

MAINE STATE LEGISLATURE

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December 10, 1943

To Lucius D. Barrows, Chief Engineer, Highway
Re: Openings in Highways

. . . You wrote this department as follows:

"R.S. 1930 Chapter 27, Sections 118 to 127, both inclusive, as amended by Chapter 19, Section 3, P. L. 1943 and R.S. 1930, Chapter 28, Section 16, authorizes the State Highway Commission to issue permits, collect fees, and repair state and state aid highways dug into for laying gas, water, steam, oil, gasoline, petroleum or any other liquid or ammonia pipes or conduits, or for any other legal purpose.

"R.S. 1930 Chapter 68, Sections 14 to 17 and Sections 29 to 33 as amended by Chapter 19, Sections 1 and 2, P.L. 1943 appears to authorize municipal officers of cities and towns to issue permits for making openings in streets and highways and it appears that no fees are to be paid when satisfactory repairs are made by the parties making the openings. R.S. 1930 Chapter 28, Section 16 authorizes the State Highway Commission to enforce only Section 15 of Chapter 68 R.S. 1930 when state and state aid roads are affected.

"In view of the seemingly conflicting legislation, should the State Highway Commission continue to issue permits, collect fees and make repairs when telephone, electric light and water companies, etc. dig into state and state aid roads, or should municipal officers issue the permits, then the State Highway Commission enforce Section 15 of Chapter 68 R.S. 1930 if the repairs are not satisfactorily made?

"In case you determine that the State Highway Commission has the authority to issue permits for openings does that authority also empower the Commission to refuse to issue a requested permit provided the 5 year period stated in Section 118, Chapter 27 R.S. 1930 has expired?

"In case you determine that the State Highway Commission has the authority to issue permits for openings, should the Commission consider an opening in the shoulder, shoulder slope or in the ditch as being a part of the driveway of a highway and should a charge be made for openings made in such areas?"

In answer to the foregoing, it seems that the statutes provide that the street commissioner in cities and the municipal officers of cities and towns shall have the right to issue permits to survey along public ways for placing conduits, water pipes, gas mains, and so forth, and the several statutes all refer to the commissioner of streets or the municipal officers; but Section 16 of Chapter 28, R.S. 1930, reads as follows:

"The provisions of sections 118 to 127, both inclusive. . . may be enforced by the commission wherever state or state aid highways are affected."

This seems to me to be only an enforcement provision whereby the State Highway Commission can inspect excavations, so as to guarantee to the traveling public a reasonable degree of safety at all times. However, the question is whether or not the Commission can exercise all of the rights of the street commissioner or the municipal officers as provided in Sections 118 to 127, and I do not believe that the language of Section 16 is sufficiently broad to intend a delegation of such power to the State Highway Commission.

For your convenience I enclose a copy of the sections under discussion, with the amendments inserted in their proper places.

John G. Marshall
Deputy Attorney General

JGM:c