

BOARD OF SELECTMEN
TOWN OF GILMANTON
NEW HAMPSHIRE

COPY

January 28, 1947

Mrs. Kathryn C. Thistle
Roosevelt, N. Y.

~~Dear Mrs. Thistle:~~

In reply to your letter regarding road to property you have recently purchased, will say that I am not quite sure in regard to the liability of the Town to build such a road as the former road was discontinued over forty years ago.

However I am consulting with the State Highway department and County Solicitor in regard to the matter and as soon as I have a ruling from them I will get in touch with you.

Respectfully yours,

Howard G. Langley, Chairman

February 28, 1947

Mrs. Robert U. Thistle
97 Hudson Avenue
Roosevelt, New York

Dear Mrs. Thistle:

I have your letter of February 25 and it is exceedingly difficult to advise any matter of this kind without definite and explicit information as to all facts and records applying, and to attempt to give definite advice based upon the limited knowledge that I have might result in injustice to yourself, the Town of Gilmanton or Mr. Hartford.

I may, however, say that there are certain general legal principals that apply to all such cases and which may have some bearing; for example, the discontinuance of a road may be made by a town if the road is entirely within the limits of the township and the New Hampshire statute relating to such discontinuances was strictly complied with, while if the road extended beyond the town limits, then it could not be discontinued by the Town of Gilmanton but it would be an entirely different procedure.

I, of course, have no knowledge as to the matter of discontinuance or when it was discontinued, nor whether the records is in Belknap County or in Strafford County.

There is no very definite interpretation to the law relating to range ways. These are in reality lay outs on paper for the use of the public as highways and some were laid out, some were used by the public without a definite lay out, some were conveyed by towns although many of such conveyances were not legal, and some have been claimed to revert to private ownership by continued and adverse use and possession of individuals although there is a statute which would probably prevent the acquiring of title in that manner.

There are one or two Supreme Court decisions relating to range ways but I have never found anyone, including some members of the court who claimed to have any very definite knowledge concerning the legal questions relating to these ways.

There is, however, another rather definitely established principal of New Hampshire law that might assist you and that is what is termed a right of way by necessity. This means that if

Mrs. Robert U. Thistle--2--February 28, 1947

the owner of a tract of land located in part on a highway or as to which there is a right of way to a high way sells a portion not binding on the highway, the law presumes the intention to give the new owner a right of egress and ingress and, therefore, awards him such right of way, so that in your case there must be a right somewhere although not having the history of the land I do not know where it would be or over what land.

There is also an obligation on the part of towns to provide reasonable roads for people living in the town and it may be that a petition to the town would result in the laying out of a road.

I realize that the foregoing is very general but I cannot do much better with what limited information I have but I can very definitely say that the selectmen of towns are very anxious to cooperate with residents and prospective residents and invariable will do all within their power to provide such people with reasonable facilities for travel.

Of course, in a Town like Gilmanton with a good many miles of roads and a lot of land of rather low value the selectmen have a difficult proposition to keep up their roads with the amount of money that they have available, but I am very sure that they will do everything in their power to accomodate you and my suggestion is that you take the matter up directly with the Board of Selectmen and I feel sure that some satisfactory solution will be reached.

I am sending a copy of this letter to the Chairman of the Board of Selectmen, Mr. Howard G. Langley, of Gilmanton.

Yours very truly,

FPT:BS

Enc.

cc: Mr. Howard G. Langley