

May towns enter private property to disconnect water service?

Yes, although in most towns this is not an issue because shut-off-valves are typically located within the town highway right-of-way. In those few towns where these valves are located on private property, the question is whether towns would be committing trespass when put on notice (via communication in person or by letter, telephone, etc. or by a sign or placard reading “No Trespassing”) that entry is not allowed. In Vermont, unlawful trespass occurs when “without *legal authority* or the consent of the person in lawful possession, he enters or remains on any land or in any place as to which notice against trespass is given . . . ” 13 V.S.A. § 3705. (Emphasis added.) This statute however must be read in conjunction with Vermont’s Uniform Water and Sewer Disconnect law which authorizes water service to be “disconnected or interrupted *at the* premises of the ratepayer, which shall include disconnection or interruption *at or near* the premises of the ratepayer . . . ” 24 V.S.A. § 5145(b). (Emphasis added.) Assuming proper notice has been provided (see uniform notice form in 24 V.S.A. § 5144), a bill or charge in excess of \$15.00 is delinquent, and disconnection occurs during the statutorily prescribed hours of 8:00 a.m. and 2:00 p.m., towns may enter private property to disconnect service. Since towns have the legal authority to enter private property for the purpose of disconnecting water service, no trespass would occur.

On a related matter, entry upon private property for the purpose of disconnecting water service also raises the question of whether such an act is tantamount to an illegal search in violation of the Fourth Amendment to the United States Constitution. (See also the Legal and Regulatory Notes column in this issue for more discussion of the Fourth Amendment.) This Amendment secures the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...”

While yet to be addressed by the Vermont Supreme Court, this issue was resolved by the United States District Court for the District of Montana. In the case of *Frates v. City of Great Falls*, 568 F.Supp. 1330 (1983), employees of the City of Great Falls water department entered an unfenced portion of private property, where the water service valve was located, to disconnect water service due to delinquent payment. The Court held that such entry did not constitute an illegal search because: (1) The conduct was not directed at bringing criminal proceedings against the plaintiff and therefore did not constitute a “search” within the scope of the Fourth Amendment; and (2) The conduct was reasonable as entry was made in an “open and unobtrusive manner” to a portion of the property easily accessible to the public. Because this case deals with the disposition of a Constitutional claim, the inconsistencies associated with interpreting state law would not confound the clear and persuasive guidance this case would provide to Vermont’s courts.

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