

# MAINE STATE LEGISLATURE

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Municipalities: Repairs To Private Ways  
Private Ways  
23 M.R.S.A. § 3105

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November 16, 1977

Honorable James K. McMahon  
Box 125  
Kennebunk, Maine 04043

Dear Representative McMahon:

This responds to your request for advice on certain questions regarding interpretation of 23 M.R.S.A. § 3105 relating to private ways.

Your first question is whether 23 M.R.S.A. § 3105 requires the appropriate municipality to charge a fee where municipal equipment is utilized on private ways.

Section 3105 does not specifically require the charging of a fee, nor can a requirement for charging a fee be implied. Prior to authorizing use of public equipment on private ways, the appropriate municipal officials must make a determination that such use is in the best interests of the municipality for fire and police protection. Thus, there is no problem with such uses under the constitutional requirement that funds be expended and public equipment used for public purposes. We would note that although § 3105 does not require charging a fee, it does not prohibit charging a fee either.

Your second question is what is the appropriate definition of "private way" as that term is used in § 3105. As a general matter, it may be said that a private way is a way on privately owned land, not open for public travel and not maintained by a municipality as a public way. This definition is, of necessity, very general. There are many special situations involving ways which may be on private land but which are used by the public for travel, by easement or otherwise, or ways which have been formerly town ways but which have been abandoned either by formal action or lack of use. The status of such ways as


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public or private ways would have to be determined on a case-by-case basis. Where there is such a question, the advice of the appropriate municipal authorities and legal advisors should be sought. Our office is not in a position to determine, within any particular municipality, which ways are public and which ways are private.

Sincerely,

  
DONALD G. ALEXANDER  
Deputy Attorney General

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