

**Question:**

This inquiry regards provisions for posting town highways, spelled out in 19 V.S.A. § 1110. Do these provisions apply to Legal Trails as well?

We have four Legal Trails in town that have been under extensive discussion; all were previously town highways.

**19 V.S.A. § 301:**

(8) "Trail" means a public right-of-way which is not a highway and which:

(A) previously was a designated town highway having the same width as the designated town highway, or a lesser width if so designated; or

(B) a new public right-of-way laid out as a trail by the selectmen for the purpose of providing access to abutting properties or for recreational use. Nothing in this section shall be deemed to independently authorize the condemnation of land for recreational purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1991, No. 47, § 1; 2009, No. 50, § 89.)

Do the provisions of 19 V.S.A. § 1110 fall within the authority of selectmen to reasonably regulate the uses of recreational trails?

**Response from VLCT**

The question relates to selectboard authority and our inquiry policy poses limitations on what type of advice/information we can provide to officials asking about other officials' duties. However, as a member of the trails committee, I can provide the following general information to you. It should not be used to challenge any selectboard decision, though, as ultimately the board represents the town's interest and that is who we serve.

As you note, "trail" is defined under State law as:

(8) "Trail" means a public right-of-way which is not a highway and which:

(A) previously was a designated town highway having the same width as the designated town highway, or a lesser width if so designated; or

(B) a new public right-of-way laid out as a trail by the selectmen for the purpose of providing access to abutting properties or for recreational use. Nothing in this section shall be deemed to independently authorize the condemnation of land for recreational purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1991, No. 47, § 1; 2009, No. 50, § 89.)

19 V.S.A. § 301(8) at <https://legislature.vermont.gov/statutes/section/19/003/00301>.

Trails are not town highways - they are a separate class of rights of way that is held by the town. Therefore, I do not interpret 19 V.S.A. Section 1110 to include trails because it uses the term highway which the statutory definition above says trails are not.

See <https://legislature.vermont.gov/statutes/section/19/011/01110>, in part:

## **§ 1110. Posting of highways**

(a) If the use of a town highway is to be restricted, the selectmen shall post copies of the rules in at least two public places in the town. Posting signs provided by the agency informing the traveler of the restriction shall be conspicuously placed at each end of the highway or portion of the highway. The secretary shall be responsible for furnishing notice of any restricted use of state highways.

However, there are other provisions of law that allow the selectboard to control access to trails. Towns are free to create limitations on how and when trails may be used merely by establishing a trail ordinance. 19 V.S.A. § 304(5) gives broad authority to municipalities to “make regulations governing the use of pent roads and trails and to establish penalties not to exceed \$50.00 for noncompliance...” Under this grant of authority, the town may restrict which trails are allowable for pedestrian use only, or a mix of bikes and pedestrians. Or, the town could adopt an ordinance that provided for a civil ticket (fine) penalty for violators if a trail is restricted to any certain use. Trails are owned by the town, so it can use policies and ordinances generally to restrict or specifically allow certain uses or activities on them. The selectboard members can feel free to contact us directly with questions about their authority, or you can follow up at their direction/on their behalf in accordance with our inquiry policy.