

MAINE STATE LEGISLATURE

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September 27, 1963

Frederick N. Allen, Chairman
George C. West, Deputy

Public Utilities Commission
Attorney General

**Authority of Maine Turnpike Authority to Grant Easements
to Public Utilities**

FACTS:

The Public Utilities Commission is making a Natural Gas Feasibility Study. An important consideration is the possibility of locating a transmission line along and within the limits of the lands owned by the Maine Turnpike Authority.

QUESTION:

Does Ch. 69 of P.S. 1941, as amended, give the Maine Turnpike Authority the right to grant an easement to a properly constituted public utility, for reasonable consideration, in or across lands, bridges, highways, etc. owned by the Authority, for the purpose of locating therein and/or thereon a pipeline to be used for the transmission of natural gas?

ANSWER: Yes.

REASON:

P. & S. Laws 1941, chapter 69, section 4, was amended by P. & S. Laws 1953, chapter 91, by adding at the end thereof the following language:

"Provided, however, the authority shall not lease, sell or otherwise convey, or allow to be used, any of its real or personal property or easements therein, franchises, buildings or structures, for commercial purposes, with the exception of such gasoline filling stations, service and repair stations and restaurants as it deems necessary to service the needs of the traveling public while using the turnpike, except that the authority may permit the erection, or installation of electric power, telegraph, telephone, water or pipe line facilities."

The last clause "except that the authority may permit the erection, or installation of electric power, telegraph, telephone, water or pipe line facilities" is the language which must be construed to determine the proper answer to the question.

It must be borne in mind that the Maine Turnpike Authority was created solely to build, operate, and maintain a toll highway for the benefit of the traveling motorists. It has no other function, as such. Hence, any other use of its lands or property can be obtained only by legislative approval or with the consent and permission of the Authority.

The legislature, by the above amendment, has both limited and expanded the powers of the Authority relative to its property. The legislature limited the Authority in its rights to sell, lease or otherwise convey its property for commercial purpose to gasoline service stations, service and repair stations and restaurants; when only as the Authority deems necessary to service the needs of the traveling public using the turnpike.

It then expanded the powers of the Authority by the "except" clause above quoted. This leads to the pertinent question of the meaning of the clause.

Our Law Court in *First National Bank of Boston v. Maine Turnpike Authority, et al.*, 153 Maine 131 at 156, said:

"The turnpike was manifestly to be a type of public highway and the Authority was, in its legislative conception, a governmental agency with police power plainly conferred."

The Authority then may permit public utilities to erect facilities on its property. The decision is wholly within its power. Having the power to permit erection of facilities, it has the power to refuse the erection of such facilities.

Such permission, if granted, would be on such terms as are set forth by the Authority. Any facilities placed on its property

may be subject to future relocation as conditions require.

"Charters, franchises, statutory grants and permits affording the use of public ways to utility locations are subservient, expressly or by implication, in the exercise of governmental functions, to public travel and to the paramount police power. . . ." National Bank of Boston v. Maine Turnpike Authority, supra.

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