

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 614

S. P. 227

In Senate, February 4, 1981

Referred to the Committee on Legal Affairs. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by C. Sewall of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

RESOLVE, Authorizing Jeanette Hodgdon, Administratrix of the Estate of Kenneth R. Hodgdon, to Maintain a Civil Action Against the State of Maine.

Jeanette Hodgdon authorized to bring civil action against the State of Maine. Resolved: That Jeanette Hodgdon, of Wiscasset, County of Lincoln and State of Maine, the administratrix of the Estate of Kenneth R. Hodgdon, late of the Town of Wiscasset, County of Lincoln and State of Maine, is authorized to bring and maintain suit against the State of Maine in the action presently pending among them in the Superior Court in and for Lincoln County, Docket Number CV-80-69. Kenneth Hodgdon died, leaving a widow, on June 30, 1978 when his motorcycle collided with an automobile at the intersection of Route 127 and Route 197 in Dresden. Mr. Hodgdon was wearing a helmet, but died instantly when he was thrown from the motorcycle. The automobile was making a left hand turn from Route 197 onto Route 127, when Hodgdon came around a curve in the road heading in the opposite direction on Route 197. The intersection is the junction of state and state-aid highways whose design posed a serious danger that drivers of vehicles approaching from opposite directions would each believe that he or she had the right of way and would be unable to see the other vehicle until a collision was unavoidable.

The Legislature determines and finds that this resolve is necessary and proper because of the unusual and unique circumstances of this case, namely, that it

appears from state records that prior to and after the accident in question the danger posed by the intersection was known, but because of the joinder of state and state-aid highways, uncertainties and differences concerning the need for repairs and proper funding sources delayed reconstruction until well after the accident. The Town of Dresden and private citizens had urged, prior to the accident, that the intersection be reconstructed. After the accident, more than 1,000 people signed a petition requesting the State to reconstruct the intersection, but differences between the State and town persisted concerning which of them should pay for the work. The State ultimately reconstructed the intersection at state expense. A Justice of the Superior Court has held that suit may be maintained against the Town of Dresden, and unless the state's sovereign immunity is waived, the town, which urged the State to repair the intersection, may be found by the jury to be solely liable for damages for which the State may share some responsibility. The State has been joined as a party, but has asserted its sovereign immunity. In these circumstances, it is just and proper that the State waive its immunity, appear and defend, and permit the court or jury to determine the responsibility of the parties for the fatality.

The State shall be joined as a party to such action in the Superior Court for the County of Lincoln within one year from the passage of this resolve, and the conduct of this action shall be according to the practice of actions or proceedings between parties in the Superior Court, including such change of venue as the court may deem just and proper for trial. The liabilities of the parties and elements of damage, if any, shall be the same as liabilities and elements of damage between individuals. Any party to such action may assert against the State, and the State may assert against any party, such claims as are permitted by the Maine Rules of Civil Procedure as in other civil actions. The legal department of the Department of Transportation is authorized and designated to appear and defend this action on behalf of the State.

Any judgment that may be recovered in this action shall be payable from the State Treasury on process issued by the Superior Court, or if applicable, the Supreme Judicial Court, and costs may be taxed for Jeanette Hodgdon as administratrix if she recovers in the action. The recovery and costs shall not exceed \$300,000, with interest thereon, if any, to the extent permitted by Maine law as in other actions. Hearing shall be before a Justice of the Superior Court with or without jury as the parties may demand; the justice is to be a regularly scheduled justice presiding in the court when the matter is scheduled for trial.

STATEMENT OF FACT

The facts are as stated in the resolve. On June 30, 1978, Kenneth Hodgdon was operating his motorcycle on route 197 in Dresden. When he came around a curve in the road he was unable to avoid colliding with an automobile coming from the opposite direction and making a left hand turn on to Route 127. Shortly after the accident, the intersection was redesigned. This resolve is necessary in the

unique circumstances to preserve the state's status as a party in an action in which sovereign immunity has been asserted. If the resolve is not enacted, there may be no cause of action for the plaintiff against the State, which may justly share responsibility with the town, and the Town of Dresden may be solely responsible for damages for failure to repair an intersection about which there was good faith uncertainty and difference of opinion concerning the need, authority and funding for repairs the town had urged be made before the accident occurred.