

LEONARD KOPELMAN
DONALD G. PAIGE
ELIZABETH A. LANE
JOYCE FRANK
JOHN W. GIORGIO
BARBARA J. SAINT ANDRE
JOEL B. DARD
EVERETT J. MARDER
PATRICK J. COSTELLO

JOSEPH L. TEHAN, JR.
WILLIAM HEWIG III
THERESA M. DOWDY
KAREN V. KELLY

KOPELMAN AND PAIGE, P.C.
ATTORNEYS AT LAW
101 ARCH STREET
BOSTON MASSACHUSETTS 02110-1137

BOSTON OFFICE
1617-881-0007
FAX 1617-851-2725

NORTHAMPTON OFFICE
(413) 585-8832

WORCESTER OFFICE
(508) 752-0233

DEBORAH A. ELIASON
JEANNE S. MCKNIGHT
JUDITH E. CUTLER
ANNE-MARIE M. HYLAND
RICHARD BOWEN
CHERYL ANN BANKS
DAVID J. DONESKI
SANDRA CHARTON
BRIAN W. RILEY
MARY L. GIORGIO
KATHLEEN E. CONNOLLY
JOHN G. GANNON
KURT B. FLIEGAUF
MICHELE E. RANDAZZO

September 14, 1994

MEMORANDUM TO MUNICIPAL CLIENTS

TO: BOARD OF SELECTMEN, MAYOR, TOWN AND CITY COUNCIL,
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY

RE: Expenditure of Public Funds on Private Ways

We are often asked whether and under what conditions public funds may be spent on private ways. This Memorandum updates the All Town Memoranda of June 6, 1990 relating to the same issue.

"It is a fundamental principle, conforming to constitutional requirements ... and frequently declared, that 'money raised by taxation can be used only for public purposes and not for the advantage of private individuals.'" Opinion of the Justices, 313 Mass. 779, 783 (1943). The Supreme Judicial Court has, nevertheless, recognized that a public expenditure may in some instances convey a benefit on both the public and a private party. As a result, it is recognized in Massachusetts that a municipality may expend public funds on a private way provided that the private way is open to the public use. Public expenditures on private ways are governed by several statutes. These statutes are set forth and explained below.

I. Repairs

Temporary repairs may be made on private ways at the expense of the municipality, provided General Law c.40, §6N is satisfied. This statute provides that:

Cities and towns may by ordinance or by-law provide for making temporary repairs on private ways. Such ordinance or by-law shall determine (a) the type and extent of repairs; (b) if drainage shall be included; (c) if the repairs are required by public necessity; (d) the number or percentage of abutters who must petition for such repairs; (e) if betterment charges