

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

You should now refer to the 1935 law as Section 23 of Chapter 32, R. S. 1944, as the 1935 law was amended in 1937 by Chapter 221 and in 1943 by Chapter 359.

Under the provisions of subsection III, paragraph (c), of said Section 23 of Chapter 32, I certify that in my opinion the rules and regulations submitted to me for maintenance and service fees are in conformity with the law and are ready for publication.

RALPH W. FARRIS
Attorney General

April 24, 1947

To Stillman E. Woodman, Chairman, State Highway Commission

I acknowledge receipt of your communication of April 17, 1947, requesting me to advise you whether it is the right and duty of the State Highway Commission to pay from the General Highway Fund created under the provisions of R. S. Chapter 20, §105 or from funds appropriated in general terms for the maintenance of bridges, the share of the State in the expense of the reconstruction and maintenance of highway bridges crossing railroad tracks, as ordered by the Public Utilities Commission under the provisions of § 17 of Chapter 293, P. L. 1945.

Section 105 of Chapter 20 defines the General Highway Fund. You will note in the last sentence of Section 105 the following language:

“After payment from said general highway fund of such sums for interest and retirement as are necessary to meet the provisions of bond issues for state highway and bridge construction, the remainder of said fund shall be segregated, apportioned, and expended as provided by the legislature.”

As you know, each session of the legislature reapportions the expenditure of this fund by Private and Special legislation. For instance, Chapter 136 of the P. & S. L. of 1945 makes allocation from the general highway fund in the fiscal years ending June 30, 1946 and June 30, 1947. This act sets up the amount for interest on bonds, bond retirement, general administration of the highway commission, highway planning, maintenance of bridges, maintenance and betterments of state and state aid roads, snow removal, construction of bridges under the general bridge act, compensation for injuries to highway employees, interest and retirement of bonds of the Hancock-Sullivan bridge, State Police, motor vehicle registration under the Secretary of State, administration of the gasoline and use fuel tax, with a general fund for accounting, auditing, and legal services rendered to the State Highway Commission, public service enterprises for toll bridge deficits, funds for the Employees' Retirement System. After the foregoing set-up, the act provides that should it appear, after providing for the foregoing purposes, there will be money available from current revenues in excess of those contemplated, any such excess may be apportioned in accordance with Section 2 of the act making the allocations. Section 2 provides as follows:

“The unappropriated general highway fund surplus may be apportioned at the discretion of the state highway commission, with the approval of the governor and council, for the following purposes and in accordance with the following schedules and conditions:”

for construction and reconstruction of state aid highways; resolves of the legislature for construction and repair of highways and bridges; expenditures for unimproved roads, \$200,000 for each year of the biennium; an amount not to exceed \$2,500,000 may be apportioned during the biennium period ending June 30, 1947, to match federal funds apportioned to the State of Maine under the Federal Highway Act of 1944; payment of such costs as may be necessary for bond interest and retirement in addition to the amounts specified in section 1 of this act; maintenance and betterments of state and state aid highways; construction of bridges under the terms of the general bridge Act; extra-administrative costs not anticipated in the budget for any department or agency receiving allocations from the general highway fund, etc.

After reviewing this Act, you can see that the State Highway Commission has broad discretionary powers, as, with the approval of the Governor and Council, it may curtail or eliminate any or all parts of said apportionment or make apportionment from the unappropriated general highway fund surplus which in their opinion is most expedient and for the best interests of the State.

This brings us to Section 17 of Chapter 293, P. L. 1945, which is an amendment of Section 48 of Chapter 84, R. S. 1944, which refers to ways laid out which cross over or under any railroad track or tracks and not at grade, under the provisions of Section 47 of Chapter 84, R. S. This provides:

“The allocation of the expense of rebuilding, reconstructing and maintaining so much thereof as is within the limits of such railroad shall be determined, as provided by the preceding section (which is Section 47), by the public utilities commission upon application to it by any corporation whose track is, or tracks are, so crossed, or upon application by the municipal officers of any town in which the crossing is located or upon application by the state highway commission.”

Section 47 provides in part as follows:

“The public utilities commission . . . may determine whether the expense of building and maintaining so much of said way as is within the limits of such railroad corporation shall be borne by such railroad corporation, or by the city or town in which such way is located, or by this state, or said public utilities commission may apportion such expense equitably between such railroad corporation and the city, town or state.”

After reading these various statutes relating to the expense of building and maintaining ways within the limits of railroad corporations, I am of the opinion that it is within the scope of their authority to pay from the general highway fund created under the provisions of R. S. Chapter 20, Section 105, whatever amount the Public Utilities Commission should apportion under the provisions of Chapter 293, Section 17, P. L. 1945.

You will note by the language of Section 105 of Chapter 20, R. S., that it provides for the construction of state, state aid, and third class highways, for the maintenance of state and state aid highways, and interstate, intra-state and international bridges.

It seems to me that the construction provided for under Section 48, R. S. 84, as amended, refers to ways already laid out, and the expense thereof, allocated under this section, should not be paid from the appropriation for the maintenance of bridges, but from the general highway fund.

RALPH W. FARRIS
Attorney General

May 5, 1947

To Raymond C. Mudge, Commissioner of Finance and Budget

I received your memo of May 2nd, enclosing in quadruplicate a 22-page list of accounts receivable recommended to be charged off . . . together with a letter from Fred Berry, State Auditor, in which he makes a suggestion with respect to these charge-offs. I had a talk with him and told him how these accounts should be handled. I call your attention to the statute providing for charging off accounts, to be found in Section 30 of Chapter 14, R. S. Upon examination of this statute you will find that the Controller should charge off the books of accounts of the State or of any department such accounts receivable, including all taxes for the assessment or collection of which the State is responsible, when recommended by the head of the department, etc., upon certification by the Commissioner of Finance and the State Auditor, subject to the approval of the Governor. Under the statute, the Attorney General has no part in these proceedings, unless upon post-audit by the State Auditor these charge-off accounts are found collectible. Then they should be turned over to the Attorney General's Department for attention.

The State Auditor is not responsible for the collection of money belonging to the State or for the handling or custody of any State funds.

I note Mr. Berry's suggestion to you that the Treasurer's office be contacted to determine what results, if any, they may have had with the collection of these accounts. In this regard I call your attention to Section 8 of Chapter 15, R. S., which provides that the Treasurer shall promptly collect all taxes and accounts due the State, certified to him, as provided therein. In cases of neglect or refusal to pay, he shall institute through the Attorney General such court actions as may be necessary to enforce payment. This section was amended by Section 23 of Chapter 41, P. L. 1945, and does not include taxes collected by the State Tax Assessor; nor does it apply to the Maine Unemployment Compensation Commission.

My suggestion in handling these charge-off accounts is that the regular statutory procedure be followed, except in those cases where the accounts have been turned over to the Department of the Attorney General, and the department has not been able to collect, or there are no assets available in the hands of debtors which would justify spending the State's money in bringing action on these delinquent claims.