

MAINE STATE LEGISLATURE

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January 11, 1932

To State Highway Commission
Re: Trees within the Limits of the Highway

In response to a recent verbal inquiry of your engineer, Mr. Merrill, regarding the authority of the State Highway Commission to remove trees standing within the limits of the highway, and also as to the authority of the Commission to trim the branches of trees standing on abuttor's land where they extend over the highway, I am pleased to inform you that trees growing within the limits of the highway are the property of the owner of the fee.

"One of the privileges of ownership of the fee of the soil in a highway is that of setting out shade trees, so long as they do not interfere with travel. This right is subject to the right of the legislature to make such regulations as to the improvement of the highway as will render it more convenient for public use."

Section 121 of Chapter 5 of the Revised Statutes provides:

"Public shade trees may be trimmed, cut down, or removed by the owner of the soil only with the consent of a tree warden or park commissioner, but such trees shall not be trimmed, cut down or removed in any case by a tree warden or park commissioner except with the consent of such owner. Nothing in this section, however, shall be construed to prevent the trimming, cutting, or removal of trees where such trimming, cutting, or removal is ordered by proper authority to lay out, alter or widen the location of highways, to lessen the danger of travel on highways or to suppress tree pests or insects."

Our Court, in the case of Burr vs. Stevens, 90 Me. 504, said:

"Whenever the public necessity or convenience requires that the whole or any greater portion than previously traveled, of a highway, should be built as a road for public travel, the duty and exclusive authority of doing such work as may be necessary is given by our statutes to the road commissioners or highway surveyors."

It is provided in Chapter 28 of the Revised Statutes that:

"The commission shall lay out, construct and maintain a system of state and state aid highways and may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require."

From the foregoing it is evident that the Commission, in connection with any state or state aid highway, may lawfully remove, or cause to be removed, any and all trees which obstruct, render unsafe for travel or interfere with the proper construction and maintenance of such highways, or otherwise interfere with the safe and free use of the highway by the public.

The Commission also have the right to remove branches from trees growing on private land outside the highway which obstruct or render the highway unsafe for public use.

Our Court, in the case of Wellman vs. Dickey, 78 Me. 31, held that in cutting or trimming trees,

"Public officers should act faithfully, discreetly and prudently, with honest purpose, and without corrupt motive."

The Courts have also held:

"Even if the removal of trees is necessary the owners should have the opportunity to remove them. If he fails to remove them within a reasonable time after notice, the commission may do so, and the owner should be given reasonable opportunity to remove the severed trees if he so desires."

Sanford L. Fogg
Deputy Attorney General