

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1839

8 S.P. 714

In Senate, January 13, 1986

9 Approved for introduction by a majority of the Legislative Council
10 pursuant to Joint Rule 26.

11 Reference to the Committee on Transportation suggested and ordered
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator McBreairty of Aroostook.

12 Cosponsored by Representative Smith of Island Falls, Representative
Harper of Lincoln and Senator Brown of Washington.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-SIX
17

18 AN ACT to Prohibit the Use of Public Money
19 for the Construction or Maintenance of
20 Private Ways.
21

22 Emergency preamble. Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, public money, in the past, has been ex-
26 pended for the maintenance and improvement of private
27 ways; and

28 Whereas, this practice of public financing of
29 private ways is currently being expanded, including
30 the unorganized townships; and

31 Whereas, public financing of private ways has
32 been declared, in an Attorney General's opinion, to
33 be in conflict with constitutional principles; and

1 Whereas, there is no clear statutory prohibition
2 against this practice which officials in municipali-
3 ties, counties and unorganized townships may follow
4 with respect to use of public money; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 Sec. 1. 23 MRSA §3 is enacted to read:

14 §3. Expenditures of public money for highway mainte-
15 nance and construction

16 Public money may be used for the construction,
17 reconstruction, maintenance, improvement or repair of
18 public ways. Public money shall not be expended for
19 the construction, reconstruction, maintenance, im-
20 provement or repair of private ways, except as pro-
21 vided in section 703.

22 1. Public use of private ways. The public use
23 of a private way, with or without restrictions, shall
24 not establish the private way as a public way for any
25 purpose under this Title.

26 Sec. 2. 23 MRSA §2051-A is enacted to read:

27 §2051-A. Expenditures of public money for highway
28 maintenance and construction

29 Public money may be used for the construction,
30 reconstruction, maintenance, improvement or repair of
31 public ways. Public money shall not be expended for
32 the construction, reconstruction, maintenance, im-
33 provement or repair of private ways.

34 1. Public use of private ways. The public use
35 of a private way, with or without restrictions, shall
36 not establish the private way as a public way for any
37 purpose under this Title.

1 While the expenditure of public money on private
2 ways violates the Constitution of Maine, the law
3 should be clear with respect to this prohibition,
4 particularly for municipalities and counties which
5 often adopt practices not prohibited by law. Consti-
6 tutional provisions are often ignored in some coun-
7 ties and municipalities.

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