

MAINE STATE LEGISLATURE

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January 10, 1956

To Frank Landers, Division Engineer, State Highway Commission
Re: Poles

You have requested my opinion in regard to the use of poles, formerly the property of a telephone company, for the purpose of carrying wires as a private line within the right of way. Even granting that this is an easement highway, there is no provision under the law under which the right of way may be used for this purpose.

It is true that abutting owners may use such portions of the way providing they do not interfere with highway use. It is also true, however, that we look with disfavor on installations wherever there is any danger to the traveling public. However, we have discovered that the necessity of obtaining water has compelled abutters to use pipes along the right of way to bring water from distant springs, and public policy has indicated that it would be advisable for us to overlook this trespass. This is based on the fact that it did not interfere with highway use.

It could be that this telephone pole case comes within the same purview. If these poles were so situated that they did not interfere with snow removal, drainage, etc., and did not endanger the traveling public, we would take the position that we would not want to interfere with their use. On the other hand, we cannot grant a permit to them and if they chose to continue the use of the wires, they would have to assume whatever responsibility there might be of any damages caused by the poles to snow plow wings or automobiles of the traveling public.

We cannot give a permit for the use of these poles. The best we can do is tell them that we would not demand their removal until such time as they obviously interfered with highway use.

L. Smith Dunnack
Assistant Attorney General

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