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LET IT SNOW: PLOWING AND SALTING PRIVATE STREETS

With another major snow and ice storm just around the corner, it is not uncommon for municipal officials to receive requests asking the municipality to plow and salt private streets within the municipality. Each Winter, NYCOM responds to inquiries from our members wanting to know whether or not plowing and salting private streets would be a proper use of municipal resources.

It is understandable that a public official's initial reaction would be to assist their residents in clearing the roads. However, it is important to keep in mind that a clear distinction exists between public streets and private streets. As a general rule, a municipality does not have the authority to use municipal equipment or to spend public monies in plowing, salting or maintaining private streets.¹ A narrow exception to this rule exists in cases of emergency.

The Public's Purse

Article VIII, Section 1 of the New York State Constitution, commonly known as the gift and loan provision of the constitution, specifically enumerates that "no county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of any private corporation or association; nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, except that two or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately."²

The gift and loan provision was included in the State Constitution in order to prevent public officials from using public monies to benefit favored individuals or enterprises.³

Because of Article VIII, Section 1 of the Constitution, the Office of the State Comptroller has opined that if a



municipality plows and clears a private street of snow it could be considered an impermissible use of public resources and "would not be in furtherance of a lawful municipal purpose and could, in some cases, be construed as a gift to private individuals in violation of Article VIII, Section 1 of the State Constitution."⁴

Moreover, a municipality exposes itself to potential liability if it assumes control of a private road and maintains it. A pedestrian injured on a private road which has been maintained by the municipality may be able to hold the municipality liable for injuries occurring there.⁵

Private Contracts to Provide Snow and Ice Removal

Because municipalities have no authority to plow private streets, the question arises, may the property owner responsible for maintaining the street pay the municipality for street clearing services?

The New York State Comptroller has opined that it is "a fundamental principle of municipal law that municipalities have only the powers specifically conferred upon them by the Constitution or statute or those powers which are necessarily implied there from."⁶

Furthermore, the Comptroller has held that "entering into the private business sector is not one of the powers granted to municipalities either specifically or by necessary implication except in rare instances such as the establishment of a municipal electric utility company."⁷

Therefore, a municipality has "no authority to provide snow and ice removal from or to apply salt and sand to private streets even though the owner of the street is willing to pay the municipality [for street plowing]."⁸

An Exception for Emergencies

A narrow exception applies to the general rule that municipalities may not plow private roadways. In cases of emergencies when police, fire or other emergency personnel would be required to respond to an incident that would require the private street to be cleared from obstruction, the

municipality may clear the private road.

This exception has been acknowledged by the Office of the State Comptroller which concluded that a “municipality may plow snow from private roadways in cases of an emergency.”⁹ The Comptroller makes note that “a fundamental guiding principle as to whether or not an emergency exists should be that there is a serious and substantial threat to life or property.”¹⁰

In a subsequent opinion, the Comptroller held that “in the event of an emergency such as a serious illness or fire, it is within the scope of a municipality’s police powers in the interest of public health, safety and welfare, to plow a private road or driveway if necessary to render private property immediately accessible.”¹¹ In the rare instance where a municipality might have to clear a private road, the “incidental private benefit will not invalidate an action which has as its primary objective a proper public purpose.”¹²

The Comptroller’s opinion further notes that the emergency must be immediate and that it cannot be in “anticipation of a possible emergency.”¹³ Thus, it would be an improper use of municipal resources to plow and salt a private roadway on a regular basis in anticipation of a possible emergency. To do so would “provide primarily a private benefit to the individual.”¹⁴

Street Dedication

Pursuant to Village Law § 6-610, village residents who own a private street may offer that private street for dedication to the village, a part thereof or an easement to the village for the use as a public street.¹⁵ Even though a resident may be willing to dedicate a private street to the municipality for public use, a municipality is not required by law to accept the street simply because it is offered.

Pursuant to Village Law § 6-610, a private street within the village may be dedicated as a public street by the following procedure:

1. The offer of dedication must be made in writing by the owner of the property and the Board of Trustees may by resolution determine to accept the offer. No street less than two rods in width may be accepted unless the resolution is passed unanimously by the Board of Trustees. In addition, all offers of dedication must be recorded in full in the minutes of the Board of Trustees.
2. Once the Board of Trustees passes a resolution accepting the street, the owner of the street may execute and deliver to the village clerk a proper conveyance of the land to be dedicated.

3. Once the proper conveyance has been made to the clerk, the Board of Trustees must pass a second resolution accepting the conveyance that must then be recorded in the county clerk's office.
4. Upon acceptance of the conveyance, the land becomes a public street.¹⁶

Once the land becomes a public street, the municipality has the authority to clear and maintain the street. However, while Village Law allows the granting of an easement in private streets by private property owners, the State Comptroller has opined, "that [Village Law § 6-610] does not contemplate a 'limited' easement whereby a street would be public for some purposes and private for other purposes. If a street is dedicated as a public street (pursuant to § 6-610), either by conveyance of fee ownership or by means of an easement, such street must be considered a public street for all purposes, including not only snow removal, but maintenance and repair as well."¹⁷ The opinion concludes that "a village may not accept dedication of private streets by means of an easement for the sole purpose of providing snow removal services."¹⁸

Pursuant to the General City Law § 20 (7), cities have the authority to "lay out, establish, construct, maintain, operate, alter and discontinue streets . . ." However, city officials must

consult their city charter to determine the proper procedure to accept the dedication of a city street.

If you would like a copy of any of the State Comptroller advisory opinions referenced in this article, please contact NYCOM Counsel, John Mancini at (518) 463-1185 or by email at jmancini@nycom.org.

Endnotes

1. N.Y. Village Law § 6-600; N.Y. Gen. City Law § 20; N.Y. Second Class Cities Law § 102.
2. N.Y. Const. Art. VIII, § 1.
3. *Taylor v. McGuire*, 100 Misc.2d 834 (Sup. Ct., NY County, 1979).
4. 1980 Op. St. Comp. No. 80-617.
5. *Swartz v. Town of Fallsburg*, A.D.2d 799, 661 N.Y.S.2d 87 (3rd Dept. 1997).
6. 1980 Op. St. Comp. No. 80-162.
7. *Id.*
8. *Id.*
9. 1972 Op. St. Comp. No. 72-57.
10. *Id.*
11. 1990 Op. St. Comp. No. 90-59.
12. *Id.*
13. *Id.*
14. *Id.*
15. N.Y. Village Law § 6-610.
16. *Id.*
17. 1977 Op. St. Comp. No. 77-816.
18. *Id.*