

Free Winter Sand for Residents' Personal Use

“Maine Town & City” - October, 2018, Maine Municipal Association

Question: Is it legal for a municipality to make sand available free of charge to residents for personal use during the winter months?

Answer: Although there's no statute or case law directly on point, we think this practice is probably lawful. In any case, it is longstanding, widespread, and not likely to be discontinued in those municipalities that do so, at least not for legal reasons.

The simple fact of the matter is that for many years, many towns and cities have made limited amounts (typically a couple of buckets' worth) of sand available to local residents at no charge and on a per-storm basis for personal use in their home driveways and dooryards. Users must supply their own buckets and must come and get the sand themselves. Commercial use is strictly forbidden.

As innocuous as all this seems, occasionally we hear objections, usually on the ground that it constitutes an illegal use of public funds for private purposes. Although Maine law does indeed prohibit the use of public funds for private purposes (see Me. Const. art. IV, pt. 3, § 1), we think providing a small amount of free sand to residents for personal use following a winter storm is distinguishable from routine public maintenance or plowing of private roads, which is illegal (see *Opinion of the Justices*, 560 A.2d 552 (Me. 1989)). This modest gesture helps keep residents safe and their homes safely accessible to public safety and emergency services during hazardous weather conditions, which is arguably a valid public purpose.

That said, municipalities have no legal obligation to provide free winter sand to anyone, nor are commercial properties or contractors entitled to the same just because they pay taxes too. Participating municipalities can (and almost always do) limit this benefit to residents for personal use only.

While we're on the subject, note that the Maine Department of Environmental Protection (DEP) allows small outside “residents only” sand-salt piles provided (1) they're located on the same site as the sand-salt building, (2) controls such as cement blocks or Jersey barriers are used to minimize pile movement and prevent “sprawl,” and (3) the pile contains no more than one truckload of material at a time. The DEP prefers that these piles also be kept on an impervious surface, if possible, and removed to the building at the end of the winter season. (By R.P.F.)