1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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2517-13. Construction in municipalities having national guard units; etc.
Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site,

2517-14. Corporation created—Commission.—Subdivision 1. For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line of the National Guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

Subdivision 2. Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than two, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. In case at any time there shall not be at least two qualified officers of the National Guard in addition to the adjutant general eligible to serve ex officio as members of such commission as provided by Subdivision 1 of this section, the adjutant general may appoint a member or members of such commission from the colonels of the line of the National Guard of the state so as to provide not more than two members of such commission in addition to himself. The membership of the member last so appointed shall automatically terminate upon the appointment and qualification of an officer of the National Guard eligible to serve ex officio as a member of such commission as provided by Subdivision 1 of this section, providing the total membership of such commission be not thereby reduced to less than three. All officers of the National Guard eligible to be members of such commission as provided by Subdivision 1 of this section shall automatically become such members forthwith upon their appointment and qualification as such officers. In case of a vacancy in the office of adjutant general, or in case of the incapacity of the adjutant general to act as a member and chairman of such commission, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being shall, during the existence of such vacancy or incapacity, acts as a member and chairman of such commission and have all the powers and duties herein vested in or imposed upon the adjutant general as a member and chairman of such commission. The adjutant general shall certify to the secretary of state all changes in the membership of the commission, but failure on his part so to do shall not affect the authority of any new member of the commission or the validity of any act of the commission after accession of a new member.

Subdivision 3. In case at any time all or all but one of the line officers of the National Guard who are members of the commission or who are eligible to serve as such are in active service outside the state, or where for any other reason there are not at least two qualified line officers of the National Guard available within the state to serve as members of the commission, the adjutant general, or in case of his incapacity or of a vacancy in that office, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being, shall become trustee of the commission and shall have all the powers and perform all the duties of the commission and its officers so long as such conditions exist. Upon the occurrence of such conditions the officer becoming trustee shall file with the secretary of state a certificate reciting the circumstances and declaring that he assumes office as such trustee, and thereupon he shall be deemed to have qualified as such, with all the authority hereby conferred. Any change in such office shall be likewise certified by the officer succeeding as trustee. Upon the termination of such conditions the adjutant general or his authorized substitute shall certify the circumstances in like manner, with the names of the officers then authorized by law to compose the commission, and thereupon such officers shall constitute the commission, and the authority of the trustee shall terminate. (As amended Act Mar. 5, 1941, c. 44, §1.)

Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site.

2517-15. Same—Powers of corporation and municapalities; etc.
Laws 1941, c. 73, authorizes conveyances of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site.

2517-16 to 2517-25. [Repealed.]
Repealed. Laws 1943, c. 660, §49.

CHAPTER 13

Roads

GENERAL HIGHWAY ACT

2542. Scope of act.
4. "Town roads."
Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

2543. "Road" and "Highway" defined.
Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

2544. Width of roads.
Failure of commissioners appointed in a judicial proceeding to establish a county line road to state width of proposed road rendered their report and order confirming the same invalid and ineffective. Highway between Sibley and Renville Counties, 213M314, 6NW(2d)626. See Dun. Dig. 8474.

2545. Width of bridges and culverts.—All bridges, culverts, and approaches thereto, on any trunk highway or state aid road hereafter established, constructed or improved, shall be at least twenty-four (24) feet wide; and all bridges and culverts, and approaches thereto, on any road other than a trunk highway or state aid road hereafter established, constructed or improved, except cartways, shall be at least twenty (20) feet wide. (As amended Act Feb. 25, 1943, c. 82, §1.)

2550. State aid roads.
Where county constructs a new section in a state aid road, it may not by resolution transfer the old section of the road to a township and thus impose burden upon

township of maintaining it, but may vacate it. Op. Atty. Gen. (377b-8), Apr. 2, 1943.

2551. County roads.

Towns and counties, being charged with highway construction and maintenance, are liable in damages to property owners if and when such owners' property rights are invaded, to protect owners against illegal exercise of power of eminent domain. Westerson v. S., 207M412, 291 NW900. See Dun. Dig. 8475.

As a general rule counties are not liable for negligent acts of their employees committed in exercise of duties of a governmental nature, such as grading a road. Op. Atty. Gen. (844c-5), March 7, 1940.

