

Response from Vermont League of Cities and Towns

Re: Echeverria submitted legal opinion

[T]he landowner is referring to 19 V.S.A. § 304(a)(5) which grants permission to Selectboards to “grant permission to enclose pent roads and trails by the owner of the land during any part of the year, by erecting stiles, unlocked gates, and bars in the places designated and to make regulations governing the use of pent roads and trails and to establish penalties not to exceed \$50.00, for noncompliance. Permission shall be in writing and recorded in the town clerk's office...” The answer to your question is no. Generally speaking, towns need to adopt ordinances in order to regulate the conduct of its citizenry. An ordinance is “an expression of municipal will affecting the conduct of the inhabitants generally, or of a number of them under some general designation.” *City of Barre v. Perry & Scribner*, 82 Vt. 301 (1909). Municipal ordinances carry the state’s authority and have the same effect within the municipality’s limits as a state statute. Once adopted according to statutory process (24 V.S.A. §§ 1972 et seq), they become legally enforceable local laws. The counter to this landowner’s position would be if there is no policy or more to the point an ordinance in place, how would the Selectboard enforce against the alleged behavior. Rather than engage in a legal debate with this landowner however I would recommend directing him to Jenny Prosser at the Vermont Secretary of State’s Office. Jenny serves as General Counsel and Director of Municipal Assistance and provides general legal information regarding municipal law to members of the public. Jenny can be reached via email at jenny.prosser@vermont.gov or by phone at (802) 828-1027.