



ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

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February 13, 2015

Randall T. Douglas
Supervisor
Town of Jay
PO Box 730
Au Sable Forks, NY 12912

Via Facsimile and Regular Mail

Dear Supervisor Douglas:

This letter is in response to your inquiry regarding the legality in providing individual residences and businesses with sand and/or salt for their own personal use at any time other than during a declared state of emergency. Article VIII, section 1 of the New York State Constitution prohibits towns from making gifts or loans of money or property to or in aid of any private individual or corporation. As the salt and sand are taxpayer funded and the property of the town, providing individuals and businesses with salt or sand would be an unconstitutional gift in violation of the Constitution, as such individuals would be receiving town property with no benefit accruing to the town. Additionally, the town cannot sell the sand or salt (see Op St Comp 80-62), as a town is not provided with the necessary authority to act in such proprietary capacity. In certain instances the town may sell salt or sand if the town has a surplus of such salt, the town receives fair market value in the sale and the salt or sand does not come from land purchased pursuant to Highway Law § 145 (see Town Law § 64 [2-a]; Op St Comp 77-471).

An exception to the prohibition against gifts or loans of the town's property and resources occurs if there is an emergency situation that presents an imminent danger to the health, safety and welfare of the town. If such a danger is present, the town may, under its police power, render assistance in the form of salt/sand or plowing, as the public as a whole benefits from such a policy (rather than a private individual), which ensures the safety of the town's residents (see Op St Comp 90-59). There must be a true threat to the health, safety or welfare; the salt or sand cannot be provided to a private individual for purposes of convenience or because a storm is predicted to occur that may cause an emergency (see Op St Comp 90-59).

If the Governor has declared a state of emergency (see Executive Law § 28), a resident is not necessarily entitled to salt or sand. As previously discussed, a true emergency that threatens the health, safety and welfare of the town must be present in order for the town to make a gift of its salt, sand and plowing resources. Particularly in light of the current salt shortage, taxpayer funded salt supplies need to be utilized for municipal highway purposes. Accordingly, the Association is of the opinion that it is impermissible to provide sand or salt for one's personal use, except in the event that an imminent danger is present that threatens the health, safety or welfare of an individual or structure within the town. If no imminent danger is present, providing residents with salt and sand would be an unconstitutional act in contravention of Article VIII, section 1 of the New York State Constitution.

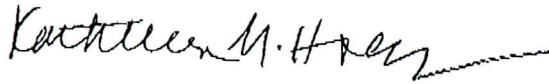
Turning to whether it is inappropriate for an elected official to purchase and pay for sand or salt out of their personal funds to distribute throughout the town, Election Law § 17-142 provides that a person may not directly or indirectly pay, lend or contribute any money or other valuable consideration to or for any voter, to induce such

voter to vote or not vote at any election. If one does in fact provide consideration in exchange for a promise to vote in a certain manner, he or she is guilty of a felony. However, this law has not been analyzed in the courts; case law provides no instances in which one has been convicted under this statute. It is unlikely that an elected official would be found guilty of violating the election franchise for purchasing sand and salt and placing it on town highways.

While an elected official is not likely to be found in violation of the election law if he or she purchases salt and places it within the town boundaries, the Association of Towns still believes that such practice is improper, as it creates a liability issue and the authority to salt and sand lies within the jurisdiction of the superintendent of highways. Specifically, Highway Law § 140 provides that the highway superintendent has the care and superintendence of town highways and bridges. Should an elected officer aside from the highway superintendent take it upon themselves to salt and sand town property, they would be acting outside of their jurisdictional duties and infringing upon the highway superintendent's authority. Additionally, should the highways, bridges and sidewalks be salted in a negligent manner by the elected officer, the town would be liable for any resulting injuries. So, while an elected officer would likely not be found guilty of violating the election franchise for purchasing and distributing salt and sand throughout the town, it is still improper and inappropriate for the officer to do so - there is no authority and such behavior creates a liability for the town.

I hope that this clarifies any questions you may have. Please let me know if there is anything else I can do to assist you.

Best,



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