

MAINE STATE LEGISLATURE

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THE MICHIE COMPANY, Inc.
CHARLOTTESVILLE, VIRGINIA

Chapter 50.

Electric and Gas Companies. Telegraph and Telephone Companies.

Sections 1- 2. Transmission of Electric Power beyond State Prohibited.

Sections 3-10. Organization of Telegraph, Telephone, Television, Electric and Gas Companies.

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History of chapter.—See *Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 44 A. (2d) 1.

Transmission of Electric Power beyond State Prohibited.

Sec. 1. Transmission of electric power beyond limits of state, prohibited.—No corporation, unless expressly authorized to do so by special act of the legislature, shall transmit or convey beyond the confines of the state for the purpose of furnishing power, heat or light, any electric current generated directly or indirectly by any water power in this state; nor sell or furnish, directly or indirectly, to any person, firm or corporation, any electric current so generated to be transmitted or conveyed beyond the confines of the state for any of such purposes. Nothing in this section, however, shall prevent any railroad corporation doing business in this state from transmitting electric current, however generated, beyond the confines of the state for the purpose of operating its road between some point in this state and any point or points beyond its confines; nor shall this section apply to any corporation engaged on the 3rd day of July, 1909, in conveying or transmitting electric current beyond the confines of the state, or chartered or empowered to do so, nor affect or impair any contracts then existing for the transmission of electric current beyond the confines of the state. (R. S. c. 46, § 1.)

Sec. 2. Violation of § 1.—Any corporation violating any provision of the preceding section may be dissolved and its franchises forfeited to the state upon proper proceedings to be instituted by the attorney general whenever directed by the governor. (R. S. c. 46, § 2.)

Organization of Telegraph, Telephone, Television, Electric and Gas Companies.

Sec. 3. Organization of telegraph, telephone, television, electric and gas companies.—Corporations for the operation of telegraphs or telephones, and corporations for the operation of both telegraphs and telephones, and corporations for the transmission of television signals by wire, and corporations for the purpose of making, generating, selling, distributing and supplying gas or electricity, or both, for lighting, heating, manufacturing or mechanical purposes, in any city or town, or two or more adjoining cities or towns, within the state, or for either or any of such purposes, may be organized under the provisions of sections 8 to 15, inclusive, of chapter 53. No corporation so organized, or person or association shall have authority, without the consent of the public utilities commission, to furnish its service in or to any city or town in or to which another corporation, person or association is furnishing or is authorized to furnish a similar service; provided, however, that any corporation authorized to make, generate, sell, distribute and supply electricity may sell and distribute electricity

to any other corporation similarly authorized, and may sell and distribute electricity to any street railroad company. (R. S. c. 46, § 3. 1951, c. 142, § 1.)

Authority in one company prohibition of right of another company without consent of commission.— Authority in one company to supply gas or electricity, or both, in a certain territory, is prohibitive of the right of another company to supply either in the same territory unless by consent or by special authority of the public utilities commission. *Crawford Elec. Co. v. Knox County Power Co.*, 110 Me. 285, 86 A. 119.

When a corporation, person or firm is already authorized to do, but is not doing, an electric lighting business in a town, another corporation cannot lawfully do a gas lighting business in the same town, unless specially authorized by the public utilities commission. *Twin Village Water Co. v. Damariscotta Gas Light Co.*, 98 Me. 325, 56 A. 1112.

Sec. 4. Consent only after hearing.—No consent, authorized in the preceding section, and no license, permit or franchise shall be granted to any person, association or corporation to operate, manage or control any public utility of the kind named in the preceding section in any city or town where there is in operation a public utility engaged in similar service or authorized therefor, until the public utilities commission has made a declaration, after a public hearing of all parties interested, that public convenience and necessity require such second public utility. (R. S. c. 46, § 4.)

Sec. 5. Consent only to corporation organized under laws of Maine.—No consent authorized in section 3 to operate, manage or control any public utility shall be hereafter granted to a corporation unless such corporation is duly organized under the laws of this state or authorized by such laws to do business in this state. (R. S. c. 46, § 5.)

Sec. 6. Physical connection between lines of corporations authorized.—Any corporation organized under the provisions of sections 8 to 15, inclusive, of chapter 53 shall have authority to extend its lines to connect with the feed lines of a corporation generating and selling electricity, and such corporation shall be obliged to furnish electricity if requested to the extent of its reasonable capacity and at reasonable rates, provided the public utilities commission shall so order upon application therefor, after public hearing of all parties interested; and said commission may fix such terms and conditions as shall safeguard the rights and interests of both the generating company and the distributing company. Petition for such public hearing may be made by 10 individuals who contemplate the organization of a corporation as above provided and the commission may hold its hearing thereon and make its order, and if the petitioners organize a corporation and begin business within 1 year, said order shall be operative and effective to give authority to said corporation. (R. S. c. 46, § 6.)

Sec. 7. Contents of certificate.—The certificate provided by section 10 of chapter 53, to be prepared and filed in the office of the secretary of state by such telegraph or telephone company, shall set forth, in addition to the statements required by said section, the general route of telegraph or telephone lines proposed to be constructed by such corporation and the points to be connected thereby; and the certificate to be prepared and filed by such gas or electric company shall specify, in addition to the statements required by said section, the city or town or the adjoining cities or towns within which said corporation proposes to make, generate, sell, distribute or supply gas or electricity, or both, for the purposes named in section 3 of this chapter, and no corporation so organized shall be authorized to make, generate, sell, distribute or supply gas or electricity in any city or town not specified in said certificate. (R. S. c. 46, § 7.)

