

MAINE STATE LEGISLATURE

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August 27, 1946

To General Wallace C. Philoon
Executive Secretary, Executive Department

I have your note attached to a letter from the selectmen of the Town of Kittery relating to the closing of the Litchfield and Adams Roads in the Town of Kittery. I note that the letter does not state whether the closing of these roads is permanent or just for the purposes of construction of the right of way of the turnpike.

It is my opinion that the statute creating the Maine Turnpike Authority does authorize the Turnpike Authority to take parts of town and county roads for the purposes provided in the Act. Section 5 of Chapter 69 of the Private and Special Laws of 1941 authorizes the Turnpike Authority to exercise the right of eminent domain. I call attention to Subsection (d) of said Act creating the Authority, which reads as follows:

"All counties, cities, towns and other political subdivisions or municipalities and all public agencies and commissions of the state of Maine notwithstanding any contrary provision of law are hereby authorized and empowered to lease, lend, grant or convey to the authority upon its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions or other municipalities may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the authority including real property already devoted to public use."

I further call attention to Subsection (2) referring to Subsection (d), which reads as follows:

"If reasonable and fair conditions for the acquisition of property or rights as provided in the preceding subsection can not be agreed upon the property may be taken under condemnation proceedings in the same manner as provided in subsection (a) of this section."

In my opinion, the power of eminent domain is a special right delegated to individuals or to corporations by the State and can be exercised only on the terms and in the manner prescribed by the statute, which in this case is Chapter 69 of the Private and Special Laws of 1941.

I doubt whether the Turnpike Authority has the right to discontinue county and town roads without petitioning the county commissioners under Section 32 of Chapter 79, R. S. 1944. If they cannot work out with the county commissioners, under Subsection (e), an agreement for taking parts of county and town ways for underpasses or overpasses, parts may be taken by condemnation proceedings in the same manner as provided in Subsection (a) for the taking of private property.

I herewith enclose the letter from the Board of Selectmen of the Town of Kittery to the Governor.

Ralph W. Farris
Attorney General

RWF:c