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DAVID A. COLE
COMMISSIONER

April 20, 2005

Ms. Cindy Sirois
Route 5, Box 1330
Gardiner, ME 04345

Re: Usage of Breakdown Lane – Route 201 in Gardiner, Maine

Dear Ms. Sirois:

The following is in response to your questions posed to me two weeks ago regarding the use by Anthony's Automotive of the breakdown lane on Route 201 in Gardiner, Maine to load and unload vehicles using a carrier tow truck and then park them in that lane. 29-A M.R.S.A. §2068.1.C. authorizes the Department of Transportation to place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a public way or within 10 feet of the traveled portion of a way or on property under its jurisdiction, where stopping, standing, or parking is dangerous to those using the way or would unduly interfere with the free movement of traffic.

29-A M.R.S.A. §2068 provides, among other things, that a person may not park a vehicle on the traveled portion of a public way outside of a business or residence district when it is practicable to park off of the way. Applying the above standards to the 201 location, Chip Kelley, inspector for MaineDOT's right of way control section, viewed the site and, noticing vehicles parked in the state's right of way, requested Anthony's to remove the vehicles which they did.

Mr. Kelly further determined that the tow truck's temporary standing or parking while unloading a vehicle on the road's shoulder was not dangerous and did not unduly interfere with the free movement of traffic. Moreover, it would not appear to be practicable for the truck to park off of the road's shoulder in most instances while unloading a vehicle. As a result of his observations, Mr. Kelley declined to recommend that a "no parking" or other restrictive sign be placed at Anthony's location.

30-A M.R.S.A. § 3009.1.C. authorizes the municipal officers to regulate the parking of motor vehicles on any public way. Therefore, it appears as though both the Maine Department of Transportation and municipal officers have authority to regulate the parking of motor vehicles within the right-of-way of those portions of State highways lying within a municipality. In fact, the Maine Municipal Association's "Municipal Roads Manual" cites 29 M.R.S.A. § 1111 for the proposition that municipalities have the



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authority to regulate parking on State and State-aid highways within their borders as does the State. It is my understanding that the City of Gardiner has refused to place restrictions on Anthony's in relation to your complaints. As a policy matter, MaineDOT generally defers to municipal regulation in this and similar situations.

If the area of Route 201 on which the tow truck is parked while loading and unloading vehicles is not subject to either a municipal parking ordinance or a signed MaineDOT "No Parking" designation, and provided the use of the right-of-way does not violate any of the above standards, it would appear that the temporary, occasional use of the shoulder portion of the right-of-way for parking would be permissible. Therefore, MaineDOT, like the decision of the City of Gardiner, declines to further regulate the subject area of Route 201 at this time.

Very truly yours,


James E. Smith, Esq.
Chief Counsel

JES/bsr

cc: David Allen, Traffic Division, MaineDOT
Robert Sinclair, Traffic Division, MaineDOT
Jeff Kobrock, Gardiner City Manager