



The Commonwealth of Massachusetts
Office of the Inspector General

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December 2, 2005

Timothy C. Smith
Town Administrator
Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

Mr. Smith:

It has been brought to the attention of the Office of the Inspector General that the Wellfleet Board of Selectman has appropriated money for the plowing of private ways in Wellfleet. The appropriation of this money is not by itself adequate to satisfy Massachusetts General Law (M.G.L.), Chapter 40 concerning the use of public funds in this manner.

In order for a municipality to expend funds to plow a private way, the municipality must comply with M.G.L. c. 40, § 6C and 6D.

M.G.L. c.40, § 6C states:

A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

M.G.L. c.40, § 6D states:

Section six C shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty percent of the total number of registered voters, substantially in the form of a question, which shall be placed on the official ballot used for the election of officers at such city or town election... If a majority of the votes in answer are in the affirmative, then said section shall thereupon take full effect in such city or town, but not otherwise.

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It appears that Wellfleet has not complied with M.G.L. c. 40. As a result, the plowing of private ways by the town of Wellfleet is a legal violation. For the town to continue to plow private ways it must act to comply with M.G.L. c. 40. According to your assistant town administrator, the town plans to put this issue on the ballot for the town's spring election.

Prior to the spring ballot, you may wish to consult with the towns of Barnstable and Harwich, two towns that allow for the plowing of private ways and have developed guidelines to govern the issue. In any event, the town must comply with the law if it intends to plow private ways in the winter of 2006/07.

If you have any questions or are in need of assistance, please contact me at 617-722-8819.

Sincerely,

Neil Cohen
Deputy Inspector General
Audit and Oversight Division