

MAINE STATE LEGISLATURE

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September 21, 1951

To Lucius D. Barrows, Chief Engineer, Highway
Re: Controlled Access Road (Freeport)

Section 5A of Chapter 400 of the Public Laws of 1949 defines a controlled access road as one

"on which the type and location of all access connections are determined and controlled by the Commission".

Section 5B of the same act gives the Commission power to lay out, etc., controlled access highways in the same manner as other highways.

Section 5C of the same act says that access to a controlled access highway may be restricted by the Commission, and that easements or access to any old road taken over may be condemned and taken by eminent domain.

Under the provisions of Chapter 400 the Commission laid out and designated the Freeport Cut-Off, so-called, following the procedure as set forth in Sections 6, 7 and 13 of Chapter 20 of the Revised Statutes, for the laying out of highways, and the taking of land therefor. In addition, a public hearing was held in order that any opposition might be heard.

It appears that there is an old county road, called the Mast Landing Road, which has not been used for a considerable period of time, and which if re-laid out by the town would cross the newly laid-out controlled access highway. This road was not condemned in the original condemnation since it was unused and of no value. This error has been rectified, and the State has now condemned that part of the old road that lies within the new highway.

My opinion has been requested as to whether or not the State has the right to take this land. Obviously, the statutes cited in the statement of facts give the highway commission the right to take this land.

At no time, under any code of laws, has a property owner had a right to have roads so laid out that they will furnish him with the most convenient or desirable ingress. In giving towns and counties the right to lay out roads, the legislature did not make it mandatory that they lay out all roads requested. Neither towns nor counties lay out all roads as requested. Neither does the State!

In this case a property holder would like easy access to the controlled access highway, rather than to go a few rods to the east or west, and use some of the access roads permitted. Since this would defeat the purpose of the limited access road, the commission was plainly carrying out its duties in denying such access.

It might be added that the State has the right to condemn town and county property in the same manner as it does the property of a corporation or an individual. Special statutes are set up for public utilities, but none for towns and counties.

L. Smith Dunnack
Assistant Attorney General

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