

MAINE STATE LEGISLATURE

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June 3, 1930

To State Highway Commission

Re: Setting off Portions of Streets for Sidewalks

Mine of May 19th with reference to highway obstructions did not particularly consider the situation with reference to sidewalks in municipalities.

By R. S., Chapter 4, Section 98, as amended by P. L. 1917, Chapter 58 and P. L. 1921, Chapter 154, towns, cities and village corporations may make by-laws

"for setting off portions of their streets for sidewalks and for regulating the use thereof",

and also

"respecting the location and protection of monuments, boundary stones, curbstones, stepping stones or horse-blocks, trees, lamp posts, posts, and hydrants, the maintenance and operation of sidewalk tanks and pumps for the sale or distribution of petroleum products for fuel, power, and kubication, supporting posts for any awning, marquee, or other temporary or permanent structure over the street or sidewalk, and all other temporary or permanent structures over the street or sidewalk, and all other things placed within the limits of their roads, ways, and streets, by municipal authority, and for legitimate municipal purposes; and no such objects placed as aforesaid, if located in accordance with such by-laws and ordinances, shall be deemed defects in such road, way, or street."

This express provision, however, does not substantially modify the general conclusions in my letter of May 19th.

In the settled portion of a municipality, the town may by by-law set off sidewalks and provide for sidewalk pumps. The statute says,

"for the legitimate municipal purposes."

Just what this means is not plain. The municipal officers, except as authorized by general by-laws, cannot take any such action. The statute does not make clear what would happen in case of a conflict of authority between the State Highway Commission under its general powers referred to in mine of May 19th and the municipality under its by-law powers. The statutes probably contemplated that a state highway will not run through a settled community in such way as to interfere with the right of the municipality to make and act under

such by-laws. It would be my opinion that in case of conflict the rights of the State and the State Highway Commission would be superior; that is, if the State Highway Commission should need for state highway purposes that portion of the lay-out which the municipality had set out as a sidewalk, and should require the discontinuance of sidewalk pumps thereon, this right would probably be superior to the existing sidewalk provisions.

Putting it in another way, - the right of the State to have adequate through passage would rise superior to the right of the municipality to have sidewalks and sidewalk pumps, but in the absence of the need of the sidewalks for state highway purposes and in the absence of interference with such state highway by sidewalk pumps, the municipality may properly make by-laws under the statute above quoted.

Clement F. Robinson
Attorney General

CFR/V