

Cutting Trees Along a 'Scenic Road'

Q: Is a landowner prevented from cutting trees between his property and a 'scenic road'??

A: Best to start with the statute that describes the "effect of designation as scenic roads."

[RSA 231:158.IV](#). Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to [RSA 231:139-156](#), and except that [RSA 472:6](#) limits the removal or alteration of boundary markers including stone walls.

The upshot of scenic road designation, then, is to limit action by public agencies, not to limit the action of private property owners. The question that remains is, who is the landowner (statute: "his own property")? This law was written with the understanding that many public highways in NH are "viatic easements," meaning that the public has a right to travel over what is otherwise private property. This explains why many property deeds describe ownership to the centerline of public roads. Scenic road designation does not prevent the owner of the underlying land from clearing out the trees that are within the public right-of-way. The landowner would doubtless be liable for damages done to the road in the process, but that's a matter of dealing with a consequence, and should not be used to bar action by a landowner (unless the town can demonstrate that damage necessarily would occur--this is the subject of a number of injunctions brought by municipalities). Of course, if the municipality owns the fee to the road (as is customary in newer subdivisions), then the abutting landowners have no blanket right to disturb the vegetation within the right-of-way.

BUT...

If your community has appointed a "Tree Warden" (see RSA 231:139-156), then designation of ornamental or shade trees is an option. Such designation/acquisition does provide protection to specifically identified trees. See below for a statute from a bygone era that is nonetheless still good law. Recognize, however, that this is not a 'free' option--the town must pay the property for the value of designated trees within the right-of-way. There is no authority to designate trees outside the right-of-way.

[RSA 231:147](#) Injury or Defacement of Trees. - It shall be unlawful to cut, destroy, injure, deface, or break any public shade or ornamental tree; or to affix to any such tree a play bill, picture, announcement, notice, advertisement, political or otherwise, or other device or thing, or to paint or mark such tree, except for the purpose of protecting it and under a written permit from the tree warden; or to negligently or carelessly suffer any horse or other beast to break down, injure or destroy a shade or ornamental tree within the limits of any public way or place.

(Also see Chapter 1, Part III *Trees And Such Along The Roadside* from [A Hard Road to Travel – NHMA's Handbook On New Hampshire Law Of Local Highways, Streets and Trails](#) 1997)

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