

**Board of Selectmen Teleconference Meeting Notice,
June 17, 2020**

**The Board of Selectmen will hold a Workshop by Teleconference on
Wednesday, June 17, 2020 at 6:00 PM**

On your computer: https://zoom.us/j/326962753	Password Required: 175989
On your land line phone: +1.929.205.6099 Meeting ID: 326962753	
On your cell phone: +1.929.205.6099 Meeting ID: 326962753#	

I. Call Public Meeting to Order

II. Roll Call

Roll call for the Board, Introduce meeting members

III. Public Comments for items not on the agenda

IV. Regular Business

21-053 Annual Municipal Appointments

To make the following annual municipal appointments:

- Treasurer, Tax Collector, FOAA Administrator: Marjorie Stratton
- Town Clerk and Registrar of Voters: Vika Wood
- General Assistance Administrator: Marjorie Stratton
- A selectmen to represent the Town with the Maine Island Coalition
- Two selectmen to represent the Town with the Yarmouth Joint Standing Committee
- Animal Control Officer: Steven Auffant
- Code Enforcement Officer, Addressing Officer, Building, Plumbing, and Electrical Inspector: James Butler
- Fire Chief: Ralph Munroe
- Harbor Master and Shellfish Warden: Genaro Balzano
- Tax Assessor: Jacqueline Robbins
- Local Health Officer: Anita Anderson

21-054 Approve Municipal Appointments

To approve the following municipal appointments:

- To Approve the Treasurer's appointment of Christine Auffant as Deputy Treasurer , and the Town Clerk's appointment of Christine Auffant as Deputy Clerk and Deputy Register of Voters.

21-055 CART

To hear a report for the CART Committee

21-056 Road Commissioner

To consider a letter of resignation from the Road Commissioner

V. Executive Session

The Board of Selectmen will hold an Executive Session to discuss pursuant to 1 M.R.S.A § 405 (6) (A) a personnel matter.

VI. Other Business

VII. Adjourn Meeting

CHAPTER 8 – Relationship Between Selectmen and Road Commissioner

An elected road commissioner cannot be disciplined or removed from office by the selectmen, but the selectmen control the purse strings in relation to roadwork and therefore have the final say on most road matters.

The relationship between the selectmen and an elected road commissioner is sometimes stormy. An elected road commissioner cannot be disciplined or removed from office by the selectmen, but the selectmen control the purse strings for roadwork and therefore have the final say on most road matters. In addition, the rights and powers of an elected road commissioner are not fully defined in the law, so the job may vary according to local ordinance, charter, or long-standing custom. For example, in some towns the road commissioner oversees road maintenance and repair, but does not personally perform the work, while in other towns the road commissioner actually does the roadwork and is paid on an hourly or per mile basis. These topics are discussed in detail below.

How the Road Commissioner is Chosen; Term of Office; Discipline; Termination

A town has three basic options for selecting a road commissioner: (1) It can have one or more elected road commissioners; (2) It can authorize the selectmen to appoint a road commissioner; or (3) It can allow the board of selectmen to serve as a board of road commissioners.^{1 2} The town makes the initial decision to follow one of these methods at a meeting held at least 90 days before the annual town meeting, and once made, this determination stands until revoked at a meeting held at least 90 days before the annual town meeting. No special training or education is legally required for this job by State law.

Unless otherwise provided by article, ordinance, charter, or contract, the road commissioner serves a term of one year, and in any event, the road commissioner's term shall not exceed three years.

A road commissioner appointed by the selectmen may be disciplined and terminated (for cause, after notice, and hearing) by the selectmen. In a town manager form of government, the manager typically either serves as or oversees the road commissioner. (See the *MMA Handbook for Municipal Officers* for further discussion of the discipline and termination of appointed officials.) An elected road commissioner cannot be disciplined or removed from office by the selectmen. The voters may "recall" (remove from office) an elected road commissioner only if the town has a charter or ordinance provision allowing it.

Guidelines for Road Commissioners

This document outlines the duties of the Road Commissioner and the Selectmen's responsibilities and authority for maintaining the public ways.

