

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

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N.Y. STATE CONSTITUTION, ART. VIII, §1; HIGHWAY LAW, §140(2): A town highway superintendent may authorize town snow removal equipment to plow out portions of private driveways in order to allow such equipment to turn around. Town employees would have the full protection afforded town employees while plowing such portions of private drives.

EDUCATION LAW, §3635; HIGHWAY LAW, §142-d: The board of education may contract with the town to have the town Highway department plow snow from portions of private driveways and roads designated by the school district as pick-up points, and the town employee would be protected from personal liability while so engaged.

HIGHWAY LAW, §140: A town employee would have all the protection granted town employees while drawing spoil onto private land from town highway construction sites, where such drawing is authorized by the private owner.

Inquiries

(1) Where town highway equipment plows snow from town roads which end in private driveways, may the town plow enough of the private driveway to turn the equipment around?

(2) May the town plow snow from portions of private driveways which are school bus turn-around or pick-up points?

(3) May the town highway department draw spoil onto private property where permission has been granted by the owner of the property?

Statements of Law

(1) This Department has consistently stated that:

"Equipment owned or hired by a town may not be used for a private purpose, such as plowing private roads and driveways. Such snow removal at town expense is an unconstitutional gift prohibited by Article VIII, §1, of the New York

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"State Constitution (15 Op. State Compt. 440, 1959)." (Op. State Compt. No. 68-818, 1968, as yet unreported.)

Highway Law, §140(2), provides that the town highway superintendent shall have the duty of keeping town highways free from snow. We believe that, where the highway department is properly plowing a town road which terminates in a private drive or roadway, there can be no doubt that any incidental plowing done on such private driveway or road, solely for the purpose of turning the equipment around, would be authorized. If any accident were to occur during such a turn-around, we believe that the town employee would be considered to be acting within the scope of his authority and could avail himself of all the benefits attendant upon town employment.

We would caution the town that such plowing in a portion of private driveways must be incidental to turning the equipment around and must not be an attempt to justify plowing certain private driveways.

(2) We must initially state that the town, in the absence of any contract with the school district, has no obligation to plow out school bus turn-arounds or pick-up sites.

It is our opinion that, if the school district contracted with the town for the rental of the town's highway equipment pursuant to Highway Law, §142-d, the town could plow for the school district.

Since the town would be contracting with the school district and receiving payment, no claim could be made that the town was making any type of gift of services to the private property owner, a portion of whose driveway is plowed. Furthermore, since Highway Law, §142-d, specifically authorizes such a rental of town equipment, it cannot be said that such activity would even be unauthorized.

Of course, the problem still remains whether the school district is authorized to contract for such snow removal. Education Law, §3635, authorizes the school district to provide transportation for school children in the district. In 5 Op. State Compt. 439, 1949, this Department stated that, where transportation for a handicapped child was required, the school district could rent town-owned equipment and have a private driveway plowed in order to transport the child to school.

We are of the opinion that the school district would, under section 3635, have the authority to contract with the town for

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snow removal on private driveways and roads designated as school bus turn-arounds or pick-up points.

It should be noted that §3635(5) provides:

"5. For the purpose of affording the greatest possible protection to school children, drive-off places on public highways may be designated by the appropriate board of education or district superintendent to permit school busses to be driven off the highway to receive or discharge school children, and the state or municipality having jurisdiction of such highway, is authorized to provide construction and maintenance of such designated drive-offs."

It is clear that, if the school district were to designate certain drive-off places on public highways, then the town could construct such places adjacent to town public highways at the town's expense, and, of course, could remove snow from the drive-offs, inasmuch as they would be part of the town highway. No authority is granted which would allow the board of education to designate private drives or roads as such drive-offs.

Therefore, it would be necessary for the school district to contract with the town pursuant to Highway Law, §142-d, in order for the town to plow snow from private driveways or roads.

Where the town highway department employees are operating town equipment under a contract between the town and a school district, we are of the opinion that the highway equipment operator would be acting within the scope of his authority and would be covered against personal liability by the town's liability insurance coverage.

(3) In 16 Op. State Compt. 13, 1960, this Department stated that a town superintendent of highways may deposit fill (spoil), taken from town highway construction projects, upon private property with the consent of the owner of the property. We noted, however, that, if the material has a market value, it should be disposed of in a manner most advantageous to the town. Since the drawing of spoil from town highway construction projects onto private property may be a legitimate town highway department activity, a town employee would be protected from personal liability while so engaged.

Conclusions

(1) A town highway superintendent may authorize town snow removal equipment to plow out portions of private driveways in

order to allow such equipment to turn around. Town employees would have the full protection afforded town employees while plowing such portions of private drives.

(2) The board of education may contract with the town to have the town highway department plow snow from portions of private driveways and roads designated by the school district as pick-up points, and the town employee would be protected from personal liability while so engaged.

(3) A town employee would have all the protection granted town employees while drawing spoil onto private land from town highway construction projects, where such drawing is authorized by the private owner.

May 27, 1969