



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Highways

Constitutional & Statutory Authority

See generally, Municipal Home Rule Law, § 10(1)(ii)(a)(6)

Local government power to adopt and amend local laws relating to acquisition. [Constitution article IX, § 2]

Laying out, opening, altering, working or discontinuing, private or local bill prohibited. [Constitution article III, § 17]

Counties, Cities, Towns and Villages – Maintenance of improved county roads is responsibility of the county under the jurisdiction of the county superintendent of highways, the cost of such maintenance may be paid by the county or apportioned between the county and the local municipality in which such road or highway is located. [Highway Law § 129]

Authorized to petition the Commissioner of Transportation to provide additional width or improvement to State highway at expense of county or joint expense of county and any city, village or town. [Highway Law §§ 49, 59]

Counties – County superintendent appointment and general duties delineated. [Highway Law, §§ 100, 102; County Law article 19, § 725]

Superintendent required to prepare map showing proposed county road system. No road may be constructed or maintained with county funds unless it appears on the map (with certain exceptions). [Highway Law § 115]

Authorized to layout, construct, open, alter or discontinue a county highway and to acquire necessary land. [Highway Law §§ 115-a, 115-b, 118-120, 131-b]

County may provide for the construction or improvement of town highways or sections thereof, in one or more towns in the county, or highways along the boundary between a city or village and a town at the joint expense of the town and county. [Highway Law §§ 194, 195]

Authorized to provide aid to towns for the construction or improvement of town highways. [Highway Law § 195]

Cities – See individual city charters.

Authorized to layout, construct, and discontinue city streets and lighting systems for lighting streets. [General City Law § 20(7)]

Towns and Villages – Village and a suburban town (see Town Law, Article 3-A) may enter into a municipal cooperation agreement whereby the town will repair and maintain village streets with the town being reimbursed by the village. [Town Law § 56]

Towns – Superintendent required, [Town Law, §§ 20(1) and 32] unless town has a contract in force and effect with another municipality for provision of highway, road and street maintenance and repair for a period of not less than five years (contract subject to permissive referendum in some cases) and has adopted a law to abolish the office of the town superintendent of highways. [Town Law §§ 20(1)(k)]

Town superintendent has care of all town highways and must keep them in good repair and free from obstructions due to snow and ice. [Highway Law § 140]

Superintendent required to sufficiently describe and record highways in town clerk's office. [Highway Law § 140(8)]

Town board is authorized to approve petition for improvement of a street or highway, private road, right of way, or portions thereof. [Town Law § 200(1)]

Authorized to petition the Department of Transportation to provide additional width or improvement to State highways situated in the town, the cost to be borne wholly by the town. [Highway Law §§ 48, 59]

Villages – Streets under the exclusive control of the board of trustees. [Village Law § 6-602]

Authorized to layout, alter, widen, narrow, discontinue or dedicate streets in village by resolution. [Village Law § 6-612]

Authorized to petition the Commissioner of Transportation to provide additional width or improvement to State highways situated in the village, the cost to be borne by the village. [Highway Law §§ 46, 59]

Board of trustees of any village may cause any highway improvement to be made on its own motion with costs borne by the village and/or lands benefited thereby. [Village Law § 6-630]

Authorized under certain circumstances to petition Commissioner of Transportation for construction or improvement of a highway to connect streets within village, with costs to be borne by county. [Highway Law §§ 47, 261]

Authorized under certain circumstances to pay for the improvement of village roads connecting State highways. [Highway Law § 47]

Village board of light commissioners may contract for lighting village streets. Contract may be for a maximum of 10 years. [Village Law article 12]

Bridges

Statutory Authority

Counties – Authorized to construct, repair, maintain or abandon county bridges. [Highway Law § 131-b]

Authorized to take over a bridge 25 feet or longer on a town highway or any town bridge over 25 feet located in an unincorporated village. [Highway Law § 234(10)]

