MAINE STATE LEGISLATURE

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February 27, 1930

To L. D. Barrows, Chief Engineer, SHC
Re: Relocation of Utility.

I have your inquiry regarding the propriety of paying the Bangor Hydro Electric Company for certain gravel used in raising the tracks of the trolley line between Bangor and Hampden in order to make the track conform to the grade of the highway. It is suggested that raising the track remedied a dangerous condition. . . and at the same time saved the State from the necessity of building a shoulder involving as much, if not more, gravel than was used in raising the track.

There may be special circumstances affecting the question which are not incorporated in your inquiry and it may be that on the basis of the circumstances the attorney for the Company may have some suggestion tending to fix liability on the State for this gravel. If so, I should be very glad to talk it over further with you or with him. . . On the facts as set forth, however, it seems to me that as a matter of law the Electric Company has no recourse for the expense which it incurred.

It seems to be the general principle that all the expense of changing tracks to an improvement in the highway must be borne by the public utility which has the franchise to maintain the tracks. It accepts this franchise with its eyes open to the possibility that it may be put to this extra expense at some time in the future. That the incurring of this expense by the public utility may save the State some expense to which it would otherwise have been put in connection with improving the highway is legally a bit of luck for the State and not a payment which the State should refund. See:

Mayor, etc., of New York v. Bleecker, etc. Co., 115 N.Y.S.592
Same vs. same, 130 N.Y. 830.
Malone, etc.,R.Co. v. Spuyton Co., 121 N.Y.S. 656.
N.Y. v. Belt Line, 181 N.Y.S. 301.
Burlington v. Burlington Traction Co., 98 Vt. 94
36 C.U.C. 1407

In Hurley v. South Thomaston, 105 Me. 301, the Law Court indicates that while the abutter may collect from the town for the damage to his premises caused by changing a grade at the request of a street railway, nevertheless the town can recover this expense from the street railway. In Brunswick Gas Light Company v. Brunswick Village Corporation, 92 Me. 493, 496, the Law Court held that the right of a gas company to have gas pipes in a public street is subordinate to the rights of the public in the use of the streets so that additional public uses can be imposed on these streets without providing for the payment of compensation for damages occasioned to the gas light company by such changes. As a matter of fact, laying the sewer pipes in Brunswick streets put the gas company out of

business but it had no legal redress against the municipality.

The railroad company of course has the legal duty of maintaining its tracks in such condition as not to endanger users of the highway. If the grade of the highway is changed the railway may have to change its tracks, Bangs v. Lewiston, etc., Co., 89 Me. 194. . .

Clement F. Robinson
Attorney General

NOTE. Later the Deputy Attorney General wrote to SHC:

It is admitted by the State that the Company furnished the gravel and the company admits that it has no legal claims for re-imbursement. The Company, however, claims that the State is bound morally and as a matter of fair business dealings, to recognize and pay their claim, owing to what they claim to be a fact that prior to the time of furnishing the gravel the then State Highway Commission indicated to the company orally that the company would be paid for the gravel furnished necessary to build up the shoulder of the road on the side where the railroad tracks were laid.

If there was such an understanding on which the company relied, while there is no legal liability by which the State is bound, as indicated by our letter of February 27, 1930, there would seem to be a business obligation on the part of the State to fulfill the terms of that understanding.

Sanford L. Fogg
Deputy Attorney General

Copy to Sherman N. Shumway, Bangor, Counsel for Co.