Sec. 8. May hold real estate.—Corporations organized under the provisions of this chapter may purchase, hold and convey such real estate and personal property as shall be necessary for the purposes for which they are created. (R. S. c. 46, § 8.)

Sec. 9. Electric power companies may take land for lines by right of eminent domain; approval.—Corporations organized under the provisions of section 3 and corporations chartered by special acts of the legislature for the purpose of making, generating, selling, distributing and supplying electricity for lighting, heating or other public purposes are authorized and empowered to take and hold by right of eminent domain such lands and easements as may be necessary for the proper location of their transmission lines which are designed to carry voltages of 5,000 volts or more and of necessary appurtenances thereto, located within the territory in which said corporations are authorized to do a public utility business, in the same manner and under the same conditions as set forth in sections 11 to 22, inclusive, of chapter 52.

This right shall not apply to lands or easements located within 300 feet of an inhabited dwelling, nor to lands and easements on or adjacent to any developed or undeveloped water power, nor to lands or easements so closely paralleling existing wire lines of other utility corporations that the proposed transmission lines would substantially interfere with service rendered over said existing lines, except with the consent of the owners thereof, nor to lands and easements owned or used by railroad corporations.

Any location to be so taken for such transmission lines shall be approved by the public utilities commission. (R. S. c. 46, § 9.)

Sec. 10. Organization of special rural electric companies under certain conditions.—Whenever any electric light and power company does not supply reasonable adequate electric service in any portion of the territory in which it is authorized to furnish service, any 3 or more persons not receiving and unable to receive service in the said territory, at reasonable rates, may themselves form a corporation for the transmission, use and sale of electricity in such portion of said territory as may be designated by the public utilities commission, and the electric light and power company authorized to furnish service throughout all such territory shall furnish the newly organized corporation with electric current sufficient for their needs, at reasonable rates to be prescribed by said public utilities commission. The current shall be furnished from the transmission lines of the said public utility most conveniently located for the purposes of the new corporation.

The certificate of the new corporation shall be in the form provided in section 10 of chapter 53, and the methods of organization of said corporation shall be in harmony with the requirements of chapter 53 and of this chapter, except that the fees to be paid to the state and the county in which the certificate is recorded shall not exceed \$10; \$2 to be paid to the register of deeds of the county for recording the certificate; \$3 to be paid to the attorney general for approving the certificate of organization; and \$5 to be paid to the treasurer of state for the use of the state when the certificate is filed with the secretary of state. (R. S. c. 46, § 10.)

See c. 51, re rural electrification.

Powers and Restrictions. Miscellaneous Provisions.

Sec. 11. Telegraph, telephone and television companies may pass along highways and across waters on route.—Every corporation organized hereunder for the purpose of operating telegraphs or telephones or for the purpose of transmitting television signals by wire may, except as herein limited, construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may, subject to the conditions and under the restrictions provided in this chapter, construct its lines along, over, under and across any of the roads and streets and across or

under any of the waters upon and along such route or routes, with all necessary erections and fixtures therefor. (R. S. c. 46, § 11. 1951, c. 142, § 2.)

Quoted in part in *Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 44 A. (2d) 1.

Sec. 12. Corporations may lay pipe lines.—Every corporation organized under the general laws of the state and owning, controlling, operating or managing any pipe line within or through this state for the transportation as a common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases may lay its pipe lines and construct and maintain the same in, along and under the roads and streets in any city or town; subject, however, to the conditions and under the restrictions provided in this chapter. (R. S. c. 46, § 12.)

Sec. 13. Water companies may lay pipes.—Every water company organized under the general law of this state and authorized to do a public utility business in this state may lay its pipes in and under the roads and streets in any city or town in which it is authorized to supply water or through which it is necessary or convenient to lay the same to conduct water from its source of supply to enable it to render such service; subject, however, to the conditions and under the restrictions provided in this chapter. (R. S. c. 46, § 13.)

Sec. 14. Gas and electric companies may pass along highways.—Every corporation organized hereunder for the purpose of making, generating, selling, distributing and supplying gas or electricity for the purposes named in this chapter may lay its pipes and wires and construct and maintain its lines in, upon, along, over, across and under the roads and streets in any city or town in which it is authorized to supply gas or electricity or both; subject, however, to the conditions and under the restrictions provided in this chapter. (R. S. c. 46, § 14.)

Sec. 15. Location and property of corporation cannot be taken by another without consent or act of legislature.—No corporation organized hereunder shall have authority, except by special act of the legislature, to take, appropriate or use the location, pipes, lines, land or other property of any other corporation, person or firm doing or authorized to do a similar business, without consent of such other corporation, person or firm. (R. S. c. 46, § 15.)

Applied in *Haines v. Crosby*, 94 Me. 212, 47 A. 137.

Sec. 16. Before laying pipes and wires, corporation to obtain permit of municipal officers.—No such corporation shall lay its pipes or place its wires under the surface of any road or street, or dig up or open the ground in any road or street, until it shall have obtained, as prescribed in the following section, a permit in writing from the municipal officers of the city or town in which such road or street is located, which permit shall be signed by such municipal officers and shall specify the roads and streets and the location therein in which such pipes or wires shall be laid; but such permit shall not affect the right of any party or parties to recover damages for any injury to persons or property by the doings of any such corporation. (R. S. c. 46, § 16. 1945, c. 293, § 5.)

