STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

May 8, 1945

To Lucius D. Barrows, Chief Engineer, State Highway Commission

Re: Town Road Improvement Fund, Chapter 371 of the Public Laws of 1945

I have your memo dated May 3rd, stating that the State Highway Commission is uncertain concerning the meaning of certain sections of the "Cross" bill, so-called, an act to create the Town Road Improvement Fund, and that you request my interpretation on the following questions:

"1) In Sec. 42-B re *allocation of funds* to towns, what is meant by 'unimproved roads'? More specifically is this term limited to unimproved portions of 4th Class (Town Ways) or does it also include unimproved portions of State, State Aid, and Third Class designations?"

In answer to this question, my advisory opinion is that the phrase "unimproved roads" means only unimproved portions of 4th class town ways and does not include State, State Aid, and third class designations.

"2) In Sec. 42-D, re *location for expenditures* by towns, what is meant by this same term 'unimproved roads' as qualified by the words which precede it, 'No money from this fund shall be expended on any road which is a part of the Federal Aid, State, State Aid, or Third Class roads?' "

My answer to Question 2 is that it is my advisory opinion that this means unimproved 4th class town ways.

My reason for answering the questions as above is that under Section 42-A of Chapter 371 aforesaid, the legislature created a special fund to be known as the "Town Road Improvement Fund," and in Section 42-D the legislature provided that no money shall be expended on any road which is a part of the federal aid, state, state aid, or third class roads, which would seem to limit the act to 4th class town ways or "dirt roads," so-called; and in Section 42-E the legislature provided that "it shall be the intent and purpose of sections 42-A to 42-E inclusive to set up a fund and a method for more equal distribution of money for unimproved roads than can be had by the present blanket road resolve, so-called." While the funds from the so-called special resolves in the past have been expended on third class designations, it appears to me that the intent of the legislature was to limit the expenditures of this fund to unimproved 4th class town roads.

RALPH W. FARRIS
Attorney General

May 9, 1945

To Fred M. Berry, State Auditor

Supplementing our memo of May 4, 1945, relating to the costs to be paid by a prisoner to obtain a release from jail where he is imprisoned in default of payment of fine and costs: Your inquiry is whether the officers' fees for service of the "mittimus to commit a person to jail. . .

and usual travel, with reasonable expenses incurred in the conveyance of such prisoner" (Chapter 79. §166 (29)) may be included in the costs to be paid by the prisoner.

Section 44 of Chapter 136 provides:

> "Whoever is convicted in any court or by a trial justice, of a crime which is punishable by a fine only, without imprisonment, and is liable to imprisonment in a county jail for the non-payment of said fine, may be sentenced to pay said fine and the costs of prosecution, and in default of payment thereof to be imprisoned in accordance with law; but the payment of said fine and costs at any time before the expiration of the imprisonment shall be a full performance of the sentence."

I am of the opinion that "costs of prosecution" would include all costs incurred, including those payable to the officers to convey the prisoner to jail in accordance with the judgment and sentence of the court.

This interpretation also finds support in Section 46 which authorizes the liberation of the prisoner after he had served 30 days upon giving his note "for the amount due to the treasurer of the same county." The amount due to the county would include the cost of the commitment and conveyance to jail, as that would have to be paid by the county to the officer.

ABRAHAM BREITBARD
Deputy Attorney General

May 21, 1945

Honorable Earl L. Russell, Justice, Superior Court

I have examined my notes on the subject about which I wrote you the other day. I was satisfied that in the case that I had under consideration the respondent was convicted of three larcenies, as that offense is defined in Section 3 of Chapter 119, the form of indictment there used being that found in "Directions and Forms in Criminal Procedure" by Whitehouse & Hill, on page 74, which charges the breaking and entering and larceny, but which omits that the breaking and entering was with the intent to commit a felony or the intent to steal the goods and chattels of a third person. I think the allegation of the intent to steal takes it into the offense of either common-law or statutory burglary, and that is the distinguishing feature in *Commonwealth v. Hope.* In that case, you will notice, the last paragraph on page 3 of the opinion speaks of the combined charge of housebreaking and larceny, and, going further on in the opinion, it is said that, while the respondent there might have been convicted of either larceny or housebreaking, when he was found guilty as charged in the indictment, the larceny was merged in the greater offense of house-breaking. Also in that case the form of pleading, that is to say, where the intent to commit a felony is charged and then in addition that he actually did consummate the felony, is justified by the fact that proof that he actually committed the offense tends to prove beyond any doubt that his intent was to commit the offense and consequently supports the finding of burglary or house-breaking.