

MAINE STATE LEGISLATURE

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February 15, 1956

To David H. Stevens, Chairman, State Highway Commission
Re: Snow Removal on Bridges Crossing the Turnpike

You have requested my opinion on the following question -

"At a location where a state or state aid highway was crossed by the 'Pike, and the Authority has constructed an overpass structure to replace the former way, who is responsible for the prevention of snow being pushed from the overpass onto the 'Pike?"

Before the 'Pike was constructed, the ordinary snow removal procedure was that of plowing the snow onto the abutting right of way.

The construction of an overpass that would compel a different and more expensive method of snow removal would constitute a damage to the State.

As I understand the situation, there has been no formal adjudication of the liabilities between the 'Pike and the State. It is within the power of the Commission to make such an agreement with the 'Pike as the Commission deems fair. The matter of snow removal expense (additional) would be a proper item to adjust. For that matter, it would be proper to consider extra costs devolving upon the State because of approaches to the 'Pike. It can be argued that the approach is part of the 'Pike.

However, all the respective rights and duties are proper subjects for an agreement and should be resolved by a contract.

I do not need to call to your attention that a problem exists as to proper acquisition by the 'Pike in the right of way over our old roads. The State originally took the right to build an overpass as well as the road it originally built. Paragraph (d) of Section 5 of Chapter 69P&SL 1941 authorized transfer of "real property already devoted to public use" by the State. This would indicate that the State could transfer fee highway without question, reserving to the State the right of the overpass. In the case of an easement way, there is the problem of the reversion. It would seem somewhat academic. The 'Pike has taken the land that formerly abutted on the old way, and it is obvious that the reversion in the small strip of the old road can have a nuisance value only.

Moreover, the State took the land for highway purposes and still needs it for the purpose of supporting the overpass. It is reasonable to reason that the State has a right to control what goes under as well as over its right of way. The State could well be happy about the land beneath being used as a way, but wish to control it from use in a business. In other words, the State could take the position that it was used by abutting owners for a purpose that did not interfere with highway use. (The 'Pike is the abutting owner at the moment!)

I suggest that the State does not discontinue the old right of way, and that Brother Varney be consulted as to his opinion on whether he thinks a conveyance of a right of way to the 'Pike would hold water. The statute is specific enough, I grant. The conveyance is that of a use for highway purposes, and the State still has a use for the land in addition.

L. Smith Dunnack
Assistant Attorney General

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