Sec. 17. Certain corporations authorized to place wires, pipes, cables, etc., under surface of streets, subject to permit from municipal officers.—Telegraph, telephone, gas, water, pipe line, electric light, heat or power companies chartered by special act of legislature or organized under the general laws of the state, and all such companies, wherever chartered or organized, engaged in the business of transmitting intelligence, heat, light or power by electricity, or of transporting or distributing water as a public utility, or of transporting oil, gas, gasoline, petroleum or any other liquids or gases as a common

carrier for hire, or of furnishing gas for light, heat or power, may, in any city or town, place their pipes, hydrants and appurtenances, wires and cables and all conduits and other structures for conducting and maintaining such pipes, wires and cables under the surface of those streets and highways in which such companies are empowered to obtain locations for their pipes, hydrants and appurtenances, poles and wires; subject, however, to the written permit therefor of the municipal officers of such city or town, and subject also to such rules and regulations as to location and construction as such municipal officers may designate in their permit. Proceedings for obtaining such permit shall be had in accordance with the provisions of sections 36 to 43, inclusive. Permits to open streets and highways for the purpose of relaying or repairing such pipes, hydrants and appurtenances, wires, cables, conduits and other structures may be granted without notice. (R. S. c. 46, § 17. 1951, c. 267, § 1.)

Cross reference.—See c. 96, §§ 112-118, Cited in *Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 44 A. (2d) 1. re excavations in city streets.

Sec. 18. Validity clause.—The location of all pipes, hydrants, wires and cables and all conduits and other structures for the conducting and maintaining of such pipes, hydrants, wires and cables under the surface and in those streets and highways in which the above such companies are empowered to obtain locations for their pipes, wires, hydrants and cables which have been heretofore located under the surface and in the streets and highways, and which shall be hereafter so located in accordance with the provisions of the preceding section, are valid and declared legal and the same shall henceforth be legal structures in said streets and highways until the location thereof shall have been changed in any manner required or authorized by law. (1951, c. 267, § 2.)

Sec. 19. Permits to specify time and place of opening.—Every permit for digging up and opening streets, roads and highways granted under the foregoing sections shall specify the time during which said streets, roads or highways may remain open, the place where such opening may be made and the number of square yards of surface which may be disturbed. (R. S. c. 46, § 18. 1945, c. 293, § 6. 1947, c. 252, § 2.)

See c. 23, § 30, re enforcement by the state highway commission whenever highways maintained by the state are affected; c. 96, § 115, re fees for excavating permits.

Sec. 20. Penalty.—Any such corporation which shall dig or make an excavation in the driveway of any street, road or highway without first obtaining such permit as provided in the preceding section, or which having obtained such permit shall disturb a greater area of surface than specified in such permit, may be punished by a fine of \$25 for each offense. (1947, c. 252, § 2.)

Sec. 21. Fees for excavation permits.—The municipal officers of any city or town or similar officers of any village corporation having the duty to maintain streets may establish a schedule of fees for granting permits for making an excavation within the driveway of any street or highway, said schedule of fees not to exceed the reasonable cost of replacement of the excavated pavement. The applicant shall pay to the treasurer of the city or town or village corporation granting such permit the fees as established by the municipal or similar officers and all such fees shall be regularly accounted for and shall constitute a special fund for the repaving of said cuts. (1947, c. 252, § 2. 1949, c. 196, § 1. 1951, c. 70, § 1.)

Sec. 22. Trench or excavation not left open; pavement protected on either side of opening.—Any such corporation opening a street, road or highway pursuant to such permit shall fully and completely fill up such opening in the surface of the street, road or highway. Such filling shall be puddled or rammed as the nature of the soil may require, and shall be done and completed within the time designated in the permit allowing said opening. Any such

corporation failing to comply with the requirements of this section may be punished by a fine of \$50 for each offense. Such corporations shall protect the paving on either side of the opening by the use of sheet piling or such other means as will prevent the escape of sand from underneath it. In determining the number of square yards of paving disturbed, there shall be included such area of paving adjoining the trench actually opened as will, in the opinion of the commissioner of public works or such officer as the municipal officers may appoint, be required to be taken up and relaid by reason of such failure to properly protect the same. (1947, c. 252, § 2.)

Under provisions of former law, R. S. 1930, c. 68, § 15, any corporation digging into roads or streets owed a duty to put such highways, roads and streets into as good repair as they were before they were dug into; and on failure to do so within

a reasonable time, such corporation should be guilty of causing a public nuisance, and should be liable to the city or town for all expenses incurred in making such repairs. See *Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 44 A. (2d) 1.

Sec. 23. Work of repairing or filling trenches skillfully done.—If the work of repairing or filling openings mentioned in sections 19 to 22, inclusive, shall be unskillfully or improperly done, the commissioner of public works, or such officer as the municipal officers may appoint, may forthwith cause the same to be skillfully and properly done and shall keep an account of the expenses thereof, and in such case such corporation in default as aforesaid shall forfeit and pay a penalty equal to the whole of said expense incurred by said city or town with an addition of 50 % ; and thereafter, upon the completion of the work and the determination of the costs thereof, said city or town shall issue no further or new permit to any corporation so in default until it shall receive, in addition to the fees provided in section 21, the amount of the penalty as by this section provided and determined. (1947, c. 252, § 2.)

