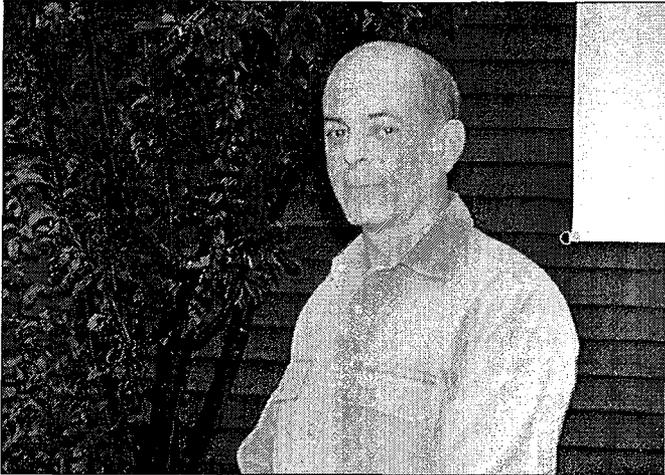


# Master Road Scholar Peter Prentice

*Road Agent, Town of Sandwich*



Master Road Scholar Peter Prentice has been the Road Agent in Sandwich for twelve years. The position has changed from elected to appointed during his tenure. Before becoming a Road Agent, Peter worked for New England Telephone as a lineman and manager. Before that he managed a private estate.

Peter has attended so many classes because "there is a lot of good information." He, like most Master Road Scholars, has attended some classes more than once. He finds a lot of interaction and the class structure very flexible. This "allows for questions and I pick things up." He also likes the time for interaction with other participants.

In his view, traditional Road Agents were contractors who happened to own a truck or backhoe. They didn't share information. "Times have changed; people need education."

Peter characterizes his town as professional. The selectmen support his efforts. Most people realize that education is important and that the town benefits from his educational experience.

Peter grew up in Berwick, Maine. He has three grown children, a daughter and two sons, who have all attended the University of New Hampshire. He likes to travel and has been to Alaska four times. He hunts -- mostly deer, with black powder or a rifle -- and fishes for trout and salmon. Peter's gave his winter hobby, with his tongue deep into his cheek, as plowing snow.

Our best wishes to you, Peter, and congratulations on achieving Master Road Scholar!

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## The 72-Hour Law

### *Notices of Insufficiency and Municipal Liability*

Questions received at the UNH T<sup>2</sup> Center, and concerns raised at the recent Tort Liability and Risk Management Workshop, indicate that some confusion and anxiety exist about what is commonly called the "72-Hour Law."

Several instructors at the workshop furnished handout material which applies to this law. Don Gardner, an attorney with Devine, Millimet, and Branch, furnished copies of the RSA's. These are reproduced below and on page 6. A "Hazard Documentation Form" similar to that distributed by Don Hambidge, Goffstown Public Works Director, is provided on page 7.

### **RSA 231:90 Duty of Town After Notice of Insufficiency**

I. Whenever any class IV or class V highway or bridge or sidewalk thereon in any municipality shall be insufficient, any person may give written notice of such insufficiency to one of the selectmen or highway agents of the town, or the mayor or street commissioners of the city, and a copy of said notice to the town or city clerk. The notice shall be signed and shall set forth in general terms of the location of such highway, bridge, or sidewalk and the nature of such insufficiency.

II. For purposes of this subdivision, a highway or sidewalk shall be considered "insufficient" only if:

(a) It is not passable in any safe manner by those persons or vehicles permitted on such sidewalk or highway by state law or by any more stringent local ordinance or regulation; or

(b) There exists a safety hazard which is not reasonably discoverable or reasonably avoidable by a person who is traveling upon such highway at posted speeds or upon such sidewalk, in obedience to all posted regulations, and in a manner which is reasonable and prudent as determined by the condition and state or repair of the highway or sidewalk, including any warning signs, and prevailing visibility and weather conditions.

III. A highway or sidewalk shall not, in the absence of impassability or hidden hazard as set forth in paragraph II, be considered "insufficient" merely by reason of the municipality's failure to construct, maintain or repair it to the same standard as some other highway or sidewalk, or to a level of service commensurate with its current level of public use.

## **RSA 231:91 Municipality to Act; Liability**

I. Upon receipt of such notice of insufficiency, and unless the highway agents or street commissioners determine in good faith that no such insufficiency exists, the municipality shall immediately cause proper danger signals to be placed to warn persons by day or night of such insufficiency, and shall, within 72 hours thereafter, develop a plan for repairing such highway, bridge, or sidewalk and shall implement such plan in good faith

and with reasonable dispatch until the highway, bridge, or sidewalk is no longer insufficient as defined by RSA 231:90.II.

II. If the municipality fails to act as set forth in paragraph I, it shall be liable in damages for all personal injury or property damage proximately caused by the insufficiency identified in the notice, subject to the liability limits under RSA 507-B:4.

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## **RSA 231:92 Liability of Municipalities; Standard of Care**

I. A municipality shall not be held liable for damages in an action to recover for personal injury or property damage arising out its construction, maintenance, or repair of public highways and sidewalks constructed thereupon unless such injury or damage was caused by an insufficiency, as defined by RSA 231:90, and;

(a) The municipality received a written notice of such insufficiency as set forth in RSA 231:90, but failed to act as provided by RSA 231:91; or

(b) The selectmen, mayor, or other chief executive official of the municipality, the town or city clerk, any on-duty police or fire personnel, or municipal officers responsible for maintenance and repair of highways, bridges, or sidewalks thereon had actual notice or knowledge of such insufficiency, by means other than written notice pursuant to RSA 231:90, and were grossly negligent or exercised bad faith in responding or failing to respond to such actual knowledge; or

(c) The condition constituting the insufficiency was created by an intentional act of a municipal officer or employee acting in the scope of his official duty while in the course of his employment, acting with

gross negligence, or with reckless disregard of the hazard.

II. Any action to recover damages for bodily injury, personal injury or property damage arising out of municipal construction, repair or maintenance of its public highways or sidewalks constructed on such highways shall be dismissed unless the complaint describes with particularity the means by which the municipality received actual notice of the alleged insufficiency, or the intentional act which created the alleged insufficiency.

III. The acceptance or layout of a private road as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such layout or acceptance.

IV. The setting of construction, repair, or maintenance standards or levels of service for highways and sidewalks by municipal officials with responsibility therefor, whether accomplished formally or informally, shall be deemed a discretionary, policy function for which the municipality shall not be held liable in the absence of malice or bad faith.

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## **RSA 231:92-a Snow, Ice and Other Weather Hazards**

Notwithstanding RSA 231:90-92, a municipality shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges, or sidewalks, even if it has actual notice or knowledge of them, when such hazards are caused by snow, ice, or other inclement weather, and the municipality's failure or delay in removing or mitigating such hazards is the result of its implementation, absent gross negligence or

reckless disregard of the hazard, of a winter or inclement weather maintenance policy or set of priorities adopted in good faith by the officials responsible for such policy; and all municipal employees and officials shall be presumed to be acting pursuant to such a policy or set of priorities, in the absence of proof to the contrary.

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## **RSA 231:93 When Municipalities Not Liable**

Municipalities shall not be deemed to have any duty of care whatsoever with respect to the construction, maintenance, or repair of class I, III, III-a or VI highways, or state maintained portions of class II high-

ways. Upon any highway or other way with respect to which a municipality is found to have a duty of care of any kind, its liability shall be limited as set forth in this subdivision.

A Sample "Hazard Documentation Form" is provided on page 7. As indicated from the above laws, documentation of known hazards and their resolution are essential to defend a liability claim or court case.