

NY CONST, ART VIII, § 1; MUNICIPAL HOME RULE LAW
§ 10(1)(ii)(a)(12) VILLAGE LAW §§ 6-610, 6-612, 7-730(2)(a),
7-732.

A village may not maintain private streets. The village may acquire the streets through dedication or eminent domain and, once acquired, expend public resources to maintain the streets. A village may require that privately owned streets be maintained by their owners in accordance with established standards.

May 5, 1999

Lawrence Praga, Esq.
Village Attorney
Village of Pelham
195 Sparks Avenue
Pelham, NY 10803

Informal Opinion
No. 99-17

Dear Mr. Praga:

You have asked whether a village may repave a private street or fill in dangerous potholes upon request of the residents who are also the owners of the street. We conclude that it may not.

A village has no authority to expend public resources to maintain private streets. The provision of these services would constitute an unconstitutional gift of public funds or property. NY Const, Art VIII, § 1.

Generally, private streets remain private until they have been ceded to the village and formally accepted through resolution of the village board of trustees, a process referred to as dedication. Id., § 6-610. The procedure for dedication is set forth in the Village Law. Id. A village may also acquire a private street through exercise of its power of eminent domain. Op Atty Gen (Inf) No. 87-2. Once a street is acquired by the village and becomes a public street, the village may expend public funds to improve and maintain it. Village Law § 6-612.¹

¹Normally, a village would acquire ownership of streets developed as part of a housing subdivision. Upon the development of a housing subdivision subject to planning board review, the streets are private until they have been ceded to the village and formally accepted as public streets by resolution of the village board of trustees. Village Law § 7-732. Alternatively, private

Therefore, if streets are not dedicated or condemned by the municipality, they remain private.

A village may enact a local law, utilizing its authority to protect the health, safety and general welfare of persons and property in the community, to require that privately owned streets be maintained by their owners in accordance with established standards. Municipal Home Rule Law § 10(1)(ii)(a)(12). Such a local law would promote the public welfare by ensuring that private streets are safe, remain passable and can safely be used by emergency vehicles such as police cars, ambulances and fire trucks.

We conclude that a village may not maintain private streets. The village may acquire the streets through dedication or eminent domain and, once acquired, expend public resources to maintain the streets. A village may require that privately owned streets be maintained by their owners in accordance with established standards.

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

streets may be condemned by the village for use as public streets. Id. As part of the subdivision review process, the streets and highways within a subdivision are required to meet established standards. Village Law § 7-730(2)(a).