

May the selectboard restrict the use of ATVs and snowmobiles to town residents only?

No. The board may not limit the use of town highways in this way.

The primary purpose of streets is use for travel by the public, and this refers not alone to adjacent property owners, nor to the inhabitants of a particular political subdivision, but to the whole people... The power of a municipality to regulate streets is not the power to prohibit their use by nonresidents. The right to travel on and along the streets is not confined to the inhabitants of the municipality, nor is it restricted to any particular method of travel. McQuillin, Municipal Corporations §30.156 (3d ed. 1997).

The right to free passage on the public ways, and the right to travel, are fundamental rights under our Constitution, and may not be restricted in a discriminatory manner. To discriminate against nonresidents would violate the Equal Protection Clause of the Constitution. The right to travel on public roads is distinguished from other rights in public property because many other uses of public property do not involve fundamental rights, such as the use of certain town recreation facilities or parking lots. These uses are limited in number and are usually funded solely by local communities, as opposed to streets, which receive state or federal funding for their construction, maintenance, or both. *Schreiber v. City of Rye*, 278 N.Y.S. 2d 527. If the town wishes to open its streets to snowmobile and ATV use, it must do so without distinguishing between residents and nonresidents. The town may have sincere concerns regarding public safety, especially the number of recreational users who may use the public streets; hence, a local ordinance regulating the time, place and manner of such use is desirable. However, the town cannot reserve the right to use the streets only to certain groups of persons.

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