

\*1 Office of the Attorney General  
State of New York

Informal Opinion No. 92-30

May 14, 1992

NY CONST, ART VIII, >> 1.

A municipality may not expend public funds to improve and maintain a private road. A municipality may, however, regulate the maintenance of private roads by their owners.

Joseph Stanzione, Esq.  
Town Attorney  
Town of Greenville  
P. O. Box 383  
Catskill, NY 12414

Dear Mr. Stanzione:

You have asked whether a town may expend public funds for the maintenance of a private road. You have informed us that the road is between two-tenths and three-tenths of a mile in length providing access to about four homes. The town clerk resides in one of these homes which also serves as her office. Your inquiry is whether the town may maintain the road in average condition to provide for access to the clerk's office by town residents.

A municipality may not expend public funds to improve and maintain a private road. NY Const, Art VIII, >> 1. Such an expenditure of funds would amount to an unconstitutional gift. Once a road is acquired by the town and dedicated as a public road, the municipality may expend public funds to improve and maintain it. 1987 Op Atty Gen (Inf) 45. We note that a municipality may require that privately owned roads be maintained by their owners in accordance with reasonable standards. Ibid.; De'Angelo v Cole, 67 NY2d 65 (1980).

The town board is authorized to determine the location of the town clerk's office within the town. 1978 Op Atty Gen (Inf) 130. Thus, the board can locate the office to facilitate accessibility to the public.

We conclude that a municipality may not expend public funds to improve and maintain a private road. A municipality may, however, establish reasonable

standards for the maintenance of private roads by their owners.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

James D. Cole

Assistant Attorney General in Charge of Opinions

1992 N.Y. Op. Atty. Gen. (Inf.) 1063, 1992 WL 479100 (N.Y.A.G.)

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New York State Comptroller  
\*1 November 13, 1990

DEBORAH FERRO DIMEZZA, ESQ., TOWN ATTORNEY

TOWN OF EDINBURG

STATE CONSTITUTION, ARTICLE VIII, § 1; HIGHWAY LAW, § 140

1. CONSTITUTIONAL LAW--GIFTS AND LOANS--REMOVAL OF SNOW AND ICE FROM PRIVATE ROAD

2. STREETS AND HIGHWAYS--PRIVATE ROADS--REMOVING OF SNOW AND ICE FROM

A town may not regularly plow and sand a private road belonging to a disabled individual, except in an emergency situation.

You ask whether a town may regularly plow and sand a private road belonging to a disabled individual.

A town superintendent of highways has the general care and superintendence of the town highways and bridges and must keep them free from obstructions caused by snow (Highway Law, § 140[1], [2]). For this purpose, towns are authorized to purchase equipment, snow plows and other devices (Highway Law, § 142[1]).

This Office previously has stated that since town property is acquired only for proper town purposes, it may not be used for purely private purposes (1988 Opns St Comp No. 88-41, p 81; 1983 Opns St Comp, No. 83-103, p 127; 23 Opns St Comp, 1967, p 762; 16 Opns St Comp, 1960, p 56). Article 8, § 1 of the State Constitution, which, inter alia, prohibits a municipality from making gifts and loans of its property to or in aid of a private individual, generally prohibits the use of municipal property for the benefit of private parties unless it is primarily in furtherance of a proper municipal purpose and is undertaken pursuant to a statutory or contractual obligation of the municipality. It is well-established, however, that an incidental private benefit will not invalidate an action which has as its primary objective a proper public purpose (see, e.g., *Murphy v Erie County*, 28 NY2d 80, 320 NYS2d 29).

Based on these principles, this Office has stated that generally a town may not use town personnel and equipment to remove snow from private roads and driveways (e.g. 1981 Opns St Comp No. 81-325, p 353; 26 Opns St Comp, 1970, p. 27; 11 Opns St Comp, 1955, p 740). A town, however, may, remove snow from private property in order to provide access to a town official's home which is

also used as his or her official office (e.g. 1977 Opns St Comp No. 77-672, unreported). Similarly, we have stated that, in the event of an emergency such as a serious illness or fire, it is within the scope of a town'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 (26 Opns St Comp, 1970, supra). In these two instances, the private benefit received by the property owner is only incidental to the primary public benefit.

