

HIGHWAY LAW § 205-a.

The town highway superintendent is unauthorized to designate a town road as a seasonal limited use highway if, as a factual matter, at least one occupied residence or commercial building depends upon the highway for access.

January 30, 1995

Frederick H. Monroe, Esq.  
Town Attorney  
Town of Minerva  
P. O. Box 465  
Chestertown, NY 12817-0465

Informal Opinion  
No. 95-3

Dear Mr. Monroe:

You have asked that we interpret section 205-a of the Highway Law which provides for designation of seasonal limited use highways. You inquire whether under certain circumstances, the town is obligated under section 205-a to remove snow and ice from a highway.

Under section 205-a, a town highway superintendent is authorized annually to designate on or before the first day of November a town highway as a seasonal limited use highway. They are defined as town highways "without occupied residences or commercial buildings dependent upon such highways for access". The town may discontinue snow and ice removal and maintenance of seasonal limited use highways from the first day of December until the first day of April.

You have indicated that several residences on the highway in question are occupied. One family believes that the town is obligated to remove snow and ice and maintain the road during the winter months while other residents would prefer that the road not be plowed and instead be used for recreation. It seems clear under section 205-a that a town road is not eligible for designation as a seasonal limited use highway, if at least one occupied residence or commercial building depends upon the road for access. The town highway superintendent annually may make this factual determination. Further, persons residing on such a highway and depending upon it for access do not have the discretion to refuse town removal of snow and ice and maintenance of the highway. Section 205-a prohibits the designation of a town road as a seasonal limited use highway if, as a factual matter, at least one residence or commercial building depends upon the highway for access.

We conclude that the town highway superintendent is unauthorized to designate a town road as a seasonal limited use

highway if, as a factual matter, at least one occupied residence or commercial building depends upon the highway for access.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE  
Assistant Attorney General  
in Charge of Opinions