

MEMORANDUM TO MUNICIPAL CLIENTS

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shall be assessed; (f) the liability limit of the city or town on account of damages caused by such repairs; (g) if the ways shall have been opened to public use for a term of years; and (h) if a cash deposit shall be required for said repairs.

II. Liability

Liability for municipal repairs to private ways is governed by Massachusetts, General Laws Chapter 84, Sections 23, 24 and 25.

General Law c.84, §23 provides:

A way opened and dedicated to the public use, which has not become a public way, shall not, except as provided in the two following sections, be chargeable upon a town as a highway or town way unless laid out and established in the manner prescribed by statute.

This section's primary purpose is to restrict the liability of municipalities for injuries or property damage caused by lack of maintenance or repair of private ways even if used by the public. Dakin v. Summerville, 262 Mass. 514 (1928). If the way is neither laid out as a public way, nor "opened and dedicated to the public use" then municipal liability is not an issue. If the way has been opened and dedicated to public use, then liability is governed by sections 24 and 25 of Chapter 84.

Both the statute and case law provide that a municipality will not be liable for an injury caused by a defect on a private way opened and dedicated to the public use if a conspicuous and legible notice is posted stating that the way is private and dangerous. This notice must be posted at the point the injured person entered the way. G.L. c.84, §24; Smith v. Lowell, 139 Mass. 336 (1885).

Section 25 governs a municipality's liability if proper notice is not posted. Under this section it has been held that a municipality which makes repairs to a private way opened and dedicated to the public use is open to liability for the next six years. That is, if a plaintiff's injury occurs within six years of a municipality's repairs, the municipality may be found liable. Havden v. Attleborough, 73 Mass. 338 (1856). The repairs by the municipality may be minor and still open the municipality to liability. Fixing potholes on a private way opened and dedicated to the public use has been held to constitute a repair, giving