

MAINE STATE LEGISLATURE

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November 9, 1961

David H. Stevens, Chairman

Highway

L. Smith Dunnack, Asst. Atty. General

Highway

Waterville grade crossing project.

You have showed me the prospective lay out of the Waterville grade crossing project and requested my opinion as to the power of the Commission to take certain lands that would not only permit economical disposal of surplus excavated material, but would also be necessary to provide for the adequate rerouting of the railroad caused by the project.

It should be noted that Section ³⁴¹¹ 51 of Chapter ²³ 96 definitely recognizes the joint rights and liabilities of the railroad and the state in the matter of alterations of crossings, and sets up the Public Utilities Commission as the arbiter to insure the protection of the users of both the highways and the railways.

This section provides for condemnation "as provided for laying out highways". It does not say which party should condemn. However, if the land is condemned as provided for laying out highways, Section 20-C of Chapter 23 applies, and the State Highway Commission is the acting party thereunder. The removal of the hazard created by a railroad crossing is definitely a highway purpose and positively within the scope of the first paragraph of Section 20-B of Chapter 23 which reads as follows: "Purchasing ²³⁻¹⁵⁴ and taking lands for highways and materials. The Commission may purchase or take over and hold for the State, such materials and land as it may deem necessary to lay out and establish, construct, improve or maintain, or to provide a change of location or alignment of, or to provide drainage for, or to provide for the health, safety and welfare of the public using, any state or state aid highway, or to secure materials, with necessary ways and access thereto, for the construction, improvement and maintenance of state and state aid highways." ²³⁻¹⁵³

In this case, it has been found necessary to relocate the railroad to eliminate three crossings. The land needed for the new location is definitely part of the elimination project. The problem of who pays what is for the Public Utilities Commission; and according to practice the railroad and the state present their agreement or the points of their disagreement to the Public Utilities Commission for judgment.

It seems consistent with the provisions of Section 51 that the State Highway Commission can agree to condemn the necessary land as part of the proposal to the Public Utilities Commission. Of course all proceedings must have the approval of the Public Utilities Commission!

November 9, 1961

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Waterville grade crossing project.

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It will be noted that Section 51 of Chapter 96 provides two methods for awarding damages; one "as provided for laying out highways" and another by the Public Utilities Commission.

In my opinion the major intent of the statute is to grant the Public Utilities Commission the overall control of proceedings to protect the public interests. The seeming contradiction in the sentence that reads "For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways," with the following sentence that gives the Public Utilities Commission power to fix damages is merely an alternative. Its intent is to facilitate the procedure in case condemnation was necessary.

In this case condemnation will be necessary, and if the Public Utilities Commission agrees to permit the State Highway Commission to condemn, it obviously would be proper to allow it to follow through with the new provisions of law in regard to the legal determination of the damages as set forth in Chapter 295 of Public laws of 1961. The Public Utilities Commission would still have control of the apportionment of costs, and the interests of the public would be protected as provided by law.

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LSD/jm

L. SMITH DUNNACK
Assistant Attorney General

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