1. The Road Commissioner will be in charge of the repair of all highways and bridges within the Town under the direction of a majority of the Selectmen (23 MRSA §2701).
2. The Road Commissioner will give bond to the satisfaction of the Selectmen and be responsible to them for the expenditure of money and discharge of his duties generally.
3. The Road Commissioner has the authority to employ the necessary personnel and equipment and purchase material for the repair of highways and bridges.
4. The Road Commissioner must plan ahead and discuss all repair, maintenance and other projects with the Selectmen. This includes developing a work schedule detailing the work to be done, a cost estimate for the work, and the location of the work projects. This schedule will be adhered to except in emergency situations such as snow storms or other unpredictable occurrences.
5. In case of sudden injury to ways or bridges the Road Commissioner must, without delay, repair them. In these emergency cases prior approval from the Selectmen is not required. However, the Road Commissioner must file a detailed report the next business day after the emergency repair is completed. For this purpose, an emergency is defined as any incident which could immediately endanger life and/or property (23 MRSA §3201).
6. The Road Commissioner will inspect town ways in _____ each year and report to the Selectmen the status of the town ways and needed repairs.
7. All projects, including but not limited to winter sand, tarring, road repairs and construction will be done only after the Road Commissioner submits a detailed budget of the project to the Selectmen. The Selectmen will approve or disapprove all projects.
8. When any ways are blocked or encumbered with snow the Road Commissioner will remove the snow in a manner directed by the Selectmen (23 MRSA §3201). The Road Commissioner will also direct removal of brush and loose obstructions from town ways that impede travel.
9. All equipment will be purchased by open bids. The Road Commissioner will draft complete specifications for any equipment and submit them to the Selectmen for review and to be sent out for bids.
10. The Road Commissioner will be responsible to the Selectmen for the expenditure of money , and shall keep accurate accounts, showing in detail all monies paid out, to whom, and for what purpose (23 MRSA §2703). All purchases, except routine maintenance supplies under the amount of \$ _____ are to be done with the Town's purchase orders. The Road Commissioner will submit monthly statements for any purchase orders to the Selectmen for approval. A majority of the Selectmen will sign each purchase order.
11. The Road Commissioner will settle all highway accounts in detail annually on or before the 20th day of February. This will be contained in the annual report (23 MRSA §2703). The Road Commissioner will participate in the budget process for determining appropriations for the coming year.

12. The Road Commissioner will maintain a complete and detailed maintenance log on all Town vehicles and equipment, and will submit these to the Selectmen for monthly review.

13. The Road Commissioner will document and approve all bills and specify to what project or equipment accounts these bills are charged.

14. The Road Commissioner and all employees of his department, both full and part time, will maintain and sign weekly time cards for all hours worked for the town. The Road Commissioner and employees shall work only those hours necessary to maintain town ways and equipment as required by these guidelines.

15. When the amount appropriated for road repairs is not sufficient the Road Commissioner may, with the written consent of the Selectmen, employ townspeople to perform the necessary work to an amount not exceeding 15% of the amount so appropriated (23 MRSA §2705).

16. Only town owned vehicles and equipment will be stored or serviced in the Town garage unless otherwise approved by the Selectmen.

17. The use of Town vehicles or equipment on statutory private ways (public easements) is prohibited. The use of Town equipment for private purposes is prohibited.

18. If a majority of the Selectmen determine that a condition exists which creates a hazard and renders a way unsafe for motor vehicle traffic, they will give the Road Commissioner written notice of the condition and order the Road Commissioner to remedy the situation within 24 hours. If the Road Commissioner fails to act as directed, a majority of the Selectmen may take steps necessary to eliminate the safety hazard.

Selectman as Road Commissioner or Road Crew Employee

Selectman Serving as Road Commissioner

A common question is whether a single selectman can serve as the road commissioner. It is the opinion of MMA Legal Services staff that a single selectman cannot serve as the road commissioner (either appointed or elected) as these are incompatible offices. This is because the selectmen have the authority to make final decisions on road matters under the local highway law,³ so a person who serves both as a selectman and as road commissioner cannot be expected to perform the duties of both offices faithfully.⁴ However, State law expressly allows that a board of selectmen can serve as a *board* of road commissioners.⁵

Selectman Serving as Road Crew Employee

A related question is whether a selectman can serve as a member of the road crew (municipal employee) where the board of selectmen has the authority to hire, discipline, fire or fix the compensation of the road crew employees. Technically, an employment position is not an “office,” so a selectman could serve as a member of the crew if no other law barred this dual role as selectman and road worker.⁶ However, if the road crew position was created or its pay was increased by action of the selectmen, then the selectman could not serve in that road crew position for the remainder of that selectman’s term and for one year thereafter.⁷ If, on the other hand, this is not a prohibited appointment, then he or she must abstain from participating or voting as a selectman on road-related matters. As a practical matter, we recommend against this arrangement since it tends to cause political troubles.

This question is further complicated when there is a town manager plan in effect. In other words, can a selectman be employed on the road crew if the town manager has complete administrative control over town employees, and there is no contact between the selectmen and the road crew? While there is technically no connection between the selectmen and road employees in this situation, we recommend against it for two reasons. First, in the public eye it often appears to be a conflict of interest and can cause problems in public perceptions. Second, it often causes internal problems. That is, a town manager may find it difficult to discipline or fire a road crew employee who also happens to be a selectman.

