of time, this would make it plainer that a new shipment had begun, but if it only came to rest briefly, it would look more as if the interstate shipment had continued until a final destination was reached.

Again, if employees at the first branch or plant inspected, examined or tested the shipment, it would tend to show that the original shipment had come to an end.

Probably no absolutely firm rule can be laid down because circumstances in the cases differ.

The proposed law now pending for amending and definitely defining a distributor will help to solve this problem if passed.

Yours very truly,

CLEMENT F. ROBINSON

Attorney General

HIGHWAYS—STREET RAILROAD TRACKS

December 13, 1929

State Highway Commission,
Augusta, Maine
Gentlemen:

In answer to your inquiry as to the necessity of providing a location for a street railroad outside of a public way which the railroad now occupies in order that the improved highway may be widened, I would call your attention to Chapter 58 of the Revised Statutes and especially sections 7, 8 and 21; section 7 being with reference to the petition for approval of location and proceedings thereon; section 8 being with reference to the application of the municipal officers of towns and cities for approval of the proposed route and location, and section 21 being with reference to the changing of the location of tracks in the street or highway. You will notice that in section 21 it is provided that under certain circumstances the municipal officers may change the location of the railroad within the limits of the street.

There does not appear to be any indication in the statute that the railroad company can be compelled by the municipal officers or any other state authority, except possibly the Legislature, to move its tracks outside the limits of the highway where it has been authorized to construct them.

A way laid out and constructed by the proper authorities is a public easement and the Legislature has the right to grant a right of way from such easement to a street railway who can share that easement with the general traveling public. I assume that the railroad to which

you refer is occupying a part of the highway lawfully, and that its location has been granted in accordance with instructions from the proper authorities.

The weight of authority seems to be that this being so, it constitutes a contract with the railroad which cannot be terminated by the municipal authorities or by the State Highway Commission, and I do not know of any way by which the railroad can be compelled to abandon a location thus granted to it.

In the case you mention I would suggest that it would be proper for you to provide a right of way outside the limits of the present highway for the new location of the railroad together with its necessary turnouts.

Very truly yours,

SANFORD L. FOGG
Deputy Attorney General

HIGHWAYS—CULVERTS

October 17, 1930

State Highway Commission,
Augusta, Maine
Dear Sirs:

You inquire regarding the expense of culverts under driveways to private property from state highways.

I confirm the ruling of my predecessors to the effect that in connection with construction work the State can properly bear the expense of replacing or constructing culverts under existing driveways or driveways which are planned at the time your construction work is going on. If the State did not bear this expense in connection with the construction work, the expense would be a reasonable item in a claim for damages which the adjoining landowner may file within six months after the road work is finished. Culverts so constructed should be reasonably adequate to give the landowner an approach to his premises, and to replace existing culverts. In case of a disagreement between the State Highway Commission and the landowner his recourse is to the courts in connection with a damage suit. In such case he would be entitled to an allowance for the reasonable expense to which he might be put in making his property as usable after a change of grade by the state highway construction as it had been before.

It does not seem to me that there is any obligation to construct culverts at the expense of the State after the construction has finished, and the six months period has elapsed. It is up to the landowner to secure adequate accommodation while the construction work is going on, or seek his redress in court within the statutory period thereafter.

Very truly yours,

CLEMENT F. ROBINSON
Attorney General