Fact that county approved plat does not make it liable for maintenance of highways dedicated. Op. Atty. Gen. (377b-10h), July 29, 1940.

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

Neither county nor members of board are liable for damages to a motorist injured because of inadequate repairs on a defective bridge. Op. Atty. Gen. (844c-5), Apr. 1, 1942.

County is not liable where car parked on highway is damaged by snowplow. Op. Atty. Gen. (844c-5), Feb. 10, 1943.

No authority exists for transfer of control of county road from county to town, but if a town wishes to maintain a county road as its own and county does not desire to maintain the road, the town may maintain the road without the necessity of any transfer or any vacation and re-establishment. Op. Atty. Gen. (377b-3), May 3, 1943.

2552. Town roads.

Cutting weeds or grass along town roads. Laws 1941, c. 246.

Where facts pleaded fail to show any excuse for a delay of more than 62 years in bringing mandamus to open and grade a township road, laches appears as a matter of law, for equity aids the vigilant, and not the negligent. Sinell v. T., 206M437, 289NW44. See Dun. Dig. 8459.

Where county takes an easement for purpose of building a county aid road, stone taken from the right-of-way must be used as a part of the construction of this particular piece of road. Op. Atty. Gen. (377a-8(a)), Nov. 22, 1939.

A platted development on the edge of a lake in an unincorporated area is entitled to have town repair dedicated road and bridges across canals built for benefit of lot owners. Op. Atty. Gen., (642a-12), April 2, 1940.

A town officer is not personally liable for a negligent failure to repair bridges. Id.

Township was not liable for injuries to passenger in motor vehicle caused by a stump in middle of township road pushed up by action of frost and unknown to town board, road having not been extensively travelled for years and very little maintenance having been done because of lack of funds. Op. Atty. Gen., (844h), May 13, 1940.

Town board must maintain dedicated highways when wishes to use them. Op. Atty. Gen. (377b-10h), July 29, 1940.

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

Landowners cannot be compelled to mow grass and weeds on township roads, law being limited to noxious weeds. Op. Atty. Gen., (322g), Feb. 26, 1941.

Whether or not county will aid town in construction of town line roads is discretionary with county board. Op. Atty. Gen. (379C-8c), Jan. 20, 1942.

Town is under no duty to improve and maintain streets in platted areas outside incorporated village or city until they have been accepted by town authority. Op. Atty. Gen. (377b-10h), July 29, 1942.

2553. Commissioner of highways.

(2).

Employees of state highway department working on a purely hourly basis could have no claim to any vacation prior to date of a rule of civil service board giving them right to a vacation since vacation with pay for such period would be a mere gratuity, and one which could not be paid from trunk highway fund. Nollet v. Hoffmann, 210M88, 297NW164, 134ALR192. See Dun. Dig. 8846ccc.

(4).

Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 209M308, 296NW24.

2554. Powers of Commissioner of Highways.—

Subdivision 1. * * * * * * * * *.

Subdivision 2. * * * * * * * * *.

(1). * * * * * * * * * * * * * * * * *.

(2) Whenever there shall be a surplus in the trunk highway fund which is not currently needed, the commissioner of highways shall certify to the state board of investment the amount thereof and when it will be needed for highway purposes. Upon receipt of the certification, the state board of investment may invest the amount so certified in bonds or securities of the United States of America, so conditioned as to be convertible into cash without discount through federal government agencies at the option of the state on or before the time when the proceeds will be needed as certified by the commissioner of highways. At or before the time so certified, except as the commissioner of highways may then certify that there is no current need therefor, the board shall proceed to cash such bonds or securities and shall deposit the proceeds in the trunk highway fund. All interest and profit accruing from the bonds or securities shall be credited to and be a part of the trunk highway fund. (As amended Act Jan. 15, 1943, c. 3.)

(3). * * * * * * * * * * *.

(4). * * * * * * * * * * * * *.

Subdivision 3. **Powers and duties of Commissioner of Highways—Practicable roads to be selected.**—Until such time as he may definitely locate and construct the several routes of the trunk highway system, he shall select practicable roads along the general location of all other of the several routes, enumerated in Article 16 of the state constitution, which he shall maintain for the benefit of the traveling public, which routes shall be known as temporary trunk highways.

