

# MAINE STATE LEGISLATURE

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July 25, 1939

State Highway Commission  
Augusta  
Maine

Gentlemen:

In response to your recent inquiry relative to removing all water pipes laid in the highways and streets, I am pleased to inform you that in the case of Water Company v. Belfast, 92 Maine, 58, the court said that: "When the company placed its pipes and gates in the street, it did so subject to the right of the city to make such changes in the surface of the street and the alinement of the sidewalks as might be necessary to render the street safe and convenient for public travel. In making needed repairs and changes in its streets the city is but an instrument of the State, an agent of the public, and it can not barter away its rights or fetter its duty to make such repairs and changes, and whenever it became necessary to remove its gates, it was the duty of the company to do so at its own expense."

In another case it has been said that the right to lay water pipe in the highway did not give the water company the vested right to have them remain undisturbed. Its right was subordinate to the rights of the people in the use of the highway.

Our opinion is that the water company in the case you mention, are legally bound to change the location of its pipes at its own expense.

Answering your inquiry as to the liability of the State for dust coming from a stone crusher operated by a contractor, I am pleased to inform you that the liability, if any, is on the contractor. The State is in no wise responsible for such acts of its contractors.

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

Very truly yours,

Sanford L. Fogg  
Deputy Attorney General

SLF:GH