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Subject: FW: CGS 13a-138 HIGHWAYS MAY BE DRAINED ONTO PRIVATE LANDS
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Stacy and Meredith:

You asked for advice on the right of a town to drain water from roads onto abutting property. On this topic, the statutes below are self-explanatory.

Let me know if you have any questions.

Thanks.

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Sec. 13a-138. Highways may be drained into private lands. (a) Persons authorized to construct or to repair highways may make or clear any watercourse or place for draining off the water therefrom into or through any person's land so far as necessary to drain off such water and, when it is necessary to make any drain upon or through any person's land for the purpose named in this section, it shall be done in such way as to do the least damage to such land.
(b) Nothing in this section shall be so construed as to allow the drainage of water from such highways into, upon, through or under the yard of any dwelling house, or into or upon yards and enclosures used exclusively for the storage and sale of goods and merchandise.
(1949 Rev., S. 2134; 1958 Rev., S. 13-18; 1963, P.A. 226, S. 138; P.A. 81-162, S. 1.)

History: 1963 act replaced previous provisions: See title history; P.A. 81-162 divided section into Subsecs. (a) and (b). Municipalities are not liable for damage from draining water from highways onto private lands within statutory restrictions. 54 C. 520. Section not applicable to draining water off private land. 64 C. 375. Section does not prohibit grading of street so that surface water runs into dooryard. 73 C. 35. Meaning of "dooryard". 74 C. 321. Constitutionality of statute quare. Id.; 79 C. 91. Does not apply where draining on land can be avoided by reasonable expense. Id. Scope limited. 81 C. 392. Section, as in derogation of private rights, to be strictly construed. 112 C. 568. Cited. 120 C. 551. Does not imply consent on part of state to be sued. 146 C. 316. Drainage easement not created in state in any particular land so as to constitute breach of covenant against encumbrances. 151 C. 183. Cited. 189 C. 740; 217 C. 520.
Cited. 6 CA 229. 15-year limitation period of Sec. 13a-138a applies to both Subsecs. (a) and (b); to construe otherwise would yield an unworkable result. 110 CA 591.

Town liable where it did not drain so as to do least damage to land. 3 CS 404. Proviso construed. 5 CS 487. Unnecessary discharge of surface water from state highway. 6 CS 485. No right of recovery where highway commissioner has neither drained water onto nor opened or cleared any watercourse on plaintiff's land. 20 CS 142. Cited. 29 CS 499.

Subsec. (a):

Clear and unambiguous language that drainage "shall be done in such way as to do the least damage to such land" does not provide for a balancing test that weighs the least damage against the least expense and other considerations claimed by defendant town. 49 CA 781.

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Sec. 13a-138a. Limitation on actions for drainage damage. No action shall be brought by the owner of land adjoining a public highway, or of any interest in such land, for recovery of damage to such property or interest by reason of any draining of water into or through such land by any town, city, borough or other political subdivision of the state pursuant to subsection (a) of section 13a-138, but within fifteen years next after the first occurrence of such drainage, except that if such drainage first occurred prior to October 1, 1981, no such action shall be brought after October 1, 1986.
(P.A. 81-162, S. 2.)
Cited. 217 C. 520.

15-year limitation period applies to both Subsecs. (a) and (b) of Sec. 13a-138; to construe otherwise would yield an unworkable result; public policy favors limitation periods for cause of action to grant degree of certainty to litigants. 110 CA 591.

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