No portion of the trunk highway system lying within the corporate limits of any borough, village or city shall be constructed, reconstructed or improved unless the plans and specifications therefor shall be approved by the governing body of such borough, village or city before such work is commenced, nor shall the grade of such portion of the trunk highway system lying within such corporate limits be changed without the consent of the governing body of such borough, village or city. (As amended Apr. 6, 1943, c. 315, §1.)

Subdivision 4(a). The Commissioner of Highways shall by order or orders designate such temporary trunk highway or highways, and when the definite location of any trunk highway or portion thereof has been by him determined, he shall designate the same by order or orders. Provided, however, that the Commissioner of Highways may change the definite location of any trunk highway between the fixed termini, as fixed by law, when the interest of public safety and convenient public travel so require, and said changes shall be designated by order or orders. Provided further, that when the County Board of any county interested asks for a public hearing with reference to the definite location of any trunk highway or any change in such definite location, a hearing shall be held by the Commissioner within the section, county or counties interested before making any such definite location or any such change therein. Copies of such order or orders shall be certified by the Commissioner of Highways to the county auditor or auditors, of the county or counties wherein such highways are located.

Said county auditor or auditors shall receive and file any and all such order or orders or certified copies thereof. No such order or orders or certified copies thereof shall be removed from the office or offices wherein filed. Such counties or subdivisions thereof shall thereupon be relieved from responsibilities and duties thereon, provided that in case the definite location should be other than the location of the temporary trunk highway, the portion of such temporary location which is not included in the definite location shall, upon notice from the Commissioner of Highways, revert to the county or subdivision thereof originally charged with the care thereof, and provided further, that when the Commissioner of Highways shall make a change in the location of a trunk highway that has been definitely located between the termini as fixed by law, in the interest of public safety and convenient public travel, then such portion of the existing road as shall no longer be a definitely lo-

cated trunk highway shall revert to the county or subdivision thereof, originally charged with the care thereof, but where such road or any portion thereof so ceasing to be a trunk highway had its origin as a state trunk highway, it shall become a County Road, unless the same lies within the corporate limits of any village, borough or city, in which event it shall become a street of such village, borough or city.

Provided further, however, that no such change as herein provided, except changes of a minor character, shall be made without the approval and consent of the Attorney General of this state. (As amended Apr. 6, 1943, c. 315, §2.)

(b). * * * * *.

Subdivision 5. * * * * * * * * * * * * * * * *.

Subdivision 6. The commissioner of highways may conduct the work or any part thereof, incidental to the construction and maintenance of the trunk highways by labor employed therefor or by contract. In cases of construction work, the commissioner of highways shall first advertise for bids for contracts and if no satisfactory bids are received, he shall have the right to reject all bids and readvertise or do the work by labor employed therefor. When work is to be let under contract he shall publish a notice to the effect, for three successive weeks prior to the date such bids are to be received, in such local newspaper or other periodicals as may be deemed advisable, provided that in case of emergency requiring immediate action, contract may be awarded without published notice. Emergency shall be defined as the doing of such work on the highways of the State of Minnesota as is necessary for immediate action in order to maintain existing highways in a passable condition. Provided, no emergencies shall be declared to exist except upon the written authority of the highway commissioner or his deputy. And provided further, that where relief labor is employed, payable out of federal funds in the construction or reconstruction of trunk highways, and where the state is the sponsor for such projects, also necessitating the use of trunk highway funds in order to complete such construction or reconstruction, the commissioner of highways is authorized to furnish supervision, equipment, equipment operators, materials, and such labor as is necessary therefor. (As amended Act Apr. 22, 1941, c. 369, §1.)

Subdivisions 7 to 16. * * * * *

Subdivision 17. Repealed.

