

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, 1930 - JUNE 30, 1932

STATE OF MAINE

REPORT

OF THE

Attorney General

for the calendar years

1931-1932

fining this Bucksport-Verona bridge as an approach to the Verona-Prospect bridge. I find no decided cases where such a definition has been ruled upon by the courts. I cannot say that our court would rule it unconstitutional.

In my opinion, therefore, the legislative definition stands effective, and under it bond issue money can properly be applied on the Bucksport-Verona bridge.

"COMPACT PORTIONS" OF TOWNS FOR STATE
HIGHWAY PURPOSES

June 10, 1931

To State Highway Commission

I have your request for my interpretation of the law governing the expenditure of bond issue money on a state highway running through the compact portion of a city. You enclose copy of a letter from the commissioners of public works of South Portland.

Article LII, of the Constitution adopted September 9, 1929, provides for expending the proceeds of the bond issue in part for "the construction of the present system of state highways designated prior to April 1, 1929"; in part "for the reconstruction of state highways forming a part of that system heretofore constructed"; in part for "the construction of state highways hereafter to be designated"; and in part for "bridges."

The Commission has the power under R. S. ch. 28, sec. 8, to "lay out, construct and maintain a system of state . . . highways."

By that section the Commission is the "sole arbiter of the designation of the state . . . highways." State highways are paid for from state funds except where a town requests the expenditure of a joint state aid fund upon a certain state highway.

By sec. 13 of the same statute "no funds for construction derived from any bond issue shall be expended on any highway within the compact portions of any town, except in towns of less than five thousand inhabitants, such compact portions to be determined by the commission."

By sec. 7 of the same chapter expenditures by the Commission are "with the approval of the Governor and Council."

I find no express restriction on the power of the Commission, under sec. 13, to determine what is a "compact portion." The only statutory reference to a "compact portion" occurs in R. S. ch. 29, sec. 69, where in setting up certain speed regulations applicable to a "built-up portion as defined herein," the statute says this,—

"The compact or built-up portions of any city, town or village, shall be the territory of any city, town or village contiguous to any way which is built up with structures devoted to business or where the dwelling-houses are situated less than one hundred fifty

feet apart for a distance of at least one-quarter of a mile. Municipal officers may designate such compact or built-up portions by appropriate signs."

This same section is referred to for the definition of "compact or built-up portion" in sec. 8 of the same chapter, which provides that in designating "through ways" for the purpose of stop sign regulations, the Commission shall make such a designation "within the compact or built-up portion" of a community "only with the approval of the municipal officers thereof."

It is my opinion that in determining what is a compact portion with reference to the expenditure of bond issue funds under sec. 13 above quoted, the Commission is not limited by the statutory definition of a compact portion which is quoted above. That definition is found in the chapter which relates to motor vehicles and their operation, and in sections referring to the rate of speed at which cars can be legally operated, and to stop sign regulations. In the chapter governing the Commission in the construction and maintenance of highways, the expression "compact portion" is not defined.

To apply the definition above quoted in the circumstances for which it is created is not difficult. It helps to define a crime, viz.: over speeding. The question presented in such a case is whether a car is being operated contrary to law at a certain time and place. The question becomes this: Is one certain place in the highway within a "compact portion" of the community? Measurements in such cases naturally start from that place and I should say that the quarter-mile limit pivots on that place. In applying that statutory definition to those circumstances, a court would hardly average up the buildings over a territory of substantially greater length overlapping a quarter of a mile in the immediate vicinity of the alleged crime.

To apply this section of the statute to the quite different problem of road construction has obvious difficulties. You are viewing the problem, not from the point of view of classifying a certain limited portion of the highway, but from the point of view of classifying a considerable extent of highway.

The problem of the Commission may be whether it is advisable to construct a state highway for a considerable distance with varying conditions during portions of the route, and in particular where to stop a through project.

As a matter of general interpretation, the word "compact" has different meanings according to the subject in connection with which it is used. Some of these meanings are discussed in *People v. Thompson*, 155 Ill., 451; and in *Moore v. Maine Central R. Co.*, 106 Me. 297, where the court upheld a verdict for the plaintiff based on a finding of the jury that a railroad train was run at a dangerous rate of speed in a compact part of a town. In that case the jury determined as a fact that a village containing twenty-five buildings all within 350 feet of a certain store was "a compact portion of the town."

It seems to me, therefore, that the whole question is one distinctly for the Commission to determine on general principles and by the exercise of a reasonable discretion, subject to the approval of the Governor and Council. The definition which appears in another chapter of the statute is persuasive and may properly be given great weight, but in the end the determination is to be made on the basis of all the circumstances of which this statutory definition is but one.

It seems to me also that the federal law has little, if any, applicability. Whether or not federal aid can be obtained in the construction of a state highway is irrelevant to the question of its designation and construction as a state highway under our own statutes.

DEFENSE OF STATE EMPLOYEES FROM DAMAGE SUITS

August 14, 1931

To Hon. Wm. Tudor Gardiner
Governor of Maine

You inquire regarding action proper to be taken by the state in the matter of a suit at law which is being brought by a private citizen against a member of the state highway police, claiming damages for an alleged slander uttered by the officer in connection with carrying out his duties. Specifically, the following inquiries arise:

1. What lawyer should defend him?
2. Who should pay the legal expense?
3. Who should pay any judgment that may be recovered against him?
4. If the officer pays this legal expense or such judgment can he get reimbursement from the state?

These inquiries I answer thus: The officer could employ his own lawyer; pay the expenses of the litigation and any judgment that may be recovered; and has no legal right to seek reimbursement from the state.

I do not find that any definite ruling on these points has been made by the courts of this state or by my predecessors in office, but the foregoing answer to the questions put conforms to the rulings of other states and the practice there of Attorneys General and other administrative state officials.

My predecessors have followed this same procedure. In a case which originated a few years ago the then incumbent of the office referred to private counsel a state police officer sued for false arrest. Judgment having been recovered against the officer he was refused reimbursement by the legislative claims committee.

The position thus taken is fundamental, based on a public policy of long duration. One who accepts public office as a state police officer or in any other position, accepts it with all its burdens, and one of the