Sec. 24. Relaying of pavements.—When any excavation shall be made in any paved street, road or highway and the opening shall have been filled as required by the 2 preceding sections, the city, town or village corporation in which the opening occurred shall relay the pavement and the cost thereof including materials, labor and inspection shall be paid out of any funds standing to the credit of the special fund for this purpose. (1947, c. 252, § 2. 1951, c. 70, § 2.)

Quoted in part in *Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 44 A. (2d) 1.

Sec. 25. Poles, lines and fixtures so constructed as not to incommode public travel or interfere with ornamental trees.—Every such corporation shall so construct and maintain its poles, lines, fixtures and appliances in, along, over, under and across the roads and streets in which it may obtain locations, and across or under any of the waters upon and along its route or routes, as not to incommode the use of such roads and streets for public travel or interrupt the navigation of such waters; and provided further, that no such corporation shall injure, cut down or destroy any fruit tree or any tree or shrub standing and growing for the purposes of shade or ornament; but this chapter shall not be so construed as to authorize the construction of any bridge across any of the waters of the state. (R. S. c. 46, § 19. 1945, c. 293, § 7.)

Cross reference.—See c. 96, § 13, re trees within highway limits are public shade trees. **Applied** in *Reed v. Central Maine Power Co.*, 132 Me. 476, 172 A. 823.

Sec. 26. Liability for damages.—Every corporation organized under the provisions of this chapter shall be liable in all cases to repay any city or town all sums of money that said city or town may be obliged to pay on any judgment recovered against it for damages occasioned by any obstruction, digging up or displacement of any way or street by said corporation, together with counsel fees

and expenses necessarily incurred in defending said town in actions therefor; provided, however, that said corporation shall have notice of the commencement of any and all suits for such damage and such corporation shall have the right to defend any such action at its own expense. (R. S. c. 46, § 20.)

Sec. 27. Telegraph or telephone companies may connect with other lines; may take land as for public uses.—Every corporation operating a telegraph or telephone line in the state may connect its line or lines with those of any other like corporation, and may sell or lease its lines and property, in whole or in part, to any other like corporation, and may purchase or lease the line or lines and property, in whole or in part, of any like corporation upon such terms as may be agreed upon by the contracting parties; subject, however, to the control of the public utilities commission and may purchase, or take and hold as for public uses, land necessary for the construction and operation of its lines. Land may be so taken and damages therefor may be estimated, secured, determined and paid as provided by sections 12 to 22, inclusive, of chapter 52. (R. S. c. 46, § 21.)

Quoted in part in *Canadian Pacific Ry. v. Moosehead Tel. Co.*, 106 Me. 363, 76 A. 885.

Sec. 28. Gas companies to furnish gas for power.—All corporations in the state which are authorized to furnish gas for lighting may furnish gas for heating and for power and proper appliances therefor, under the same conditions and with the same rights as they now furnish gas for lighting purposes. (R. S. c. 46, § 22.)

Inspection of Meters.

Sec. 29. All meters furnished to consumers inspected and sealed.—No corporation, municipality, district or person shall furnish for use any gas, electric or water meter in any city or town in which there shall be a duly appointed and qualified inspector of meters, unless such meter shall have been first inspected, approved, marked and sealed by such inspector. Every corporation, municipality, district or person furnishing gas, water or electric current to consumers shall provide and keep in and upon its premises a suitable and proper apparatus, to be approved and stamped by the inspector of meters for such city or town, for testing and proving the accuracy of all water, gas and electric meters, by which apparatus every meter furnished to a consumer shall be tested. (R. S. c. 46, § 23.)

Sec. 30. Inspectors of meters.—The municipal officers of cities and towns may annually appoint an inspector of meters, who shall serve for 1 year or until another is qualified in his stead, at such salary as the municipal officers shall determine. The said inspector shall have charge of the inspection of all water, gas and electric meters furnished for use in the city or town. (R. S. c. 46, § 24.)

Sec. 31. Duties.—The inspector of meters shall, upon application in writing as provided in the following section, by any consumer of gas, water or electric current in said city or town, inspect, examine, prove and ascertain the accuracy of any gas, water or electric meter of which complaint is made, and when the said meter shall be found or made to be correct, the inspector shall stamp or mark such meter with some suitable device, which device shall be recorded in the office of the clerk of the city or town where he was appointed. (R. S. c. 46, § 25.)

Sec. 32. Application for inspection; removal of faulty meter; expense of inspection.—If any consumer to whom a meter has been furnished shall apply in writing to the city or town clerk for the inspection of such meter, and shall deposit with the clerk the fee fixed by the municipal officers for said service, the inspector shall inspect and test said meter and, if said meter on being

so tested, shall be found to be incorrect to the extent of 4%, if an electric meter or 2%, if a gas or water meter, to the prejudice of such consumer, the inspector shall order the corporation, district, municipality or person furnishing said meter forthwith to remove the same and to install in place thereof a meter which has been tested, approved, marked and sealed by an inspector of meters; and the inspector shall thereupon give a certificate to the consumer, showing the result of said test. Upon presenting said certificate to the city or town clerk, the consumer shall receive the fee deposited with said clerk; and in such case the corporation, district, municipality or person shall bear the expense of such inspection and shall pay to the treasurer of the city or town the fee required of the consumer; but such consumer shall not be entitled to recover back in whole or in part from such corporation, municipality, district or person any sums paid for service prior to the filing of his application for inspection. All fees collected by the city or town clerk or treasurer shall be placed to the credit of the city or town to be used for municipal purposes. (R. S. c. 46, § 26.)