Subdivision 18. (a). The commissioner of highways is hereby authorized to employ and designate not to exceed 126 persons, a chief supervisor, such assistant supervisors and sergeants as hereinafter provided to enforce the provisions of the laws relating to the protection of and use of trunk highways, who shall have upon all trunk highways the same powers with respect to the enforcement of laws relating to crimes, as sheriffs, constables, and police officers have within their respective jurisdictions, so far as may be necessary for the protection of life and property upon such trunk highways. Under instructions and regulations of the commissioner of highways, said employees shall cooperate with all sheriffs and other police officers, and to that end are authorized to exercise the powers herein conferred upon all trunk highways and, for the purpose of continuing pursuit from such trunk highways of offenders thereon, upon all public highways connecting and traversing such trunk highways, provided that said employees shall have no power or authority in connection with strikes or industrial disputes. Employees thus employed and designated shall subscribe on oath and furnish a bond running to the state of Minnesota, said bond to be approved and filed in the office of the Secretary of State.

(b) All fines and forfeited bail money, from traffic and motor vehicle law violations, collected from persons apprehended or arrested by such employees, shall be paid into the state treasury, and shall be credited to a separate fund hereby established for that purpose. Out of such fund shall first be paid to counties all costs and expenses incurred by them in the prosecution and punishment of persons so arrested and for which such counties have not been reimbursed by the payment of such costs and expenses by the persons prosecuted, and so much of said fund as shall be necessary for the making of such reimbursement is hereby appropriated therefor. Such payment shall be made by the state treasurer upon the claim of the county verified by the county auditor but no claim shall be made exceeding $1.50 per day for board and lodging of a prisoner. On the first day of each calendar month the money remaining in such fund shall be credited to that part of the trunk highway fund which is set apart for maintenance purposes; and so much of said maintenance fund as shall be necessary for the salaries and maintenance of such employees is hereby appropriated for that purpose.

(c) Each such employee other than the chief supervisor, assistant supervisors and sergeants hereinafter designated shall be known as patrolmen and shall receive a salary of not less than $150.00 per month and shall receive an annual raise of $5.00 per month for each succeeding year of employment, such term of employment to be computed from commencement of employment by such individual employee, except that the salary of no patrolman shall exceed the sum of $180.00 per month and in addition thereto each such individual employee shall be paid not less than $1.00 per day for subsistence while in the performance of his duty. The salary of one chief supervisor shall be in such amounts as may be fixed by the commissioner of highways, but not to exceed $4,000.00 per year.

There may be appointed one chief supervisor who shall receive a salary of not exceeding $3,180 per annum; two assistant supervisors who shall receive a salary of not exceeding $2,880 per annum; five assistant supervisors who shall receive a salary of not exceeding $2,700 per annum; and there may be appointed six sergeants, each of whom shall receive a salary of not exceeding $2,400 per annum. In the event such last mentioned six sergeants are appointed, the vacancies thereby created among the patrolmen shall not be filled. In addition thereto, each individual supervisor and sergeant, except the chief supervisor, shall be paid not less than $1.00 per day for subsistence while in the performance of his duty. The supervisors and sergeants shall be appointed by and have such duties as the Commissioner of Highways may direct and shall be selected from the patrolmen, sergeants and supervisors who shall have had at least three years experience as either patrolmen, sergeants or supervisors.

Every person employed hereunder shall be subject to the terms and provisions of Laws 1935, Chapter 254, and acts amendatory thereof. (As amended Apr. 10, 1941, c. 175, §1; Apr. 24, 1943, c. 623, §1.)

Subdivision 19. * * * * *

Subdivision 20. Repealed.

Subdivision 21. * * * * *

(As amended Apr. 10, 1941, c. 175, §1; Apr. 22, 1941, c. 369, §1; Jan. 15, 1943, c. 3; Feb. 27, 1943, c. 90; Apr. 6, 1943, c. 315, §§1, 2; Apr. 24, 1943, c. 623, §1.)

Laws 1943, c. 487. An act relating to the powers of the commissioner of highways and governmental subdivisions, authorizing the leasing and renting of equipment and machinery used in the construction and maintenance of highways and streets during the war emergency.

Where road was established as Elwell Highway, under which abutting owners paid one-eighth of original construction, township one-eighth, county one-fourth, and state one-half, and thereafter it was designated as a Trunk Highway and later changed so that 6 miles was abandoned as Trunk Highway, such part of highway abandoned as Trunk Highway reverted to its original status, and no one has any vested right to require the state to maintain it further. Op. Atty. Gen. (229-K-4), July 14, 1940.

Sub. 1.

