

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

November 25, 1949

To Honorable Frederick G. Payne, Governor of Maine
Re: River and Harbor Improvements

I have your memo of November 22nd, enclosing a letter which you had received from the Corps of Engineers, U. S. Army, Army Air Base, Boston, Mass., with three assurances of the State of Maine in quadruplicate, on the Josias River-Ogunquit-Perkins Cove project, Cape Porpoise Harbor project, Kennebunkport, and the Portland Harbor project at Portland, Maine.

I am returning the letter and the so-called Agreements of Assurance from the State of Maine, for the reason . . . that the liability of the State of Maine might be in regard to financing these projects in case local private interests do not meet the conditions of the Act, as outlined in these three drafts which the Government has sent you for approval.

In the first place, you have not approved these projects, and they want you to sign the assurances and the approval of the project in the same document. Before you approve any such projects or sign any such agreements, I feel that you should appoint a committee under Section 115-F of Chapter 207, P. L. 1949, which reads as follows:

“The governor, with the advice and consent of the council, is authorized to designate any state agency to make such investigation as is deemed necessary in connection with any such improvement or protection project.”

I call your attention to the fact that in the Josias River-Ogunquit-Perkins Cove project, local interests agree to contribute one-half of the initial cost of the improvement, but not to exceed \$32,000; in the Cape Porpoise Harbor project at Kennebunkport local interests shall contribute one-third of the initial cost of improvements, but not to exceed \$20,000; and in the Portland Harbor project the assurance does not state that local interests have agreed to contribute any costs of the improvement, but local interests shall agree to hold the United States free from damage due to construction and maintenance of the work. Therefore if you sign these assurances as Governor of Maine and local interests do not contribute, it is possible that the Federal Government will look to the State to make up the deficiency, since the projects have the official approval of the State of Maine.

I call your attention also to Section 115-E of Chapter 207, P. L. 1949, which provides as follows:

“When an appropriation has been made by the legislature for such purpose, the governor, with the advice and consent of the council, is authorized to provide for the payment by the state of not more than $\frac{1}{2}$ of the cash contribution required by the federal government for any such improvement or protection project.”

So the Government might be in a position to ask this office for an interpretation of this section, as to which I would say offhand that the Governor and Council are not authorized to provide for the payment by the State of not more than one-half of the cash contribution required by the Federal Government, unless the legislature has made an appropriation for such purpose.

Another serious question which presents itself in this connection is how far-reaching is the assurance of the State that it will save harmless the United States from claims or damages resulting from such project, from such dredging. It is possible that they may incur some unforeseen liability in the execution of these projects which might cause damage to private interests in Portland Harbor or the other places named in these projects, and these private interests could come back on the State of Maine instead of the Federal Government, which might possibly be guilty of negligence through its servants or agents in prosecuting this work.

Therefore I advise you to answer this letter written by Col. B. M. Harloe of the Corps of Engineers, advising him that you are not in a position to execute any assurances of the State of Maine to save the United States harmless until the assurances specifically state what the nature of the claims or damages is which might result for which the State would be liable; and that furthermore you have not given these projects your approval, as you have not had time to study them and this is the first time they have been brought to your attention; that under the statute you may possibly designate a State agency to make a survey of these projects before signing any assurances.

I am cognizant of the fact that we do not want to be in the position of holding up any projects for the improvement of our rivers and harbors; but the term "local interests" is a pretty broad term to be inserted in a legal document, and if they do not pay their shares under the agreements with the Army and if the State of Maine does not know who the local interests are, as they are not specified in these documents, it may be that the State of Maine will be saving the United States harmless from damages resulting from such improvements, and the Government will look to the State of Maine to make the payments which the local interests, whoever they may be, may have failed to contribute according to their statement in these assurances.

I am leaving for Houlton Sunday morning and will be engaged in the trial of a murder case during the week of November 28th, but upon my return I will be glad to discuss this act and the language of these assurances with you to ascertain as far as possible any resulting liabilities to the State in executing these assurances to the Federal Government.

You will note that I have changed L. D. 193 to Chapter 207, P. L. 1949 in all these documents. If they are to be executed, the statute should be cited specifically by chapter and not by legislative document.

It is possible that if we can arrive at some agreement with the Federal Government, they would accept an additional clause in these assurances, providing that the State will not be liable for any failure on the part of the local interests or the City of Portland to make payment to the Federal Government of their shares of the contribution to these projects. You will note that these contributions by local interests are only of the *initial cost* of the improvement. I feel that as Governor you should know what the "initial cost" of the improvement means, and also what the cost of completing the projects will be to all parties concerned before you sign any agreements of assurance relieving the Federal Government from all liabilities.

RALPH W. FARRIS
Attorney General