

Members of the State and Local Government Committee,

I am writing not to give you more material to read, but in the hope of making materials you have already been asked to consider easier to find, and thereby saving you some time.

Conflicting definitions of the term “private way”:

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.

<https://legislature.maine.gov/legis/statutes/23/title23sec3021.html>

29-A §MRS 101 - 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.

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.

<https://legislature.maine.gov/legis/statutes/29-A/title29-Asec101.html>

23 MRS §1903 - 10-A. Private way. "Private way" means a private road, driveway or public easement as defined in section 3021.

<https://legislature.maine.gov/legis/statutes/23/title23sec1903.html>

17-A MRS §505. Obstructing public ways

1. A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

[PL 1975, c. 499, §1 (NEW).]

2. As used in this section, "public way" means a way, including a sidewalk, owned and maintained by the State, a county or a municipality over which the general public has a right to pass by foot or by vehicle, a way upon which the public has access as invitees or licensees or a way under the control of park commissioners or a body having like powers.

[PL 2017, c. 432, Pt. C, §2 (AMD).]

3. Obstructing public ways is a Class E crime.

<https://legislature.maine.gov/legis/statutes/17-A/title17-Asec505.html>

Town of Fayette v Manter, 528 A.2d 887

<https://law.justia.com/cases/maine/supreme-court/1987/528-a-2d-887-0.html>

Footnote 1 - “[1] The phrase "private way subject to gates and bars" meant in 1945 that the Town retained, in effect, a public easement in the road. See *Browne v. Connor*, 138 Me. 63, 67-68, 21 A.2d 709, 710 (1941). The term "public easement" is now defined in 23 M.R.S.A. § 3021(2) (1980). The parties agree that a "private way subject to gates and bars" is the legal equivalent of a "public easement" as defined in section 3021(2). The parties also agree that 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. The parties disagree over whether this definition of a public easement is constitutional. The Manters argue that a town should be permitted to retain a public easement in a road only if the town maintains it or fully reimburses private individuals as costs are incurred by those individuals in maintaining the road.

Summary:

23 MRS §3021 says private ways are for *public access*.

29-A §MRS 101 (58) says the owner of a private way *may restrict use or passage*, even if it's a public easement.

23 MRS §1903 says a private way is *either one* of the above.

29-A MRS 101 (59) specifies that only ways *maintained* by the public are considered *public* ways.

17-A MRS §505 (2) says that "*public way*" includes not only ways that are maintained by the public, but also ways upon which the public has access as invitees or licensees.

Town of Fayette v Manter says the public has an *unfettered right of access* over a private way.

Examples of the result of these contradictory definitions:

Example 1:

Background: A 1945 County Commissioners' order said the Young Road in Fayette was a "private way subject to gates and bars." This order was *not* made "pursuant to former sections 3001 and 3004 prior to July 29, 1976," as per the definition in §3021. (Those sections did not exist in 1945, and they granted towns, not counties, the power to lay out or discontinue private ways.) Based on those two facts and on 29-A §MRS 101, paragraphs 58 and 59, David Manter concluded that Young Road is not a public way, and that he had a right to restrict use or passage. He posted the road "no trespassing" in an attempt to prevent yet another logging operation from using the south end of the road, as he had already had to rebuild it after each of several previous logging operations. But based on the definitions in 23 MRS §3021 and 17-A MRS §505 (2), he was arrested, found guilty, and sentenced to 10\* days in jail:

State of Maine v Manter <https://caselaw.findlaw.com/me-supreme-judicial-court/1061320.html>

"...the Superior Court (Kennebec County, Marden, J.) issued an order permanently enjoining Manter from 'taking any action which interferes in any way with the public's use of the Young Road.' Despite this injunction, Manter placed a no trespassing sign in the middle of the road. He was promptly arrested for obstructing a public way and was then released on bail with the condition that he remove the sign and obstruct Young Road no further. Several months later, Jody Pease was attempting to use Young Road when Manter prevented him from doing so by standing in the road and refusing to move."

"...the testimony supports the finding that Manter obstructed Young Road.

The entry is:

Judgment affirmed."

Question: Which definitions apply? If Young Road is a discontinued road that was designated a "private way" by the county in 1945, and if it is not maintained by the public, is it a public way or isn't it?

Example 2:

Franklin Property Trust V. Foresite, Inc., et al. 438 A.2d 218 (1981)

<https://www.casemine.com/judgement/us/5914c42fadd7b049347cbdf9>

Just for fun, go to the above site, press Ctrl F, and type the words private way (without quotation marks) into the search box. You can then scroll down through the 47 times where that term appears in the decision, (particularly from #8 on,) and see how the court pointed out conflicting definitions and different uses of the term.

\*(David Manter was released after 8 days for good behavior, presumably for not having obstructed any roads while in jail, and having repaired a broken bunk bed while he was there.)