

# MAINE STATE LEGISLATURE

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**EIGHTY-SECOND LEGISLATURE**

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**HOUSE**

**No. 534**

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House of Representatives, April 9, 1925.

Read and ordered placed on file, and 500 copies ordered printed.

CLYDE R. CHAPMAN, Clerk.

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**STATE OF MAINE**

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**IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND TWENTY-FIVE**

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**DEPARTMENT OF THE ATTORNEY GENERAL**

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To the House of Representatives of the State of Maine:

In response to your order of April 8, 1925, asking the opinion of the Attorney General as to whether the Governor and Council were legally authorized to adopt a policy by which no state highway shall be constructed in any town unless such town shall in advance agree to bear one-half of the expense of detours as provided in order of the Governor and Council, No. 88, dated March 23, 1921, I hereby submit the following answer:

Section 6 of Chapter 25 of the Revised Statutes, as amended by Chapter 258 of the Public Laws of 1917, and further amended by Chapter 215 of the Public Laws of 1921, provides that:

“Whenever it becomes necessary to close a state highway to travel on account of construction, before such state highway is closed the commission shall establish the most practical detour road around the state highway to be constructed, have the same properly signed at all intersecting roads or streets indicating the principal town or city in either direction and cause the detour road to be put in proper condition to withstand the travel and maintained in such condition until the state highway being constructed is open to travel.”

The statute says that *the Commission shall establish* the most practical detours whenever a state highway is closed, and cause the detour to be put in proper condition to withstand the travel and maintain the same in such condition until the main highway is open to travel. The original act establishing the State Highway Commission, Chapter 130, Section 7 of the Laws of 1913, provided that “the Commission may establish detour roads during the construction and repair of state or state aid highways, and may authorize the expenditure of such sums as it deems necessary to make the same safe for travel.”

There is nothing said in the original law, nor does the statute, as amended, permit the passage of a council order “that no state highway shall be built in any town which will not enter into written agreement with the State Highway Commission for putting detours into suitable condition and for their constant care,” as stated in the order of March 23, 1921.

Chapter 25 of the Revised Statutes, as amended, defines and

fixes the duties of the Governor and Council and the duties of the Commission, in regard to construction and maintenance of state and state aid highways. The "general policy" is established by the legislature, and it is not the province of the Governor and Council to pass any orders contrary to the Constitution, and the laws passed by the legislature.

It might be legal and desirable, for a town to enter into a contract with the Commission to pay a portion of the cost of a certain detour, but it was not the intention of the legislature to limit the building of state highways only to those towns who were willing to enter into an agreement to pay half the cost of any or all detours within the town.

The answer to the question is, therefore, that the Governor and Council were not legally authorized to establish such a general policy.

Respectfully submitted,

RAYMOND FELLOWS,

Attorney General.