
MEMORANDUM

TO: Kevin Behnke, Town Chairperson
FROM: Katherine M. Reynolds
DATE: January 6, 2009
SUBJECT: Town Board Authority: Surface Water, Wood Burning Stoves, and Survey Stakes

Over the last several months there have been several requests by the residents of the Town of Newton for assistance by the Town Board on a variety of problems. Many of the problems involve disputes between two property owners. The Town Board does not have the authority to intervene in private disputes. This memo will explain the legal role and legal limitations of the Town Board.

There are two basic rules:

(1) The Town Board and the town officers have only those powers which are specifically provided to them by the Wisconsin Statutes or which can necessarily be implied from the statutes. If we can't find the authority in the statutes, the town board cannot act.

(2) The Town Board can only spend public funds (town money) for public purposes. This is known as the public purpose doctrine. The Town Board has no authority and it is unconstitutional to spend taxpayer money dealing with private disputes. The essence of this rule is that public funds should be used for the benefit of the community and not private individuals.

Based on those general rules, consider the following:

Surface Water Drainage

Question: My neighbor is diverting water from his land on to my land. This is causing me a hardship and I want it stopped. What can the Town do for me? **Answer:** The Town Board does not have any statutory authority to intervene in a dispute about surface water drainage between two private land owners. In addition the Town Board cannot spend town funds on resolving a dispute between two private parties. It is only if the drainage matter has some effect on the community in general, such as directly affecting a town highway, that the Town Board may be able to become involved.

Smoke from Outdoor Wood Burning Stoves

Question: My neighbor is operating his outdoor wood burning stove on his property and the smoke from the stove really bothers me and my family. Can't the Town Board do something about that? **Answer:** The Town does have an ordinance regulating the installation and