Duties of Telegraph Companies.

Sec. 33. Telegraph companies to maintain offices in certain places.—Every corporation doing business in the state as a telegraph company shall maintain an office in every city or town containing 12,000 inhabitants or more where, under any circumstances, it undertakes to serve, in any way, the citizens of said town; such office shall be located in the business portion of every such town and easy of access to the public, and shall be open for the reception and transmission of messages from 8 o'clock in the forenoon to 8 o'clock in the afternoon in every secular day. The delivery of messages shall be without cost to the party to whom they are addressed when delivered within a radius of 1 mile from said office. (R. S. c. 46, § 27.)

Sec. 34. Liability of owners of telegraphs for errors or delays in sending dispatches; falsifying or divulging contents of dispatch.—A person or company owning or using a line of telegraph, wholly or partly in the state, for any error or unnecessary delay in writing out, transmitting or delivering a dispatch within its delivery limits, making it less valuable to the person interested therein, is liable for the whole amount paid on such dispatch; all dispatches shall be transmitted in the order in which they are received, under a penalty of \$100 to be recovered by the person whose dispatch is willfully postponed; an operator or agent who designedly falsifies a dispatch forfeits not less than \$20 nor more than \$100, to be recovered in an action of debt; and in case of his avoidance or inability to pay such judgment, the person or company employing him forfeits a like sum; and if such operator or agent willfully divulges any part of the contents of a private dispatch entrusted to him for transmission or delivery, he shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months. (R. S. c. 46, § 28.)

Applied in *True v. International Tel. Co.*,
60 Me. 9.

Sec. 35. Officers responsible for frauds and company subject to common law liabilities.—Nothing herein exonerates telegraph operators, agents, clerks or other officers from liability for fraud committed or attempted by means of telegraphic communication; or the company from any liability existing at common law for the neglect or wrongdoing of such company or its agents. (R. S. c. 46, § 29.)

Applied in *Dickey v. Maine Tel. Co.*,
43 Me. 492; *True v. International Tel. Co.*,
60 Me. 9.

Regulation of Poles and Wires.

Sec. 36. Companies subject to duties and liabilities prescribed herein.—Every company incorporated for the transmission of intelligence, heat, light or power by electricity and all persons and associations engaged in such business shall be subject to the duties, restrictions and liabilities prescribed in the following sections. (R. S. c. 46, § 30.)

Cross Reference. — See c. 51, re rural Me. 285, 86 A. 119.
electrification.

Quoted in *Cleveland v. Bangor Street Ry.*, 86 Me. 232, 29 A. 1005; *Crawford Elec. Co. v. Knox County Power Co.*, 110 Me. 285, 86 A. 119.
Cited in *Twin Village Water Co. v. Damariscotta Gas Light Co.*, 98 Me. 325, 56 A. 1112.

Sec. 37. Permit from municipal officers or county commissioners to construct lines; lines so erected are legal structures; proceedings and right of appeal.—Except as hereinafter provided, no such company, person or association shall construct lines upon and along highways and public roads, without first making an application for and obtaining a written permit, signed by the municipal officers in case of cities, the selectmen in case of towns and the county commissioners in case of plantations and unorganized townships, specifying the kind of poles, where and how they shall be located and set and the height of the wire above the ground; and if the line specified in the permit is a telephone line and is not constructed and public telephone service established in connection therewith within 18 months from the time the decision is filed, the permit shall be void. Before granting such permit, 14 days' public notice thereof shall be given by posting a true copy of said application in some public and conspicuous place in the town concerned, and by publishing a true copy of said application at least once in some newspaper, if any, printed in the city concerned, or, if no newspaper is printed in such city, then by posting a true copy of said application in some public and conspicuous place in the city concerned. During said period residents and owners of property upon the highways to be affected thereby may file written objections to the granting of such permit with the municipal officers or the board of selectmen of the city or town concerned. Upon receipt of such objections the municipal officers or the board of selectmen shall fix a time and place for a hearing so that such residents and owners of property shall have full opportunity to show cause why such permit should not be granted. Fourteen days' public notice of such hearing shall be given, in the case of towns, by posting a true copy of the order of notice of hearing in some public and conspicuous place in the town concerned and, in the case of cities, by publishing a true copy of said order of notice of hearing at least once in some newspaper, if any, printed in the city concerned, or, if no newspaper is printed in such city, then by posting a true copy of said order of notice of hearing in some public and conspicuous place in the city concerned. Such public notice shall be given by publication at least once in a county newspaper when the county commissioners are to act, said publication to be at least 14 days before said hearing. At the hearing such company, persons or associations, before proceeding, shall first prove that such order of notice of the hearing has been complied with and public notice thereof given as hereinbefore required, and the adjudication of the municipal officers, selectmen or county commissioners that such public notice has been given shall be final and conclusive. If from any cause the notice given appears to have been defective, said municipal officers, selectmen or county commissioners may order new notice, not exceeding 7 days, and adjourn said hearing to a time named in said new order of notice. If no written objection is filed as hereinbefore provided for, the municipal officers in case of cities and the selectmen in case of towns shall issue their decision granting the permit, and if such municipal officers or selectmen fail to issue said decision within a period of 7 days after the expiration of said 14-day period for public notice, the town or city clerk is authorized and shall forthwith issue such decision in behalf of such municipal officers or selectmen, which shall be deemed