Compensation

The voters determine the compensation of an elected road commissioner, unless a charter or ordinance provides otherwise. Under State law, that office is supervisory in nature, and being in office does not guarantee that the road commissioner will get all or most of the road contracts. This issue does not usually arise in municipalities that have their own equipment and sand supply, but it can be a problem in towns that must hire out all road-related work.

In those municipalities, the tradition may be that the road commissioner (who is usually a private contractor as well) automatically does the roadwork. This tradition comes under fire, however, when the quality or cost of the work is questioned. Moreover, there is a question as to whether a road commissioner can fairly satisfy his or her supervisory obligations to the public while also performing the actual work.

In some communities the road commissioner is paid a yearly stipend to act as supervisor of the roads and to oversee the roadwork done by contractors. In other municipalities, the road commissioner receives an hourly wage for certain work (filling potholes, brush cutting, etc.) while major projects (paving, reconstruction, etc.) are bid out. In still other municipalities, the road commissioner also is paid as an “independent contractor” by the municipality for performing all roadwork. However, to the extent that the road commissioner receives pay from the municipality for work as a road commissioner or for actual road work, the municipality must withhold social security and State and local taxes, and the road commissioner should be included in the municipality’s workers’ compensation coverage. Further, while the road commissioner may claim to be an independent contractor for road plowing and maintenance work, the road commissioner (and any of the commissioner’s employees) could be considered a municipal employee by the federal and State departments of labor (with all of the associated withholding, insurance and personnel concerns), since it is difficult to tell where the road commissioner’s role ends and the road contractor’s duties begin when the same person serves in both capacities. This is another reason why the road contractor and the road commissioner should not be the same person.

Bidding Out Roadwork; Contract Authority

There is no State law generally requiring that contracts for municipal road repair, maintenance or plowing be put out to bid. A bid process may be required if State or federal money is involved, so be certain to review the language of any such grants. Also, a municipality’s charter or ordinance may require bidding. Even if no legal bidding requirement exists, a bid process may save the municipality money since there will be competition for the work, but bidding out has drawbacks as well. For example, the bid process may be time-consuming, and may not be feasible for minor day-to-day roadwork. Also, unless the bid process is done fairly, the municipality may be sued by disappointed bidders. If the municipality now has a satisfactory arrangement for roadwork with a particular person or outfit, it is not necessary to change it. The bid process should be used when it will benefit the municipality in terms of cost, quality or even political tranquility. (See Chapter 5, “Road Maintenance and Repair,” Contracting out for Road Maintenance.)

The decision whether to go out to bid can be made by the municipal officers, unless the voters have stated otherwise in an article, ordinance or charter. The municipal officers may delegate control of the bid process to the road commissioner (such as developing specifications, reviewing bids, choosing the successful bidder), but this should not be done where the road commissioner is or will be a bidder. An elected or appointed road commissioner may legally bid on road contracts, but only if he has no involvement in developing the specs, reviewing bids, or awarding the bid.⁸ (In light of the concerns raised previously, a municipality may preclude an appointed road commissioner from bidding by a statement to that effect in the contract or appointment papers.) If the road commissioner is chosen as the successful bidder, the selectmen must oversee the work, since the road commissioner cannot do the work and also supervise its performance and rule on its quality. Appendix I contains more detailed information on bidding and sample bidding documents.

The selectmen have the implied authority to enter contracts on the municipality's behalf if the term of the contract is one year or less. For example, if the voters raise an appropriate \$50,000 for winter and summer road maintenance, the selectmen can enter contracts to accomplish this purpose within the fiscal year. It is the opinion of MMA Legal Services staff, however, that the selectmen should not enter multi-year contracts without voter approval. For example, if the selectmen find that the best deal for road maintenance is through a three-year contract, the article should ask the voters to authorize the selectmen to sign a three-year contract, within the price range set by the voters. A recent case (see discussion in Chapter 5, "Road Maintenance and Repair") upheld a multi-year contract without specific voter authority, but the safe and prudent course is to obtain such authority before entering multi-year contracts.

Under Maine law, the legislative body of the municipality can authorize the road commissioner "or other persons" to make contracts for opening or repairing ways.⁹ This law conflicts to some extent with the road commissioner's lawful authority to hire personnel or purchase materials under the direction of the selectmen.¹⁰ This conflict was overlooked by the Legislature when it amended the law allowing road commissioners to hire and purchase. We recommend that municipalities which authorize their road commissioner to enter into contracts take care to clearly specify the respective duties of the selectmen, road commissioner, and contractor involved.

