

MAINE STATE LEGISLATURE

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October 28, 1955

To W. H. Bradford, Right of Way Engineer
Re Procedure regarding Land Taken by State - Utility Poles

You have requested my opinion as to the procedure in a case where land has been taken by the State for highway purposes and in anticipation of construction work, a power company moved its poles to the newly acquired land and the former owner of the land erected an obstruction that prevents ingress to the poles.

Under Section 100 of Chapter 96 of the Revised Statutes of 1954

"any person may take down and remove gates, bars or fences across any highway or town way unless they are there to prevent the spread of infectious diseases, etc."

The way in question is, of course, a highway and "any person" is broad enough to include an employee of a power company. A highway consists of all of the right of way and is not limited to the traveled portion of the way. Therefore, it would seem to me that Section 100 is strong enough to permit any person to remove the fence.

In this particular case I am at a loss to see what action the erector of the fence could take, even if this statute did not exist. The fence is a trespass erected on land which the State owns in fee and is in violation of the law, which says that no obstructions shall be erected within the right of way.

The company has a permissive easement to erect these poles and I presume the new location has been planned in conjunction with the highway plans as per the working agreement.

It is my opinion that the company is justified in removing the obstruction. I am not sure that due care in regard to the injury of the fence is even necessary, but would suggest that it might be diplomatic to try not to destroy the material completely.

L. Smith Dunnack
Assistant Attorney General

LSD/ek