Authorized to fund reconstruction of town bridge destroyed by the elements. [Highway Law § 131-d]

Authorized to construct and improve bridges in one or more towns at joint expense of the county and town. Maintenance is town expense unless county chooses to share. [Highway Law §§ 237, 238]

State commissioner of transportation required to inspect bridges not on State highway system or under jurisdiction of a public authority and to close unsafe bridges. [Highway Law § 231]

State commissioner of transportation authorized to promulgate a uniform code of bridge inspection. [Highway Law § 232]

County superintendent has responsibility for maintaining all county roads, town highways and bridges within the county. [Highway Law § 102(1); County Law § 725]

Inspections by county of city, town and/or village highway or bridge at the written request of town superintendent and city and village mayor. [Highway Law § 102(2)]

Cities – Authorized to establish, construct, maintain, operate, alter and discontinue bridges. [General City Law § 20(9)]

Towns – Required to maintain all bridges having a span of less than 25 feet with its borders. [Highway Law § 234(8)]

Authorized to assume maintenance of bridges in villages previously maintained by village. [Village Law § 6-608]

Superintendent required to inspect bridges within the town during April – October of each year. [Highway Law § 140(2)]

Town superintendent has responsibility for the care and maintenance of town highways and bridges less than two rods in width. [Highway Law § 140(1)]

Authorized to contract for the lighting of improved State highways, county roads and bridges on such highways in the area of the town outside of villages. [Town Law § 64(19)]

Villages – Authorized to construct and maintain bridges. [Village Law § 6-606]

Authorized to maintain certain bridges. May assume or relinquish control of all bridges wholly within its boundaries. [Village Law §§ 6-604 to 6-608; Highway Law § 231]

Highway Equipment

Statutory Authority

Counties – County road machinery fund required. Board of supervisors may authorize expenditures for machinery. [Highway Law § 133]

Authorized to rent county-owned equipment to any municipality or district within the county. [Highway Law § 133-a]

Authorized, with approval of board of supervisor, to sell equipment if no longer needed. [Highway Law § 133(4)]

Authorized to permit use by any county association, of any street or highway machinery, tools or equipment owned by the county. [County Law § 224(8)(f)]

Cities – Authorized to rent city-owned equipment to the county within which the city is wholly or partially located, or to any governmental unit in such county. Fee may not be less than the hourly rate fixed by State commissioner of transportation. [General City Law § 20(31)]

Towns – Town superintendent, with approval of town board, is authorized to purchase or hire equipment. [Highway Law §§ 142(1-a), 143]

Town authorized to permit use of town equipment by other municipalities. [Highway Law §§ 142-b, 142-d]

Town superintendent, with approval of town board, authorized to sell such equipment if no longer needed. [Highway Law § 142(5)]

Snow Removal

Statutory Authority

Counties, Cities, Towns and Villages – Authorized to request emergency aid for control of snow and ice from State during emergency. [Highway Law § 55]

Authorized to provide funds for snow removal and snow fences. [Highway Law § 274-a]

Counties – Authorized to remove snow from county roads, to treat roads to remove danger, and to erect snow fences. [Highway Law §§ 135, 274-a]

May contract with other municipalities for snow removal on county roads. [Highway Law § 135-a]

Towns – Authorized to remove snow on village streets. [Highway Law § 142-c]

Town superintendent has care of all town highways and must keep them in good repair and free from obstructions due to snow and ice. [Highway Law § 140]

Villages – May contract with town for snow removal. [Highway Law § 142-c]

Special Districts

Towns

May remove snow and ice from school district property, repair roads belonging to a school district, and permit the use of town highway equipment by any fire district, special improvement district or school district located in whole or in part in the town. [Highway Law § 142-b]

May establish snow removal districts and lighting districts. [Town Law articles 12 and 12-A]

During the thirteen-year period, 1984-1997, ten transportation development districts were established by Special Act.

