

MAINE STATE LEGISLATURE

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April 5, 1955

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To W. H. Bradford, Engineer, Right of Way, State Highway Commission
Re: Establishment of Bounds

You have requested my opinion as to whether or not towns and cities have the power to contract with the State to pay the costs of right of way acquisitions and to pay consequential damages.

As I understood the facts, the way is to be constructed within a built upssection, and it is contemplated that sidewalks and underground drains will be constructed.

A state highway that runs through a business area has a dual capacity. It serves as both a through way and as a local service road. The major interest of the State is in its use as a through way. The major interest of the town or city is in its use to the inhabitants of the municipality.

The statutes contemplate that through ways should be the responsibility of the State, and that local service roads should be the responsibility of the municipality.

The problem you present to me has not been specifically contemplated by the statutes.

The courts have held that the highway laws should be construed in the light of changing conditions, and to effectuate the intent of the legislature in obtaining an adequate highway system.

It is obvious that the boundaries of a way would not be lost or uncertain if the town had attended to its statutory duty, and maintained the boundary markers. It might be that the bounds were never marked. But in that case, the situation exists because the municipal officers did not petition the county commissioners.

It would seem that since the towns and their municipal officers have been the parties charged with the power to make certain the bounds of the ways, and with the duty of maintaining the markers, any need of reestablishment of uncertain bounds under the provision of section 25 of chapter 23 can be said to be caused by the neglect of the town. It certainly would be proper for the town to assume the expense of doing what it should have done or caused to be done, some time ago.

L. Smith Dunnack
Assistant Attorney General

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