

MAINE STATE LEGISLATURE

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September 9, 1955

To G. E. Hart, Engineer, Right of Way Division, State Highway Commission
Re: Prescriptive Rights in Way

You have requested my opinion in regard to the procedure in establishing prescriptive rights of way. It has been my opinion that the State could not obtain a prescriptive right in the use of a way. However, there are several cases that establish the fact that a prescriptive town way may be established. The case of 22 Pickering 75 definitely says that "20 years' use raises the presumption of dedication." This case has been frequently quoted in Maine cases.

All the cases that I read arose on the question of a town's liability for negligence in maintaining the untravelled portion of ways. A typical one is Lawrence vs. Mt. Vernon, 35 Maine 100, where they state that a 20-year user establishes a town way and that the existence of the right of way is a question of fact for the jury. In other words, there can be no question as to the wrought portion of the way, but there can be a question as to how much of the right of way is also established. See Young vs. Garland, 18 Me. 409; also 46 Me. 423, 314 Me. 243, 39 Me. 300, and 82 Me. 450 as 454.

It might be proper for our files to show that 66 Me. 254 discusses the acceptance of dedication and that 57 American State Reports at 744 covers the matter of user and dedication at an extended length.

Since all these cases came about in reverse, they do not answer your immediate question as to the action taken by the State. However, since town ways can be established by use (which must be continuous and actual), it would seem that any interested citizen could ask for an injunction and that the Attorney General on behalf of the tax payers could also act. An injunction being an equitable right, and the public having a right, it would seem that the Attorney General could protect the public's right.

L. Smith Dunnack
Assistant Attorney General
Counsel for the Commission

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