

The state roads commission is not liable to be sued for negligently allowing a road in course of construction or repair to be without a warning light at night, etc.; the state roads commission is entitled to the benefit of the state's immunity from suit unless a statute provides to the contrary. *State v. Rich*, 126 Md. 644.

See notes to article 14 of the Declaration of Rights, and to sections 34, 36, 40, 48 and 66 of article 91 of the code.

See article 27, section 677 *et seq.*

**33A.** Repealed. (Act 1918, ch. 224.)

**34.**

The act of 1908, chapter 141, does not give the state roads commission authority under the police power or otherwise to take or disturb any interest or easement of any corporation otherwise than by agreement, gift, grant, purchase or condemnation. Construing the acts of 1908, chapter 141, and 1910, chapter 116, together, the state roads commission may not require a railway company to move its tracks at its own cost; the intent of said acts was to provide for the entire cost of the construction and improvement of such roads as might be selected by the commission as part of the system of state roads; no part of the expense was to be borne by electric railway companies, whose rights the act declares shall not be disturbed. Agreement between state roads commission and United Railways & Electric Company of Baltimore, construed; as such agreement was made with the state roads commission and the work done by the company was in accordance with the former's requirements, the liability of the parties for the cost of the work must be determined by the act of 1908. That the city could require the company to conform its tracks to a change of grade of the street is immaterial. *United Rys. & Elec. Co. v. State Roads Com.*, 123 Md. 563.

This section and section 63, so far as they confer the power, and regulate the procedure of condemnation, were not repealed by the adoption of article 33A of the code, particularly in view of section 14 of article 33A. *Koehler v. State Roads Com.*, 125 Md. 446.

**35.**

See notes to section 34.

**36.**

Although this section as enacted by the act of 1908, chapter 141, was repealed and re-enacted by the act of 1910, chapter 721, after the former had been repealed and re-enacted by the act of 1910, chapter 218, the act of 1910, chapter 721, is valid. The surety on a bond given under this section is liable in an action by a creditor of the contractor for labor and materials, irrespective of whether the express language of the bond or act gives it to him. The creditor may sue in the name of the state. How the bonds of surety companies are to be construed. *Am. Fidelity Co. v. State*, 128 Md. 52.

A surety bond guaranteeing that the principal will promptly pay his debts for labor and material in the construction of a certain work, is not liable to the holder of promissory notes which are alleged in the declaration to have been given for money borrowed by the principal and used in paying for such labor and materials. *So. Md. Bank v. Natl. Surety Co.*, 126 Md. 291. And see *Am. Fidelity Co. v. State*, 128 Md. 54.

persons at present constituting the state roads commission, and such persons shall continue in office notwithstanding the passage of this act." The act of 1918, chapter 224, is in effect July 1, 1918.