

MAINE STATE LEGISLATURE

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June 5, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Department
Re: Assessments for Road Work in Deorganized Towns

I have your memo requesting advice upon a certain point in regard to the assessment of amounts in excess of 2% of the valuation in deorganized towns, and you cite the provisions of Chapter 41, § 32, P. L. 1945, which amended §62, Chapter 19, R. S. You quote from the end of said §32 of Chapter 41, P. L. 1945 as follows:

"Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% shall be paid by the state out of the general highway fund on approval of the state highway commission."

You again quote from Chapter 111, P. L. 1945, which also amends §62 of Chapter 79, R.S., which reads as follows:

"Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% may be paid by the state out of the general highway fund by agreement between the county commissioners and state highway commission before the assessment is made."

In my opinion the amendment of §62, Chapter 79, R.S., by Chapter 111, P. L. 1945, prevails at the present time for the reason that Chapter 41 carried the emergency clause and became effective March 9, 1945, and Chapter 111 became effective July 21, 1945 and which is the latest amendment of the legislature on this subject during the same session. So, since July 21, 1945, Chapter 111 was effective, but between March 9, 1945 and July 21, 1945, the amendment by Chapter 41, P. L. 1945, was in effect. I merely call this to your attention because some of these assessments may have been made between the date of the first amendment and the effective date of the last amendment.

You ask the following two questions on this proposition:

"1. Can the county commissioners make an assessment of over 2% of the valuation, such excess to be charged to the State Highway Commission before any agreement is made with the Highway Commission?"

My answer to this question is in the negative.

"2. If the State Highway Commission refuses to enter into such an agreement, can the county commissioners make an assessment against the county for the amount over 2% where deorganized towns are concerned?"

My answer to this question is in the affirmative.

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My reason for answering this question in the affirmative is due to the fact that the statute, as amended by Chapter 111, P. L. 1945, is permissive rather than mandatory, as you will note that the "assessment may be made of over 2%" and "the amount over 2% may be paid by the state out of the general highway fund by agreement between the county commissioners and the state highway commission before the assessment is made"; but I do not believe that the State is obligated to pay the assessment over 2% made by the county commissioners if the county commissioners do not agree with the State Highway Commission upon payment of this amount over 2% of the assessment, before the assessment is made.

Ralph W. Farris
Attorney General

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