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GARFIELD H. MILLER (1946-2001)

JOHN C. CANDON

April 16, 2021

John Echeverria and Carin Pratt
232 Justin Morrill Highway
Strafford, Vermont 05072

Re: Tunbridge trails

Dear John and Carin:

The Vermont League of Cities and Towns has provided a brief legal analysis in response to a request from Wendy Palthey, the Tunbridge Administrative Assistant (attached), and you have asked me whether this analysis affects the conclusion in my April 6, 2021, opinion letter that, in the absence of a trail regulation adopted by the selectboard, there are no authorized public uses of legal trails. The answer is no, it does not alter my conclusion,

First, the league does not address much of the substance of my opinion letter. Ms. Palthey asked the league to address one particular provision of Title 19 discussed in my letter, but she apparently did not forward my 4-page letter to the league for its review. Thus, the league did consider my explanation for *why* 19 VSA § 302(a)(5) imposes an obligation on the selectboard to adopt a regulation in order to establish authorized uses. My letter also discussed other relevant statutory provisions, including 19 VSA 301(8), 19 VSA § 302 (a) (5), and 19 VSA § 310 (c), but the league addresses none of these provisions.

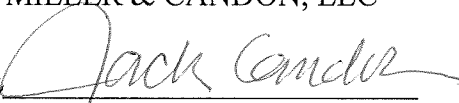
Second, to the extent the league addresses the substance of the issue, the league makes an assertion about Vermont law that is irrelevant to the questioned I addressed in my opinion letter. The league says that “towns need to adopt ordinances in order to regulate the conduct of its citizenry,” and cites *City of Barre v. Perry & Scribner*, 82 Vt. 301 (1909), which includes general language about the nature and purpose of ordinances. This statement and authority have no bearing on the question of the scope of authorized public uses of a legal trail, and the closely related question of the rights retained by the owner of land subject to a legal trail. As I explained in my letter, while the authorized public uses of a highway can be regarded as self-evident, 19 VSA § 302(a)(5) makes clear, especially when read in conjunction with other provisions in Title 19, that the selectboard needs to adopt a regulation to authorize public uses of a legal trail.

A curious position stated in the League’s response was the following:

“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?”

That seems more supportive of your position than contrary. In the absence of regulated, authorized uses, how would the Selectboard enforce against the alleged behavior?

Respectfully,
MILLER & CANDON, LLC

By: 
John C. Candon

JCC:bhs
Encl.

From: Garrett Baxter <gbaxter@vlct.org<<mailto:gbaxter@vlct.org>>>
Subject: RE: More legal trail questions
Date: April 8, 2021 at 9:07:32 AM EDT
To: "Tunbridge Adm. Assistant"
<tunbridge.adm.assist@gmail.com<<mailto:tunbridge.adm.assist@gmail.com>>>

Good morning Wendy,

I think there may have been a mistake as the law cited doesn't exist. I assume the 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<<mailto:jenny.prosser@vermont.gov>> or by phone at (802) 828-1027.

I hope this helps. Stay safe and take care.

Sincerely,

Garrett A. Baxter, Esq.
Senior Staff Attorney, Municipal Assistance Center Vermont League of Cities and Towns
1-800-649-7915