Selected Court Cases

Drake v. County of Herkimer, 2005, 15 A.D.3d 834, 788 N.Y.S.2d 770. Municipality's duty to maintain roads is measured by courts with consideration given to the proper limits on intrusion into municipality's planning and decision-making functions.

Hill v. Town of Reading, 2005, 18 A.D.3d 913, 795 N.Y.S.2d 126. Since town was not responsible for maintenance of county road, town owed no legal duty to motorists with respect to adjacent drainage ditch; that duty rested solely with county.

Winney v. County of Saratoga, 2004, 8 A.D.3d 944, 779 N.Y.S.2d 605. Municipality is accorded a qualified immunity from liability arising out of a highway planning decision, but may be held liable when its study of a traffic condition is plainly inadequate or there is no reasonable basis for its traffic plan.

Evans v. Stranger, 2003, 307 A.D.2d 439, 762 N.Y.S.2d 678. A municipality has a continuing duty to review a roadway design plan in light of its actual implementation, but has no obligation to undertake expensive reconstruction of older roads solely based on updated highway safety standards.

Hilliard v. Town of Greenburgh, 2003, 301 A.D.2d 572, 754 N.Y.S.2d 29. The duty of a municipality to maintain its roadways in a reasonably safe condition extends to trees which are adjacent to the road and which could reasonably be expected to pose a danger to travelers; however, liability does not attach unless the municipality had actual or constructive notice of the dangerous condition.

Quigley v. Goldfine, 2000, 276 A.D.2d 681, 714 N.Y.S.2d 733, leave to appeal denied 2001 WL 309016, leave to appeal denied 96 N.Y.S.2d 706, 725 N.Y.S.2d 278, 748 N.E.2d 1074. Village was immune from liability in connection with a traffic accident at an intersection where the village was in the process of conducting a study and devising a traffic control plan for the intersection at the time of the accident, and no question was raised regarding the adequacy of the plan or the timeliness of its implementation.

Amato v. County of Erie, 1998, 247 A.D.2d 846, 669 N.Y.S.2d 104. Counties are responsible for traffic control at intersections of county and town roads.

Ledet v. Battle, 1996, 231 A.D.2d 884, 647 N.Y.S.2d 601. Town did not have duty to maintain or sign intersection of town road with state highway, even though town requested State to take safety measures with regard to intersection, since under statute State had jurisdiction over intersection.

O'Brien v. City of New York, 1996, 231 A.D.2d 698, 647 N.Y.S.2d 561, leave to appeal dismissed in part, denied in part 89 N.Y.S.2d 1026, 658 N.Y.S.2d 241, 680 N.E.2d 614. City was not liable for motorist's injuries in intersectional collision, despite lack of traffic control device; decision to install device was "discretionary governmental function" and, while city undertook study of intersection, it had not completed study at time of accident.

Village of Port Chester v. City of Rye, 1996, 234 A.D.2d 453, 651 N.Y.S.2d 146. Village lacked standing to challenge neighboring city's traffic ordinance, even though ordinance allegedly deprived heavy truck traffic from one of the possible means of access to village streets.

Opinions of the Comptroller and Attorney General

Attorney General Opinion 2006-8: L. 1905, Ch. 724; L. 1937, Ch. 929; L. 1985, Ch. 907; L. 1914, Ch. 478; *New York City Administrative Code* §§ 1-111, 24-356; *Highway Law* §§ 3(5), 189, 341(53)(1); *Vehicle and Traffic Law* § 1622. The town is not authorized to regulate speed on the portion of a highway built pursuant to special legislation that goes through the town.

Attorney General Opinion 2006-8: *Vehicle and Traffic Law* §§ 1202, 1640, 1660; L. 1958, Ch. 853; L. 1957, Ch. 698. Local governments with authority to regulate parking may permit parking closer to intersections than otherwise permitted under *Vehicle and Traffic Law*, § 1202(a)(2)(b) and (c).

