

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

August 8, 1938

State Highway Commission
Augusta, Maine

Gentlemen: Attention, H. S. Weymouth
Supt. State Aid Roads.

In response to your letter of August 2, relative to the outlet for surface drainage adjacent to a state aid highway in Machias in which you ask as to whether or not you have the right to permit adjacent property owners to enter this drain with sink and cellar drainage, I am pleased to call your attention to Section 7 of Chapter 26, R. S., which provides that,-

"In all state and state aid highway construction and maintenance, the commission shall have the powers of municipal officers conferred by section 26 of chapter 26 relating to construction and maintenance of ditches and drains, and the powers conferred upon municipal officers and road commissioners by section 106 of chapter 27."

Said section 26 is as follows:

"The municipal officers of a town may at the expense of the town construct ditches and drains to carry water away from any highway or road therein, and over or through any lands of persons or corporations when they deem it necessary for public convenience or for the proper care of such highway or road, provided that no such ditch or drain shall pass under or within twenty feet of any dwelling-house without the consent of the owner thereof. Such ditches or drains shall be under the control of said municipal officers, and wilful interference therewith shall be punished as is provided by statute for obstruction in a traveled road. If such town does not maintain or keep in repair such ditches and drains, the owner or occupant of the lands through or over which they pass may have his action against the town for damages thereby sustained."

There does not appear to be anything in the statutes which authorizes the construction or use of such drain for any other purpose than to carry water away from the highway, consequently it is my opinion that you would not have the right to permit the owners of adjacent property to enter such drain with sink and cellar drainage.

Trusting that the foregoing will give you the information you require,

Very truly yours,

Deputy Attorney General

SLP H