Control of the Road Budget

Control of money is at the center of many disputes among local officials. The treasurer can disburse money only on the authority of a warrant signed by the municipal officers; the road commissioner has no power to order the treasurer to write a check from the town account.¹¹

The municipal officers' authority in this regard may be limited by the budget format. In a line item budget (where the voters approve each separate item) the municipal officers generally cannot vary from the lines without voter approval. In a "lump sum" budget (where the voters raise a lump sum of money for road purposes generally), however, the municipal officers have broad discretion to spend money as they see fit.

One issue that the municipal officers and road commissioner should resolve at the beginning of the fiscal year is the commissioner's authority to hire outside help. For example, if the road commissioner is expressly or by implication (that is, with the knowledge and unwritten consent of the municipal officers) authorized to hire private contractors for road repairs, this arrangement will bind the town. If the commissioner has no such authority, the commissioner may be personally liable for any sums due the contractor for work performed. This issue often goes to court (the contractor wants its money, regardless of who pays) so it is best resolved upfront.

There often is confusion regarding the road commissioner's authority to expend funds directly. As discussed in these sections of this Manual, State statute authorizes the road commissioner to hire road workers, rent equipment and purchase materials.¹² He may also, with the written consent of the municipal officers, overdraft the road account by an amount not to exceed 15% when the amount appropriated is insufficient.¹³ State statute also directs the road commissioner to provide the selectmen with monthly statements of expenditures¹⁴ and to settle all accounts before February 20 of each year.¹⁵ MMA Legal Services advises that these statutory provisions should not be interpreted to allow the road commissioner to directly spend funds for these purposes. This would be inconsistent with the municipal finance statutory provision, which requires a majority of the board of selectmen to approve a disbursement warrant before the municipal treasurer may issue a check for payment.

Budget Overdrafts

Where an appropriated amount of money is not sufficient to repair or maintain town roads, Maine law permits the road commissioner, *with the written consent of the municipal officers*, to spend money in excess of the appropriated amount for either or both road repair or maintenance, but not beyond fifteen percent of the amount appropriated.¹⁶ This overdraft authority recognizes that road budgeting is not a science, and that road conditions are often subject to forces beyond human control. If the overdraft authority is used, the voters still must approve it after the fact, so an article must be prepared for this purpose.

Disputes Between Selectmen and Road Commissioner

Maine law¹⁷ makes it clear that the selectmen have the final say in questions about the road commissioner's duties:

“In the absence of a statute, charter provision or ordinance to the contrary, any decision involving the duties and responsibilities of the road commissioner shall be made by a majority of the board of selectmen whose decision shall be final.”

The same law also makes it clear that the selectmen can take all steps necessary to repair hazardous road conditions if the road commissioner fails to remedy the situation within twenty-four hours after receiving written notice to do so from the selectmen. This provision is designed to ensure that public safety is the top priority, and will not be subject to disputes between local officials.

Defining the Road Commissioner's Role

As discussed above, the State law does not describe in detail the road commissioner's rights and duties. The local highway law¹⁸ pertains to inspecting roads and keeping accounts, but those provisions are limited in scope. A municipality can by ordinance or charter clearly define an elected road commissioner's role. The duties of appointed road commissioner can be determined by the selectmen (or town manager), and should be put in writing to minimize disputes. Appendix Q contains a set of guidelines.

One way to reduce conflicts between the selectmen and an elected road commissioner is for them to meet soon after the town meeting to discuss what work needs to be done and the best way to accomplish it. If the selectmen and road commissioner agree on a schedule, it provides both of them some assurance of the order and manner in which work will be completed. This is also helpful when members of the public raise questions or complaints about the roads.

¹ 30-A M.R.S.A. § 5603.

² 30-A M.R.S.A. § 2526(7) governs the selection of a road commissioner.

³ 23 M.R.S.A. § 2701.

⁴ See, for example, *Lesieur v. Lausier*, 148 Me. 500 (1953); *Howard v. Harrington*, 114 Me. 443 (1916).

⁵ 30-A M.R.S.A. § 2526 (7)(C).

⁶ See *Inhabitants of Town of Harpswell v. Wallace*, CV-08-184 (Me. Super. Ct., Cum. Cty., May 16, 2008) (Cole, J.).

⁷ 30-A M.R.S.A. § 2606, the “prohibited appointment” statute.

⁸ 30-A M.R.S.A. § 2605.

⁹ 23 M.R.S.A. § 2704.

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- ¹⁰ 23 M.R.S.A. § 2701.
¹¹ 30-A M.R.S.A. § 5603.
¹² 23 M.R.S.A. § 2701.
¹³ 23 M.R.S.A. § 2705.
¹⁴ 23 M.R.S.A. § 2703.
¹⁵ 23 M.R.S.A. § 2703.
¹⁶ 23 M.R.S.A. § 2705.
¹⁷ 23 M.R.S.A. § 2701.
¹⁸ 23 M.R.S.A. § § 2702 and 2703.