to be their decision. The adjudication of the municipal officers or the city clerk in case of cities or the selectmen or the town clerk in case of towns that such public notice has been given and no written objection filed shall be final and conclusive. After the erection of the lines, such municipal officers, selectmen or county commissioners may, after giving all persons interested an opportunity to be heard, direct or approve any alteration from the original permit. The provisions with respect to notice, filing objections and hearing applicable hereunder to original permits shall apply; provided, however, that no permit or alteration of an original permit shall be required for the relocation of lines or single poles along highways and public roads within the right of way when such relocation is necessitated by the construction or relocation of highways or public roads. Such permits, specifications and decisions shall be recorded in the records of the city, town or county commissioners. Poles and wires heretofore erected, maintained and now in use by such company, person or association and poles and wires hereafter erected and maintained in accordance with the provisions of this section shall be deemed legal structures and the party maintaining the same shall be liable on account thereof only for carelessness or negligence in the erection or maintenance of the same. In case of plantations and unorganized townships, any person or corporation interested may appeal from the decision of the county commissioners to the superior court in the manner provided in sections 59 to 62, inclusive, of chapter 89, relating to highways, and in case of cities and towns, the decision of the municipal officers or the selectmen shall be filed with the clerk of the city or town within 1 week from the date thereof; and within 2 weeks from such filing any person or corporation interested may appeal from their decision by filing notice of appeal with a copy of the original petition and adjudication with the clerk of the city or town and with the clerk of the board of county commissioners; the commissioners shall immediately entertain such appeal and give 2 weeks' public notice in a county newspaper of the time and place of hearing, which time shall be within 30 days from the time such appeal is filed; such hearing may be adjourned from time to time, not exceeding 30 days in all, and the commissioners shall file their decision within 30 days from the time the hearing is closed and transmit a copy of the same to the clerk of the city or town, who shall forthwith record it. (R. S. c. 46, § 31. 1945, c. 293, § 8. 1951, c. 304. 1953, c. 224.)

Company's only interest in land is right to occupy it.—The company has no interest in the soil which supports its posts and lines except a right to occupy it by the permission of the municipal officers, a mere license revocable at their will. *Readfield Tel. & Tel. Co. v. Cyr*, 95 Me. 287, 49 A. 1047. See § 43.

Wires and poles not nuisances merely because not erected in accordance with this section.—Where wires and poles erected and maintained in accordance with this section are declared to be deemed legal structures, it cannot be held by inference that those not so erected and maintained are nuisances, since this section is in

derogation of the common law and therefore, must be construed strictly. It cannot be enlarged by implication. *Mt. Vernon Tel. Co. v. Franklin Farmers' Co-Operative Tel. Co.*, 113 Me. 46, 92 A. 934.

In this section the word "upon" includes crossing a way by the wires. *Mt. Vernon Tel. Co. v. Franklin Farmers' Co-Operative Tel. Co.*, 113 Me. 46, 92 A. 934.

Applied in *Chickering v. Lincoln County Power Co.*, 118 Me. 414, 108 A. 460.

Cited in *Wells v. Northeastern Tel. Co.*, 101 Me. 371, 64 A. 648; *Shackford v. New England Tel. & Tel. Co.*, 112 Me. 204, 91 A. 931; *Reed v. Central Maine Power Co.*, 132 Me. 476, 172 A. 823.

Sec. 38. Notice of request for permit under § 37 to be given to state highway commission.—In all cases in which a permit or the alteration of a permit is sought under the provisions of section 37 with reference to post or wire lines upon and along state and state aid highways, such company, person or association shall, before such permit or alteration of permit is granted, give to the state highway commission written notice of at least 14 days in the case of the original grant of a permit and at least 7 days in the case of an alteration of a permit

by sending a copy of the application for permit and notice of the date set for the hearing to said commission in order that said commission may have full opportunity to appear and show cause, if any they have, why such permit should not be granted or altered; or if granted or altered, to suggest such restrictions and conditions as seem to be necessary for the public safety.

Provided, however, that said state highway commission may in their discretion waive such notice in any particular case. (R. S. c. 46, § 32. 1949, c. 324.)

Sec. 39. Determination of damages; recovery of award and costs.

—An owner of land near to or adjoining a highway or road along which lines shall hereafter be constructed, erected or altered in location or construction by any company, person or association, if said owner's property is in any way injuriously affected or lessened in value, whether by occupation of the ground, on air or otherwise by such construction, alteration or location of any such line, whether such owner is also the owner of the fee in such way or not, may within 6 months after such construction, alteration or location apply to the mayor and aldermen or selectmen to assess and appraise the damage. Before entering upon the service, they shall severally be sworn to faithfully and impartially perform the duties required of them by this section. They shall on view make a just appraisal in writing of the loss or damage, if any, to the applicant, sign duplicates thereof, and on demand deliver 1 copy to the applicant and the other to the company or its agent. If damages are assessed, the company shall pay the same, with the costs of the appraisers. If the appraisers award that the applicant has suffered no damage, he shall pay the costs of the appraisers. The award and costs may be recovered in an action of debt, if not paid in 30 days after written demand therefor served upon the company or any of its agents; the superior court for the county shall have jurisdiction thereof and full costs shall be allowed. Before entering upon the discharge of their duties under the provisions of this section, such municipal officers may require the applicant to advance to them their fees for 1 day and from day to day thereafter. (R. S. c. 46, § 33.)

