

Plowing Private Roads

Does a municipality have to continue doing this if it has been plowing a private road for a certain number of years? No... this is not true and never has been true.

Plowing or otherwise maintaining private roads at public expense is a violation of the Maine Constitution's "public purpose" clause, which requires that public funds be expended only for public purposes (see Opinion of the Justices, 560 A.2d 552 (Me. 1989)). There is no statute, case law or legal theory to support the claim that plowing a private road for any period of time somehow obligates a municipality to continue doing so despite the law. Nor does a history of plowing a private road in some way "grandfather" or permit a municipality to continue the practice. The source of this misunderstanding is likely the doctrine of prescriptive use, by which a municipality may acquire a public easement over a private road by continuously using it for at least 20 consecutive years. But two crucial points: First, a prescriptive easement does not exist unless and until suit has been filed and a court declares it so. Second, a prescriptive easement cannot arise where the municipality's use has been with the owner's consent, which is virtually always the case with public plowing of private roads. Also, even if a court were to declare that a prescriptive easement exists, this would not require public plowing, it would merely permit it.

Another myth about plowing private roads is that if emergency vehicles such as fire and rescue cannot gain access to persons or property due to snowbound roads, the municipality can be held liable. This of course is nonsense. Municipalities have no legal duty to ensure access to private roads. Those who live on private roads but neglect to maintain them do so at their own risk. For more on why plowing private roads is both illegal and inadvisable from a liability standpoint, see "Plowing Private Roads & Driveways Revisited," Maine Townsman, Legal Notes, November 2003. (By R.P.F.)

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