

This is what I have so far on “private ways” as they appear in the Maine statutes. I have put in italics things I see as problematic, and the major problems I have put in boldface.

Places where private way is found include:

12 MRS 12304-B - Applies to animals harvested in hunting. “4. Disposal of parts not presented for registration. A person may not dispose of the parts of a bear, deer or moose not presented for registration where they are visible to a person traveling on a public or private way.” (*Unclear whether this is intended to apply to private roads, but it should.*)

12 MRS 13106-A Subsections 6 and 7 - Operation of snowmobiles on a “public way or a private way maintained for travel.” (*Unclear whether this is intended to apply to private roads, but it should.*)

17 MRS 2802 Lists nuisances, including “obstructing or encumbering by fences, buildings or otherwise of highways, private ways, streets, alleys, commons, common landing places or burying grounds ...” (*Unclear whether this is intended to apply to private roads, but it should.*)

17 MRS 3853C - makes it a trespass to leave a parked vehicle “A. In a private drive or private way in a manner that blocks or interferes with the free passage of other vehicles without the permission of the owner of that private drive or way;” (*Since it refers to the owner of the private way, this evidently intends to refer to private roads, not private ways.*)

17-A MRS 361-A - Has to do with concealing stolen property, and *appears to intend private roads, not private ways, since it refers to public ways and private ways.*

23 MRS 1903-10A “10-A. Private way. "Private way" means a private road, driveway or public easement as defined in section 3021.” (This is problematic because it lumps two different types of entities into one definition. Private roads and private driveways are private. Public easements are not private.)

23 MRS 1914 - Has to do with the locations of signs, and *appears to mean private roads, not private ways.*

23 MRS 3021 - “2. Public easement. "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976. Private ways created pursuant to former sections 3001 and 3004 prior to July 29, 1976 are public easements.” (This unfortunately changes what a private way was understood to be before 1976.)

It is also worth noting that 23 MRS 3022 USED TO be the process for laying out of “private ways.” (It now calls them public easements.) It says, “The municipal officers may on petition therefor, personally or by agency, lay out a public easement **for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement.** [PL 1979, c. 127, §153 (RPR).]” (If you think about it, that means they were invariably dead ends, laid out primarily for the benefit of the person who requested the layout.)

The section continues, “After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, **public easements laid out under this section are limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42.**” (See *Fayette v Manter*, below.)

23 MRS 3101 - 3105-A (Also in the name of the Subchapter, which is confusing as it mostly applies to private roads, not private ways.)

Section 3101 says: A. "Private way" means a public easement as defined in section 3021, subsection 2.” But that means that this series of statutes (3101-3195-A) allows forcing

private individuals to pay to provide maintenance of a road that is open to public use. (Unconstitutional!) Section 3105-A allows towns to use equipment on “private ways” - but not private roads. Why not say what it means - they can use their equipment on public easements?

23 MRS 7229 - Applies to private railroad crossings, and *appears to mean private road, not private way.*

29-A MRS 101 paragraph 58: Private way. "Private way" means a way privately owned and maintained over which the owner may restrict use or passage and includes a discontinued way even if a public recreation easement has been reserved. (Note that a private way is not a public way as defined in paragraph 59: Public way. "Public way" means a way, owned and maintained by the State, a county or a municipality, over which the general public has a right to pass.)

29-A MRS 2063 - Allows the owner of a private way to restrict bicycle passage. Since a “private way” is not OWNED by a private individual, this *clearly refers to a private road, not a private way.*

29-A MRS 2053 subsection 4 applies to entering a public way from a private way, and says, “For the purposes of this subsection, ‘private way’ means any way or road access onto a public way, including an alley, driveway or entrance.” *(It appears this intends a private road, not a private way.)*

30-A MRS 3252 - The purpose of this section is to preserve trees along public ways. Subsection 4 says it does not, “B. Abridge the right of the owner or the owner's tenant to lay out a private way across that land or to clear and improve any of the land that is necessary for actual building purposes.

(1) If the municipal officers refuse to give consent for laying out a private way or for cutting and clearing any of the land that is necessary for immediate building purposes, when requested to do so in writing, that refusal is ground for a further award of damages to the owner as provided in subsection 3. *(This appears to refer to private roads built across private land.)*

30-A MRS 3110 “Unless otherwise provided by local ordinance or charter, when there is a dispute over the naming of a town way, private way or private road for E-9-1-1 purposes, the decision of the municipal officers is final.” *(This should probably be changed to public easement, since private roads are already named as another class of roads.)*

33 MRS 460 - 462, 465, 467 these sections have to do with determining who owns the land under a road. In most cases, 33 MRS 460 conveys ownership of the land under a road to the center line, subject to rights of access over the road. *(This has caused a lot of confusion.)*

35-A MRS 2503 Has to do with permits for public utility installation. Subsection 11 says, “No location permit is required for any facilities which existed within the limits of a private way before the legal acceptance of the private way as a public way and the facilities are deemed legal structures.” *(This appears to refer to private roads, not private ways.)*

Fayette v Manter 528 A.2d 887 (1987), footnote 1: “... a "private way subject to gates and bars" is the legal equivalent of a "public easement" as defined in section 3021(2). ...when a town discontinues a road and retains a "public easement," the public has an unfettered right of access over that road but the town has no maintenance responsibility.”

(Is there still a sign on the back stairs to the judge’s chambers in the Kennebec County Superior Courthouse saying “private way?” I know it was there in the 1980's.)

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