

MAINE STATE LEGISLATURE

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May 19, 1930

To the State Highway Commission
Re: Encroachments on Highways

I have yours of May 6, enclosing letter from the Federal District Engineer, and Bulletin from the Chief of the Federal Bureau of Roads, all with reference to encroachments on highways.

Under our law the right of the public to the use of all the surface of a state highway within the limits of the lay-out is paramount. No local officers can give a valid permit to any person to erect or maintain any obstruction to travel within those limits. In Corthell v. Holmes, 88 Me. 380, the Court says:

"Any obstruction placed within the limits of a public way is a nuisance at common law as well as by statute. The easement of the public is coextensive with the extent or limits of the way, and the question of nuisance does not depend upon the interruption of travel. The traveler may use any part of the way to travel upon and if obstructed in the exercise of that right has a remedy against the persons unlawfully placing the obstruction there."

Even in connection with cultivating lands adjacent to the highway no person can change the drainage or obstruct the highway. (R. S., Chapter 24, Section 81) The adjoining owners may make a reasonable use of the land within the limitation, but in one case it was held that a use which involved placing objects of such character as to frighten horses was unreasonable. Lyman v. Hooper, 93 Me. 46.

Gates, bars or fences upon or across highways may be licensed by local officials under certain circumstances, but where unlicensed may be removed by any person (R. S., Chapter 24, Section 103). Other obstructions may be removed by a road commissioner or municipal officer or the State Highway Commission (P. L. 1921, Chapter 215).

In general, an obstruction to the actual use of the way may be removed by a member of the public who is prevented by such obstruction from actually using the way, and this includes not only obstructions on the traveled part of the way, but obstructions within any part of the layout. A traveler has the right to turn from the beaten path and use any part of the highway to pass and repass upon (Parsons v. Clark, 76 Me. 479; Dickey v. Telegraph Co., 46 Me. 483).

The principles above outlined apply to that part of a State highway which lies within the limits of a village corporation. Neither the corporation nor an adjacent owner has the authority to erect a gasoline station within the layout. In this respect, the wrought portion of the way is legally unimportant. All parts of the layout are, as a matter of law, within the highway limits. Adjacent property owners have no inherent right to erect or maintain obstructions.

It seems to me that under the law in our State, agreements with municipal officers regarding encroachments on a State highway would be valueless. At most, the municipal officers would be contracting to do something which they legally cannot do. Anyway and in any event, municipal officers under our system in Maine would have no power to bind their successors one way or the other.

The Highway Commission has, it seems to me, full right, power and authority to prevent and abate the erection and construction of encroachments upon the State highways, both in and outside the incorporated places.

Clement F. Robinson
Attorney General.