Attorney General Opinion 2003-2. *Highway Law*, §§ 114, 115, 115-a; *Village Law*, § 6-602. The proper method of transferring control and supervision of a village road to the county within which the village is located is by adding the village road to the county road system map pursuant to *Highway Law*, § 115. Upon such transfer, the county is responsible for maintaining the road.

Comptroller Opinion 2002-12: *General Municipal Law* §119-o. Pursuant to a municipal cooperation agreement, two villages may combine their water, sewer and street departments under the supervision of a single superintendent of public works, and all officers and employees performing services for the combined department, including the superintendent, may be designated as officers and employees of the villages.

Comptroller Opinion 2001-13: *Town Law*, § 130(7)(a); *Municipal Home Rule Law*, § 10; *State Constitution*, Article IX, § 2; *Vehicle and Traffic Law*, §§ 1600, 1604. Absent a State statute providing express authority, a town may not install a tollbooth and charge a fee to certain users of a town highway.

Comptroller Opinion 2000-11: *Town Law* §32(2). A deputy town superintendent of highways, whether appointed pursuant to *Town Law* §32(2) by the superintendent of highways or by the town board, serves at the pleasure of the superintendent.

Attorney General Opinion 99-17: *NY Const*, Art VIII, § 1; *Municipal Home Rule Law* § 10(1)(ii)(a)(12) *Village Law* §§ 6-610, 6-612, 7-730(2)(a), 7-732. A village may not maintain private streets. The village may acquire the streets through dedication or eminent domain and, once acquired, expend public resources to maintain the streets. A village may require that privately owned streets be maintained by their owners in accordance with established standards.

Comptroller Opinion 98-10: *Village Law*, §6-602; *Highway Law*, §142-c; *General Municipal Law*, §119-o; *Municipal Home Rule Law*, §10(1). A town may not raise town taxes within a village to generate revenues to reimburse the town for the cost of repairs and maintenance of village streets performed by the town pursuant to a contract with the village.

Comptroller Opinion 98-14: Town Law, §§104, 106; Highway Law, §141; Municipal Home Rule Law, §10(1). The town highway superintendent's annual budget estimate must specify the four major categories as set forth in Highway Law, §141 and further must be in such form and contain such information as the budget officer prescribes. A town may not, by local law, supersede these budget estimate requirements.

Comptroller Opinion 98-23: Village and Traffic Law, §§1600, 1643; Municipal Home Rule Law, §10(1)(ii)(a)(6). A village may not, pursuant to Vehicle and Traffic Law, §1643 or by local law, impose a village-wide maximum speed limit of twenty-five m.p.h. A village also may not establish such a speed limit within designated areas of the village. A village may, however, if separately and independently justified on a case-by-case basis, designate one or more portions of a village street, on a linear basis, as twenty-five m.p.h. zones.

Attorney General Opinion 95-1: Highway Law, §§ 115, 115-b, 115-c, 130, 234. A county may provide for the reversion of a bridge, which is part of the county road system, to a town in accordance with the procedures set forth in Highway Law, §§ 115-b and 115-c.

Comptroller Opinion 94-3: Town Law, §200. The approval of the State Comptroller is not required in connection with a proceeding for the improvement of a road pursuant to Town Law, §200.

Comptroller Opinion 91-49: County Law, §215; Highway Law, §§118-a, 131-b. A county may convey an abandoned county highway by private sale by the adoption of a resolution approved by a simple majority of the whole governing body at a duly convened meeting. In certain circumstances, a county may be permitted to convey title to abandoned county highway property only to owners of property abutting such highway.

Comptroller Opinion 90-13: Highway Law, §10(27). The State Department of Transportation has authority, at the request and expense of a village, to install sewer pipe for a village sewer project in conjunction with a DOT road reconstruction project.

Comptroller Opinion 89-57: Highway Law, §142-c; General Municipal Law, §§103, 119-o. The town board may authorize the superintendent of highways to utilize town highway equipment and personnel to repair and improve a village street of a village located within the town. The work would be performed upon such terms and conditions as may be agreed upon by the town board and village board. Such agreements between the town and village are not subject to competitive bidding requirements. 1971 Opns St Comp No. 71-76, unreported is superseded.