Sec. 40. Party aggrieved by assessment of damages may appeal; determination.—Either party aggrieved by the assessment of damages may, within 20 days after the award, file in the office of the clerk of courts for the county a copy of the award with reasons of appeal, a copy of which papers, attested by the clerk, shall be served on the adverse party at least 14 days before the term of the superior court for that county to be holden next after the expiration of said 14 days. After entry, the matter shall be determined by a jury, or by the court by agreement of parties, in the same manner as other civil causes. If the company is the appellant and the award is not decreased, the costs shall be paid by the company; if the applicant appeals and the award is not increased, the costs shall be paid by the applicant. (R. S. c. 46, § 34.)

Sec. 41. Fees of municipal officers.—The mayor, aldermen and selectmen shall each receive, for services performed under the provisions of this chapter, \$2 a day. (R. S. c. 46, § 35.)

Sec. 42. Permits required to move buildings, cut wires and remove poles; expenses; damages.—No person without first making written application to the municipal officers of the towns in which changes or alterations of wires or poles are desired, or in which a building is to be moved, and receiving from such officers a written permit therefor, shall cut, disconnect or remove the wires or poles of a telegraph, telephone, electric light or street railroad company in order to move a building, alter, repair or improve a street, bridge or way, or for any other purpose.

Upon receipt of such application, the municipal officers shall fix a time and place for hearing thereon and give reasonable notice thereof, including actual notice to any utility whose service may be interrupted or property interfered with.

Upon hearing, the municipal officers may grant a permit on such terms and conditions and make such apportionment of the expenses as they deem best.

Provided, however, that unless the utility and the person or corporation desiring to cut, disconnect or remove any wires or poles owned or used under contract by such utility for transmitting train orders or operating block signals, first agree upon the terms thereof, no such wire or wires, pole or poles, shall be cut, disconnected or removed, until after a permit therefor has been granted by the public utilities commission, upon application therefor to said public utilities commission and actual notice to the utility owning or using such wire or poles, and hearing thereon. At such hearing, said commission may grant such permit on such terms and conditions and make such apportionment of the expense arising thereunder as it deems best. Whoever disconnects or removes such wires or poles or moves any building on or over a public way without first obtaining such permit, or violates any of the conditions of said permit, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 years.

In case any way or bridge is damaged by reason of the moving of a building, the municipal officers shall determine what proportion of such damage shall be paid by the owner of said building, and the same may be recovered by the town in an action of debt against the owner of said building. (R. S. c. 46, § 36.)

Sec. 43. Enjoyment of right to attach wire, etc., to any building limited.—No enjoyment by any company, person or association, for any length of time, of the privilege of having or maintaining posts, wires or apparatus in, upon, over or attached to any building or land of other persons shall give a legal right to the continued use of such enjoyment or raise any presumption of a grant thereof. (R. S. c. 46, § 37.)

Privilege granted not permanent vested interest in land.—The only privilege granted in any particular spot, parcel, or portion of land is temporary and not permanent, a mere license revocable at the will of the municipal officers so far as any particular portion of the highway or any particular highway is concerned, and not a permanent vested interest in the land itself. *Readfield Tel. & Tel. Co. v. Cyr*, 95

Me. 287, 49 A. 1047.

Posts, wires and insulators are chattels subject to legal seizure.—Because of this section, as between debtor and creditor, posts, with the wires and insulators thereon, continue to retain their character as chattels and may be seized and sold on execution as personal property. *Readfield Tel. & Tel. Co. v. Cyr*, 95 Me. 287, 49 A. 1047.

Sec. 44. Revocation of location; new location; joint use of poles; apportionment of expenses; orders and decisions in writing; long distance telephone lines excepted.—Whenever the municipal officers of any city or town having a population of more than 40,000 inhabitants, in which any person, firm or corporation maintains wires attached to poles located in any public street or way for conveying electric current or for the transmission of telephone or telegraph messages, determine, after notice and hearing, that public safety and the public welfare require the revocation of any location for poles already erected in any public street or way, they may revoke any such location and order such poles removed, which shall be done within a reasonable time by the person, firm or corporation owning said poles; provided, however, that other suitable locations or the right to use other poles jointly shall be granted by the municipal officers to such person, firm or corporation. The municipal officers of such cities and towns may, after notice and hearing, order the wires of any person, firm or corporation used for conveying electric current or the transmission of telephone or telegraph messages and attached to poles located in any public street or way of such city or town to be removed and attached to such other poles, however owned and controlled, legally located in the public streets or ways, as said municipal officers may designate; provided that in their judgment such change is practicable and can be made without unreasonably interfering with the business of any person, firm or corporation. Before revoking any such location or ordering

the removal of any poles or wires, public notice of the hearing shall be given to all persons interested by publication in some newspaper printed in said city or town, if any, the last publication to be 14 days before the hearing; if no newspaper is printed in said city or town, said publication shall be in some newspaper printed in the county; personal notice shall be given to the owners of said poles and wires 14 days before the hearing. The municipal officers may establish such regulations as they deem necessary for the joint use of such poles, and in case the several parties so using such poles cannot agree as to the proportionate share each shall bear of the original cost and of the expense of maintaining such poles, or a proper annual rental for the use of the same, the municipal officers may, after hearing the parties, determine the proportionate part of such expense each party shall justly bear or a proper rental therefor; personal notice shall be given to each party 14 days before the hearing; and the owner of such poles may recover, in an action of assumpsit of each party so using such poles, his share of such cost and expense or the rental as determined by the municipal officers. All orders and decisions of the municipal officers under this section shall be in writing and a record thereof shall be made by the city or town clerk, and the service of a copy thereof, attested by the clerk, upon the parties affected thereby shall be sufficient notice to the party so affected to render compliance obligatory. Provided, however, that this section shall not apply to long distance telephone wires or lines of poles used for the support thereof; and for the purpose hereof no wire shall be deemed to be a long distance telephone wire which does not extend 20 miles at least in a direct line from a central office. (R. S. c. 46, § 38.)

