

MAINE STATE LEGISLATURE

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No

May 22, 1951

To Col. H. J. Woodbury, Division Engineer, Corps of Engineers, U.S.A.
P. O. Box 2316, Boston

Your letter of May 11, 1951, addressed to the Honorable Frederick G. Payne, refers to the fact that there appears to be no statutory authority by which municipal officers can grant to the United States the right to place a pipe across a public way. We have discussed the contents of your letter with the Governor and fully appreciate the situation with which you are confronted. We have also conferred at some length with field workers employed by the Corps of Engineers and we know that an extended conference on the same subject was previously held in the offices of the State Highway Commission in an effort to resolve the same question.

It is stated in your letter to the Governor, "It is realized that this is undoubtedly a technicality inasmuch as the United States and the State of Maine would have the right of eminent domain to obtain such crossing." We are unable to agree with you that the situation is merely a technicality; or if it is a technicality, it is made so simply because of the high legal standards insisted upon by the Corps of Engineers. There is of course no question as to the right of the United States to proceed to obtain a perfect license to cross public ways with pipes by eminent domain. The problem, however, that was presented to us was the process of securing a perfect license to cross a public way without proceeding by eminent domain, since the eminent domain procedure under the circumstances is too slow.

This office suggested, and firmly believes, that you would have no difficulty in proceeding to cross public ways simply by following the procedure which is required to obtain a permit to open up a public way. The right to open up a public way does not of itself confer a right to lay anything beneath that public way. However, we are certain that if the public way is opened up under permit and the pipe is laid and the way satisfactorily restored, there will be no objection to the fact that your pipe line crosses under the public way. We see no reason why this procedure could not be followed; and, if the Corps of Engineers believed that this procedure gave insufficient protection to the United States Government for its pipes, why the eminent domain procedure could not follow in order to perfect your license.

We wish to impress upon you that the officials of this State are in no way attempting to obstruct the Corps of Engineers in the speedy accomplishment of the laying of the pipe line. On the contrary, all the officials of this State are interested in cooperating to the fullest extent. We wish to assure you that the only technicalities involved are those involved in the speed with which you wish to accomplish your purpose; and the fact that we are unable to give you a perfect license without following the ordinary processes of law is a matter entirely beyond our control. The risks of laying your pipe under the suggestions we have made are practically inconsequential and we therefore suggest that if you desire to perfect your license, the matter can be attended to subsequently by following your eminent domain procedure. . .

John S. S. Fessenden
Deputy Attorney General

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