

# MAINE STATE LEGISLATURE

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February 1, 1956

(Letter to a complainant)

Re: Damage to Well-

. . . The law in regard to wells is not generally understood. A property owner has the right to dig a well on his land and use the water therefrom, but does not of necessity have an inalienable right to perpetual water supply from this well. If a neighbor should dig a well on his land and, as a result, the water supply of the first well-digger diminishes or, in fact, disappears, the original well-digger has no claim for damages. This is based on the fact that the second well-digger was performing a lawful act, plus the fact that the original well-digger had no vested right in a continual flow of water.

In this case it appears that you are claiming damages on the theory that the construction of the highway has in some manner affected the flow of water to your well. There are three very sound reasons why we cannot lawfully recognize your claim. They are as follows:

1. The State, in the construction of a highway is performing a lawful act upon property that it owns and upon which it has a right and a duty to excavate, blast, etc., for the lawful purpose of building a highway. The State is in the same position as the second well-digger referred to above.

2. There is only a presumption that the change in the type of water you are now getting was caused by the construction.

3. The State has already paid you and has your release for "all damages to our well. . . which have arisen or may arise at any future period".

Of course, I personally regret that you are having trouble with your water supply and I can assure you that the Commission is very sympathetic with your difficulty. However, in this case, there is no evidence that the State is in any way responsible in fact as well as in law. There is no evidence of any negligence in the performance of the work.

L. Smith Dunnack  
Assistant Attorney General

LSD/ek