Sec. 45. Party aggrieved may appeal to the superior court; appointment of committee and proceedings at hearing; acceptance of report.—Any party aggrieved by any order or decision of the municipal officers relating to the joint use or occupation of poles or by any of the regulations established by the municipal officers of said city or town relating to the joint use of poles, or by their decision as to his proportionate share of the original cost, or the cost of maintaining any joint poles, or the annual rental for the use of the same, may appeal from such orders, decisions or regulations of the municipal officers at any time, within 10 days after service of notice of the same, to the next term of the superior court to be held in the county more than 30 days after service of such notice, excluding the 1st day of the session. The appellant shall serve written notice of such appeal upon the opposite party 14 days at least before the session of said court, and shall at the 1st term file a complaint setting forth substantially the facts of the case, and the orders, decisions, or regulations of the municipal officers from which he appeals and in what respect he is aggrieved thereby. The presiding justice at the 1st term of said court shall appoint 3 disinterested persons, not residents of the city or town named in the complaint, who shall, within 30 days after their appointment, after due notice and hearing, affirm the orders and decisions of the municipal officers, or amend or modify the same, or make new and further orders, decisions and regulations governing such joint use of such poles by any of the parties to the proceedings, or in relation to the proportionate share of the expense to be borne by each party using such joint poles, or the just and fair rental therefor; and their report, which shall be filed with the clerk of said court, upon being accepted by any justice of the superior court in term time or in vacation, shall be final and binding on all parties to the proceedings, except that questions of law arising under such proceedings may be reserved for decision by the law court. Any person affected by any order or decision of the municipal officers, who is not joined in the original complaint, may, on petition to the superior court, be joined therein at any time before hearing by the committee appointed under the provisions of this section. (R. S. c. 46, § 39.)

Sec. 46. Power and authority conferred are additional.—The power and authority conferred on municipal officers under the provisions of section 44

are in addition to those vested in municipal officers under the provisions of sections 36 to 43, inclusive; and nothing contained in the 2 preceding sections shall be construed as giving to any party the right of appeal from any of the decisions, specifications, orders or permits, or alterations thereof, of the municipal officers under the provisions of this chapter, except as provided in the preceding section. (R. S. c. 46, § 40.)

Sec. 47. Affixing wire to building, etc., without consent of owner.—Every company, association or person maintaining or operating a telephone or other electrical line, or anyone who in any manner affixes or causes to be affixed to the buildings or building of another any structure, fixture, wire or other apparatus, or enters upon the property of another for the purpose of affixing the same, in either case without the consent of the owner or lawful agent of the owner of such property shall, on complaint of such owner or his tenant, be punished by a fine of not more than \$100. (R. S. c. 46, § 41.)

Cited in *Wells v. Northeastern Tel. Co.*,
101 Me. 371, 64 A. 648.

Sec. 48. Lines constructed along any railroad by written permit; if parties cannot agree, either may apply to public utilities commission.

—Any company, person or association mentioned in section 47 may construct a line upon or along any railroad by the written permit of the person or corporation operating such railroad, but in case such company cannot agree with the parties operating such railroad, as to constructing lines along the same or as to the manner in which lines may be constructed upon, along or across the same, either party may apply to the public utilities commission, who, after notice to those interested, shall hear and determine the matter and make their award in relation thereto, which shall be binding upon the parties. The expenses of the hearing shall be paid by the company, person or association seeking to construct lines on the railroad, except that if the public utilities commission shall find that parties operating the railroad have unreasonably refused their consent, said parties shall pay the expenses. (R. S. c. 46, § 42.)

Cross references.—See c. 30, § 50, re provisions for weekly payment of wages apply to telegraph and telephone companies; c. 112, § 113, re limitation of proceedings for damage for land taken by right of eminent domain; c. 131, §§ 15, 16, re penalty for malicious injuries to fixtures of electric power line; c. 136, § 16, re penalty for improper use of telephones; c. 136, § 17, re penalty for unlawful combination against gas and electrical companies.

Authority to construct upon land implies authority to take that land.—So far as the question of authority is concerned, when a telephone company is authorized by statute to construct and maintain its lines "upon or along a railroad" it is necessarily implied that it may "take" the right of way so far as is reasonably necessary for that purpose. The use of words like "take" or "take and hold" is not essential. If it so constructs its lines it nec-

essarily so far takes the right of way, and authority to "construct" is necessarily an authority to "take". *Canadian Pacific Ry. v. Moosehead Tel. Co.*, 106 Me. 363, 76 A. 885.

Section makes no provision for compensation.—It is very clear that this section makes no provision for compensation. Under this section the commissioners have power only to determine as to constructing the line, and the manner thereof. There is no word which relates to compensation. *Canadian Pacific Ry. v. Moosehead Tel. Co.*, 106 Me. 363, 76 A. 885.

But owner of land is entitled to compensation.—The location of a telephone line upon a railroad right of way is a taking of it, and imposes a burden upon it for which the owner is entitled to compensation. *Canadian Pacific Ry. v. Moosehead Tel. Co.*, 106 Me. 363, 76 A. 885.