

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

July 18, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Damage from Heavy Rain

You have requested my opinion as to the liability of the State in the matter of damage by water on certain property in Mars Hill.

In the first place, there is considerable doubt that anyone could be held responsible for this particular damage, in that it might be considered such an unusual storm as to constitute "an act of God." In the second, there is no evidence of any negligence or neglect of duty on the part of the State.

It appears that no question had been raised as to the adequacy of our original ditch to care for our drainage problem. It further appears that after the construction of the Soils Conservation ditch by others than the Commission, not only extra water, but accelerated water was turned into the highway drain (which exists to take care of highway drainage, and not for the benefit of the countryside). Further, it seems that the State at its own expense made proper provision to relieve the pressure of this extra water by building a culvert and continuing the flow of water to a brook.

The circumstances attendant on this occasion indicate that a cloudburst caused extraneous material to plug the culvert, and the combination of the plugged culvert with an excessive amount of water caused the damage to property. It would seem obvious that the State could not be held responsible for anticipating that a potato barrel would be cast into the pipe-opening and not having a supervisor on the spot to remove the barrel. Under any interpretation of the "due care" rule, it would seem fantastic to put a duty on the State to have patrolmen appear within the hour at every culvert along the road to fend off possible obstructions.

The only way a court could find liability on the part of the State would be to hold that it was our duty to see that culverts were kept open during all storms. I doubt very much if any court would do this extreme, particularly in the case of a cloudburst. In this case it would appear that the potato barrel was the real culprit. It would be just as sensible to claim that the owner of the barrel should not have permitted it to be where it could float down and lodge in the culvert.

From a causation point of view, it would seem that the creation of the Soils Conservation ditch had much more to do about this act than the installation of the culvert by the State. It was the water accelerated along that ditch which carried the barrel down to the pipe and forced it in.

In the several cases we have had where culverts were plugged during unusual storms, we have successfully denied liability. In two cases in which coarse screening had been placed at the pipe entrance to keep out large objects (like this barrel), we were criticised because the screen caught twigs, branches and leaves, which matted together and caused an overflow. We successfully denied liability in these cases also, though it seems to me that the complainants were more justified than in the others.

L. SMITH DUNNACK
Assistant Attorney General