

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**R E P O R T**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1949 - 1950**

judgment or the treasurer of the State, if the judgment has been paid, may on application to a Justice of the Superior Court in term time or vacation have an order directing that the amount of damages awarded in that action shall be made a judgment against the owner or driver or both of the identified vehicle. Subsection IV then provides that it shall be no defense in that action that the accident was not caused by reason of any negligence or improper conduct on the part of the owner or driver of that vehicle.

It would seem to me that this provision is obnoxious to the due process clause of the Fourteenth Amendment to the Federal Constitution and to our own Constitution which guarantees to every person the right to a trial by jury in any civil suit.

Respectfully submitted,

ABRAHAM BREITBARD  
Deputy Attorney General

March 22, 1949

To the Honorable Committee on Judiciary:

With regard to Legislative Document No. 685, entitled "Resolve Authorizing Donald S. Porter of Lowell to Sue the State of Maine."

It seems to me that the Resolve, as written, creates a new remedy, in that it provides that the liabilities of the parties shall be the same as the liabilities between individuals. The rights of the parties therefore under this Resolve would be governed by common law principles. This differs from the remedies provided by statute.

I am informed by the Highway Department that Route 16 is a state-aid highway. By Chapter 20, Section 16, the State is made liable to towns and counties for any judgments recovered in any actions against such towns and counties, including reasonable attorney fees and expenses and costs incurred in defending it, when such actions pertain to those state and state-aid highways to the improvement of which the State has contributed, provided, however, that within 24 hours after the "various" officials, namely the county commissioners or the municipal officers or road commissioners of the town receive notice of a defect or want of repair or sufficient railing, such officials shall give written notice thereof to some member of the Highway Commission; provided also that within ten days after any of the various officials mentioned has had notice of any injury to any person, such official shall have given notice thereof to some member of the Highway Commission. This is then followed by a limitation of liability not in excess of \$4000.

The Resolve here presented contains no limitation on the amount of liability, nor would it be essential that the various written notices of the defect in the highway or of the injury be given to the Highway Commission as a condition precedent to the maintenance of the action.

I have obtained a report from the State Police which I submit herewith and which was apparently made on the scene after the accident. The facts set up in the Resolve are not in accordance with the facts as they appear from the officer's return. In the facts contained in the Resolve it is stated that this pipe railing was on the ground and at the time of the injury the

car was traveling parallel to the guard rail and about two feet away from it. Mr. Curtis, the operator of the car, says that he stopped his automobile immediately following the impact and it was brought to rest at a point in the main highway parallel with the iron fence and approximately two feet distant therefrom. His statement to the officers was that he pulled out to the right so far he went into an old iron fence and the front of the car broke through and went over the bank. It is not conceivable that the pipe rail, if it was on the ground lying by the side of the road, could have broken through the windshield of the car and injured the passenger. It is more consistent with the statement in the police report that he broke through the guard rail and went over the bank. It also appears that Curtis's breath smelled of alcohol.

If the observation of the officer is correct, there would seem to be no merit in this claim and no reason why the State should submit itself to a suit based on common law principles.

It also seems to me that if this Honorable Committee should feel inclined to report favorably on the Resolve, there ought to be a limitation of liability as to amount; and I think further that the tribunal to be set up should be a Justice or three Justices, in the latter case, two Supreme Court Justices and one Superior Court, to be assigned by the Chief Justice of the Supreme Judicial Court.

Respectfully submitted,

ABRAHAM BREITBARD  
Deputy Attorney General

March 22, 1949

To Ernest H. Johnson, State Tax Assessor  
Re: Taxation of Unorganized Territory

I have your memo of March 18th, requesting an opinion on the following question:

"If the state tax on cities and towns is not levied by the legislature, can the legislature nevertheless levy a state tax upon the unorganized areas of the state?"

In my opinion the legislature is so prohibited under the provisions of the Constitution, which provides that all taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof.

Under this provision no exception is allowed, whether the land is found within or without any particular subdivision of the State's territory. It is my opinion that the legislature cannot discriminate by not taxing the cities and towns and taxing the unorganized territories. This question was touched upon in Opinion of the Justices, 97 Maine 595, where it related to a difference in the rate of taxation between incorporated and unincorporated territory. The same principle applies in this case.

RALPH W. FARRIS  
Attorney General