

MAINE STATE LEGISLATURE

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October 24, 1956

To Vaughan M. Daggett, Chief Engineer, State Highway Commission
Re: Powers of County Commissioners to Close Winter Way.

You have requested my opinion as to the powers of the County Commissioners to close a way to snow removal under the provisions of Section 125 of Chapter 96.

This section was enacted in 1923 (it has been amended several times since then), providing machinery for winter closing of certain ways.

It requires that 1) "The municipal officers of any city, town or plantation", or
2) "7 legal voters in any such city, town or plantation"
may petition the County Commissioners.

Although I have always thought that the County Commissioners were the municipal officers of unorganized territory, I can find no legal declaration that they have that title, even though they have certain statutory duties that correspond. Therefore, the questionable procedure of petitioning themselves as municipal officers might not hold water.

There can be legal voters in an unorganized territory under the provisions of Section 64 of Chapter 5. Maybe some of these could be located. I believe that if there were ~~than~~ seven (7), it could be ruled that the requirement of seven voters was directory rather than mandatory and would be sufficient.

However, this raises the question whether or not an unorganized territory is a "plantation". I doubt it.

It appears that the legislature just overlooked this situation.

One can argue that the general intent of the legislature was to provide a method of saving the tax payers' money on snow removal, and that the strict requirements for opening a way on petition do not apply to this procedure.

The County Commissioners have charge of the road work in the unorganized places and assess the expenses. It could be said that they could petition some other body than themselves. However, again, I question their right to petition themselves.

If several legal voters in the territory, who are assessed, could be found, it might be that this method would hold up. It would furnish them an excuse to proceed, anyway.

L. Smith Dunnack
Assistant Attorney General

LSD/ek