Sections 357 and 311 of Title 25, Mason's United States Code Annotated, offer two methods for acquisition by state of land for a public highway, and hence in a proceeding by the state of Minnesota pursuant to the former

section to condemn land allotted in severalty to Indians for highway purposes consent of Secretary of Interior was not necessary. U. S. v. State of Minnesota, (CCA8), 113F(2d)770.

Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into possession of the property or appropriated it to its purposes. State v. Appleton, 208M436, 294NW418. See Dun. Dig. 3091.

"Material in place" in a highway contract means that material is hauled and put in place at a unit price per cubic yard. State v. Elsberg, 209M167, 295NW913. See Dun. Dig. 8452.

Railroad and warehouse commission has exclusive control of all matters involving railroad crossings and warning devices, but commissioner of highways has certain powers concerning approach signs on highways, and former can compel a railroad within a reasonable time to comply with general order fixing minimum standards and requirements for crossing signs, and a railroad has no vested rights to retain an old sign until such time as reconstruction would be required in maintenance of railroad. Op. Atty. Gen. (369m), Apr. 16, 1941.

Sub. 2.
Amended. Laws 1943, c. 3. See above text.

Sub. 3.
Amended. Laws 1943, c. 315, §1. See above text.

Sub. 4.
State Highway Department and City of Minneapolis could enter into an agreement relative to department paying for highway improvement within city upon a street designated by the commissioner as a temporary trunk highway. Op. Atty. Gen., (229a), Feb. 8, 1941.

Sub. 4(a).
Amended. Laws 1943, c. 315, §2. See above text.

Sub. 6.
Amended. Laws 1941, c. 369.
Commissioner could enter into a contract for improvement of trunk highway in city, whereby city of Minneapolis would resurface with asphaltic concrete pavement, without necessity of advertising for bids. Op. Atty. Gen. (229e-2), Apr. 24, 1941.

Sub. 17. Repealed.
Repealed. Laws 1941, c. 456.
Time for application for arbitration begins to run from completion of "work" and not from date of final estimate or acceptance. State v. Wm. O'Neil Sons Co., 296NW7. See Dun. Dig. 8452.

Sub. 18.
Amended. Laws 1941, c. 175.
Amended. Laws 1943, c. 623. See above text.
State highway patrolmen are not eligible to be appointed deputy sheriffs. Op. Atty. Gen. (229a-7), Sept. 27, 1939.

(18)(a).
Inmates of a National Youth Administration Camp while driving government trucks are not employees the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

Section prescribes a limitation only on number of patrolmen, which number after Jan. 1, 1941, may not exceed 116, and does not limit number of additional persons, such as supervisors, assistant supervisors, radio operators or other employees not in Highway Patrol. Op. Atty. Gen., (229A-7), Mar. 4, 1941.

Officers of a state highway traffic patrol may not be employed to make inspection and perform other services in connection with the enforcement of laws relating to the regulation of aeronautics. Op. Atty. Gen. (229a-7), July 9, 1941.

(18)(b).
Highway fines do not arise under or by virtue of Constitution article 16, and fund created by fines is subject to legislative control and may be used for same purposes for which constitutional fund is devoted, or put to use for some other purpose, such as is provided by Laws 1939, c. 420, relating to ascertainment of damages caused by construction of improvement of trunk highway. Westerson v. S., 291NW900. See Dun. Dig. 8452.

Each week clerk is to file with city treasurer a weekly report and pay over all sums collected from fines, except those he is entitled to retain as part of his compensation, and it is then duty of city treasurer to pay over such fines to state or county, whichever is entitled thereto, and there is no requirement that clerk of municipal court shall pay such sum into either county or state treasury. Op. Atty. Gen. (199B-4), Aug. 12, 1940.

Defendant and court having accepted legality of arrest on a county highway by a state highway patrolman, fine should be turned into state treasury and not be retained by county. Op. Atty. Gen. (199B-4), Aug. 16, 1940.

This section requires county to be reimbursed for clerk's fees and prisoner's board when not paid by individual prosecuted. Op. Atty. Gen. (989a-6), Oct. 4, 1940.

If a prisoner having elected to serve his sentence rather than pay fine imposed, later changes his mind and pays his fine, county cannot charge meals to him for number of days he was fed in jail as a condition of his release. Op. Atty. Gen. (559A), Dec. 21, 1940.

