

MAINE STATE LEGISLATURE

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October 29, 1936

To Elmer W. Campbell, Director of Sanitary Engineering
Re: Duties re Installation of Drains

Answering your inquiry relating to the power and duties of the Bureau of Health in relation to compelling the installation of drains and sewers, we beg to advise as follows:

Authority for the construction of public drains or sewers is provided by Chapter 25, Section 2, Revised Statutes of 1930: "The municipal officer of a town, or a committee duly chosen by the town, may, at the expense of the town, construct public drains or sewers. . ." This chapter confers no authority and duties upon the Bureau of Health.

The Public Utilities Commission is authorized to consult with and advise cities and towns. . . as to the best methods of disposing of their drainage and sewage, but apparently this is only advisory and does not confer upon the Commission any authority to compel the installation of drains or sewers. . . This statute does not in any way confer any powers or duties upon the Bureau of Health.

When any source of filth causes illness, the local Board of Health or Health Officer has authority to require the removal and abatement of such nuisance, but this applies only when illness is caused by said nuisance. . .

Chapter 26, Section 5, Revised Statutes 1930, provides amongst other things that a nuisance is "causing or suffering any offal, filth, or noisome substance to collect or to remain in any place to the prejudice of others".

Section 12 of said chapter provides a method of abatement by the courts. Section 19 provides for personal recovery of damages. . . No portion of this chapter confers any power or duties upon the Bureau of Health in relation to such conditions.

Chapter 1, Public Laws of 1933, Sections 174 to 176 inclusive, provides for the adoption of plumbing regulations by the Bureau of Health, which shall be minimum requirements for any plumbing installed within the State. Section 2 of Article I of the Regulations adopted under this statute provides:

"Every building intended for human habitation. . . on premises abutting on a street in which there is a public sewer or within one hundred feet of a public sewer shall have a house drainage system which shall be connected with the sewer. . ."

Enforcement of these regulations is provided in Chapter 1, Public Laws of 1933, Section 34. . .

SUMMARY

In view of the above, the State Bureau of Health apparently has no authority to compel the installation of public drains for the purpose of draining waste land, nor for the compelling of installation of public sewers where they may be needed.

Local communities apparently have a privilege of consulting with the Public Utilities Commission as to best methods of installing such drains, but the Public Utilities Commission is vested with no authority to compel the installation of the same.

Local health officers may require the abatement of nuisances which have definitely caused sickness.

Nuisances due to noisome substances, filth and similar causes may be abated upon orders of the court, when complaints are made directly to the courts. Persons injured in their comfort or use of their property by such nuisances may sue the offenders for their damages.

If a public sewer has been installed in a street, abutters within 100 feet of such sewer may be required to enter the same through the regulations of the State Bureau of Health, which regulations are enforceable by local health officers, municipal officers, sheriffs, constables, police officers and marshals.

The Bureau may enforce their regulations when local officials fail to do so.

Authority, however, is not given under any of these statutes to the Bureau of Health to compel the installation of drains and sewers by municipalities, or corporations, or private individuals.

Clyde R. Chapman
Attorney General