Under the circumstances in the instant case, it appears that the plowing and sanding would not be performed to further primarily a town purpose such as to facilitate public access to a town office or as an exercise of town police powers in an emergency. Rather, it appears plowing and sanding this private road on a regular basis would be in anticipation of a possible emergency and, therefore, would provide primarily a private benefit to the individual. Accordingly, it is our opinion that the town may not plow and sand this private road on a regular basis.

Opns St Comp, 1990 No. 90-59

1990 WL 299266

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**Opns St Comp, 1982 No. 82-59**  
**New York State Comptroller**  
**February 11, 1982**

TO: MR. DREW A. OUTHOUSE, HIGHWAY SUPERINTENDENT TOWN OF NORTH SALEM

Town Law, SS 277(1), 278(1) Highway Law, S 1401(1)

1. STREETS AND HIGHWAYS--PRIVATE ROADS--WORK ON STREETS WITHIN A SUBDIVISION
2. SUPERINTENDENT OF HIGHWAYS--POWERS AND DUTIES--WORK ON PRIVATE STREETS

A town highway superintendent may perform work on streets within a subdivision only after the town has taken title to them. The superintendent may not perform work on driveway openings on streets which have been dedicated to the town if such openings are on private property.

We have received an inquiry requesting an opinion as to whether a town highway superintendent may perform work on driveway openings from a new road created in a subdivision, which is not presently a town road but will eventually be deeded to the town.

It has been our position that town funds may not be expended to maintain or repair private roads or construct improvements thereon (Opns St Comp, 1977, No. 77-614, unreported; 31 Opns St Comp, 1975, p 22). Such an expenditure would constitute a gift to private individuals in violation of Article VIII, S 1, of the State Constitution.

Where a subdivision is involved, the title to the streets remains in the developer until such time as they are deeded to the town. The filing of a subdivision plat constitutes only a continuing offer of dedication of the streets therein and they do not become town streets until accepted by the town (Town Law, S 278(1); Bakery Salvage Corp. v City of Lackawanna, 48 Misc 975, 265 NYS2d 471, revd on other grounds, 30 AD2d 207, 291 NYS2d 104 [1965]).

However, we have said that a town may accept dedication of streets in a subdivision prior to their completion and may complete the work on the streets on the condition that the subdivider remains liable on his bond to pay for such work. Town Law, S 277(1) provides in part: "In the event that any required improvements have not been installed as provided in this section within the term of such performance bond the town board may thereupon declare the said performance bond to be in default and collect the sum remaining payable thereunder and upon the receipt of the proceeds thereof the town shall install such improvements as are covered by such performance bond and are commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds."

We have said, in regard to section 277, that although it appears to preclude installation of the required improvements by the town until actual receipt of the proceeds, we believed that it applied only to a town's mandatory function of installing improvements with bond proceeds and that it did not eliminate a town's discretionary authority to install public improvements such as streets, sidewalks, and curbs with general town funds whenever it finds a public need (Opns St Comp, 1977, No. 77-614, supra). Of course the town in such circumstance, must take title to the streets before it can perform any work on them. Furthermore, where driveway openings are involved, these may not be part of the street to begin with, but rather, part of private property to which the town would never take title. If such is the case, then the town would be prohibited from performing any work on them (31 Opns St Comp, 1975, p 22; 27 Opns St Comp, 1971, p 110).

Therefore, it is the opinion of the State Comptroller that a town highway superintendent may perform work on streets within a subdivision only after the town has taken title to them. The superintendent may not perform work on driveway openings on streets which have been dedicated to the town if such openings are on private property.

Opns St Comp, 1982 No. 82-59  
1982 WL 20165