Comptroller Opinion 85-39. County Law, § 362(3); Highway Law, §§ 127(1), 133(4) and (5), 134; Municipal Home Rule Law, § 10(1)(ii)(a)(1). A county may appoint a county purchasing agent for the purpose of purchasing or renting all highway equipment, but the county may not make the purchases requested by the highway superintendent subject to the prior approval of such purchasing agent or a county administrator.

Comptroller Opinion 83-58: Highway Law, §§ 142(1)(a), 266. Normally, the purchase of highway equipment is initiated by a recommendation by the highway superintendent to the town board and, subject to board approval, the purchase is executed by the superintendent; however, in certain situations where an impasse exists between the board and the superintendent, the board may direct the town supervisor to complete an approved purchase.

Comptroller Opinion 83-172. Highway Law, §§ 141(1), 142-c(2) and (4), 277. A town may contract with a village for the repair and maintenance of village streets and the town may perform such services upon terms and conditions as may be agreed upon by the town board and village trustees.

Comptroller Opinion 83-240. Highway Law, § 142(2); Town Law, § 64(3). Town highway equipment is under the management and control of the town highway superintendent and the town board may not impose restrictions on its use so long as it is being used for town highway purposes. This rule applies even where the superintendent is traveling outside the limits of the town if such travel is related to his official duties.

Attorney General Opinion 82-59. Highway Law, §§ 2(4), 140(1), (2) and (5), 147, 189. The width of a town highway by use includes the shoulders of the road and whatever land is necessary for the safety of the traveling public. A town superintendent of highways is authorized to make repairs, erect safety barriers and remove obstructions to drainage within the boundaries of such highways.

Comptroller Opinion 82-340. Town Law, § 32(1); Highway Law, § 142-b. A town board may enter into an agreement with a school board for the town to plow snow on school district property located within the town and the town board may direct that the town superintendent of highways perform such plowing.

Attorney General Opinion 81-78. Highway Law, §§ 327, 328; Town Law, § 64(19) and (22), Articles 12, 12-A. A county may terminate the lighting of public highways without advance notice to towns. Towns may provide lighting on public highways as a general town charge. There is no duty for a town or county to provide lighting on public highways.

Comptroller Opinion 81-162. Highway Law, § 231(1); L. 1980, Chapter 54. Where the State Commissioner of Transportation causes inspection of bridges to be made, a percentage of the cost of such inspection is charged back to the municipality.

Comptroller Opinion 81-290. Highway Law, § 231(2) and (6). When a county superintendent inspects and condemns a bridge having a span of 25 feet or more located on a town highway, the town has the responsibility to repair or rebuild the bridge within a reasonable time, unless the county has taken over the bridge.

Attorney General Informal Opinion, March 5, 1981, p. 145. Highway Law, § 231. Where a bridge is located on a private road that has become a "highway by use," the town must accept responsibility for the bridge and provide repairs and maintenance.

Comptroller Opinion 80-251. Town Law, § 32(1); Municipal Home Rule Law, § 10(1)(ii)(a)(1). A town board may, by local law, establish a department of public works to be headed by the town superintendent of highways, and assign him the responsibility of supervising the town dump, town highways, and town water and sewer districts, provided that there is no impairment of, or interference with, his statutory duties as superintendent.

Attorney General Informal Opinion 80-263. Highway Law, §§ 140(2), 231, 232; Village Law, § 6-604. A town in which an incorporated village is located is responsible for repair and maintenance of a bridge located on a street in that village, unless the village has assumed responsibility for the bridge.

Comptroller Opinion 76-794, General Municipal Law §§ 119-n(c), 119-o; Highway Law §§ 142-b(4), 142-d. A town and a village, located in separate counties, may enter into an agreement whereby they would rent to each other various pieces of highway equipment.