

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 877

H. P. 687

House of Representatives, February 28, 1975

Referred to the Committee on Transportation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Kauffman of Kittery.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Town Ways.

Be it enacted by the People of the State of Maine, as follows:

- Sec. 1. 23 MRSA c. 203, as amended, is repealed.
- Sec. 2. 23 MRSA c. 207 is repealed.
- Sec. 3. 23 MRSA c. 209 is repealed.
- Sec. 4. 23 MRSA c. 303, as amended, is repealed.
- Sec. 5. 23 MRSA c. 304 is enacted to read:

CHAPTER 304

ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§ 302I. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Highway purposes. "Highway purposes" means those things incidental to the laying out, construction, improvement, maintenance, changes of location, alignment and drainage of town ways or recreation access ways, including the securing of materials therefor; providing for the health, welfare and safety of the public using town ways or recreational access ways; providing for parking places, rest areas and preservation of scenic beauty along town ways or recreational access ways.

2. Public easement. "Public easement" means an easement held by a municipality for highway or recreational purposes or for purposes of public

access to land or water not connected to a public way. "Private ways" created pursuant to law and not subsequently discontinued, before January 1, 1976, are public easements.

3. Recreational access way. "Recreational access way" means an area or strip of land designated and held by a municipality for use by the general public for the passage of certain types of recreation vehicles including bicycles, motorbikes, motorcycles, snowmobiles and horses.

4. Town way. "Town way" means an area or strip of land within a municipality designated and held by the municipality for the passage and use of the general public by motor vehicle, and all public ways laid out and not subsequently discontinued or abandoned before January 1, 1976, by the municipality or the county.

§ 3022. Eminent domain

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective.

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined, and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order, and upon one of the owners a check in the amount of the damages awarded. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3023, whichever occurs first.

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of the damages authorized shall be served immediately upon one of the owners of record. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3023, whichever comes first.

Unless specifically provided in the order of condemnation, title to property taken for highway purposes after December 31, 1975 shall be in fee simple absolute.

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. Sections 154-A to 154-E, 160 and 161 shall apply, except that references to the "commission" shall mean "municipal officers" and references to the "state" shall mean the "municipality".

§ 3023. Recording of proceedings

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect to it.

§ 3024. Dedication and acceptance

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily transfers such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use.

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body.

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1975, shall be in fee simple.

§ 3025. Discontinuance of town ways

A municipality may terminate in whole or in part any interests held by it for highway purposes through discontinuance procedures or by abandonment. A municipality may discontinue a town way after the municipal officers have given actual or reasonable constructive notice to all abutting property owners, and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners, and the amount of damages, if any, determined by the municipal officers to be paid to each abutter. Upon approval of the order by the legislative body, the municipality's interest shall pass to the abutting property owners to the center of the town way. Unless otherwise provided in the discontinuance order, a public easement shall be retained and the public shall continue to have the right to travel upon the discontinued way and have access to abutting properties.

§ 3026. Vacation of proposed town ways in land subdivision

Where proposed town ways have been described in an approved subdivision plan, and lots have been sold with reference to the plan, the municipal officers may on their own initiative or petition of the abutting property owners, or on

petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The procedures shall be the same as in the discontinuance of accepted town ways, except that damages and reasonable costs as determined by the municipal officers shall be paid by the petitioners.

A dedication of property or interest therein described in an approved subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and filed with the appropriate registry of deeds.

§ 3027. Presumption of abandonment

A public way laid out by a county or a municipality that has not been maintained by the town or county for a period of 20 consecutive years next prior to January 1, 1976, shall be presumed to be abandoned and thereby discontinued by operation of law. Any person affected by such a discontinuance, including a municipality, may seek declaratory relief to finally resolve the status of such ways; however no municipality shall be liable for nonperformance of a legal duty with respect to such ways if it has in good faith relied upon a presumption of abandonment.

A discontinuance of a town way by abandonment shall relegate the status of the way to that of a public easement for access to abutting property.

§ 3028. Damages; appeal

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto.

§ 3029. Purchase; prescription

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use.

Sec. 6. 23 MRSA c. 309 is repealed.

STATEMENT OF FACT

The purpose of this Act is to clarify the authority and procedures by which municipalities acquire or terminate interests in property used for highway purposes, and to eliminate the involvement of county government in highway matters within organized municipalities.