When person is held in village jail pending trial or arraignment for a violation charged under state law by local officers, expense of keep should be paid by county board upon a verified claim from the village, and board could then seek reimbursement from state treasurer. Id.

All costs and expenses incurred by county in keeping prisoners in county jail are a proper charge against fund, and charge may be 85c per day. Op. Atty. Gen. (559a), Dec. 5, 1941.

Sub. 20. Repealed.
Repealed. Laws 1941, c. 345.
Repealed. Laws 1943, c. 90.

Sub. 21.
Highway department and school district may contract for removal of snow on regular school bus routes. Op. Atty. Gen.,(377a-11), Nov. 15, 1941.

2554-¼. Actions against state-waiver of immunity—Jurisdiction of courts.—Whenever a controversy arises out of any contract for the construction or repair of state trunk highways entered into by the commissioner of highways or by his authority, in respect to which controversy the party would be entitled to redress against the state, either in a court of law or equity, if the state were suable, where no claim against the state has heretofore been made under Mason's Minnesota Statutes 1927, Section 2554, Subsection 17, the state hereby waives immunity from suit in connection with such controversy and hereby confers jurisdiction on the district courts of the state to hear and try out such controversy in the manner provided for the trial of causes in said district courts. (Act Apr. 26, 1941, c. 456, §1.)
[161.03(17)]

Laws 1943, c. 662, authorizes suits against state of Minnesota for the recovery of damages by persons named in chapter.

2554-¼a. Same—Time for commencement of action.—No such action shall be maintained under Section 1 hereof unless commenced within 90 days after the plaintiff has been furnished by the state with a final estimate under his contract, or, at the election of the plaintiff, within six months after the work provided for in said contract shall have been in all things completed. (Act Apr. 26, 1941, c. 456, §2.)
[161.03(18)]

2554-¼b. Same—Venue.—Such action shall be brought, at the election of the plaintiff, in the district court of Ramsey County, or in the district court of the county where a major portion of the contract is performed, or in the district court of the county in which the plaintiff resides, or, if there be several plaintiffs residing in different counties, then in the district court of the county of the residence of any one of them. The action shall be commenced by filing a complaint with the clerk of said court and serving summons and copy of said complaint upon the attorney general of the state at the state capitol at St. Paul. The state shall have 40 days from the date of such service within which to serve an answer upon the plaintiff; and thereafter the case shall proceed in the same manner as other actions at law in said court. (Act Apr. 26, 1941, c. 456, §3.)
[161.03(19)]

2554-¼c. Same—Appeal.—An appeal from any final order of judgment in such action shall lie to the Supreme Court of the state in the same manner as appeals in ordinary civil actions. (Act Apr. 26, 1941, c. 456, §4.)
[161.03]

2554-¼d. Repealer.—That Mason's Minnesota Statutes of 1927, Section 2554, Subsection 17, is hereby repealed, subject to the right of persons having actions or proceedings now pending thereunder, to have such actions and proceedings heard, considered and decided in accordance therewith. (Act Apr. 26, 1941, c. 456, §5.)

2554-¼e. Application of act.—This act shall not apply to or affect any action or proceeding heretofore duly commenced under Mason's Minnesota Statutes of 1927, Section 2554, Subsection 17, and pending at the date of the passage of this act. (Act Apr. 26, 1941, c. 456, §6.)

2554-¼f. To cooperate with the United States Government.—The commissioner of highways is authorized to cooperate with the government of the United States and any agency or department thereof in the construction, improvement, and maintenance of roads and bridges in the State of Minnesota and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such roads and bridges. (Act Apr. 21, 1941, c. 345, §1, as amended Feb. 27, 1943, c. 90, §1.)

2554-¼g. May accept federal moneys.—The commissioner of highways is authorized to accept federal moneys and other moneys, either public or private, for and in behalf of the State of Minnesota or any governmental subdivision thereof, for the construction, improvement, or maintenance of roads and bridges upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and is authorized to act as an agent of any governmental subdivision of the State of Minnesota upon the request of such subdivision in accepting such moneys in its behalf for road or bridge purposes, in acquiring right of way therefor, and in contracting for the construction, improvement, or maintenance of roads or bridges financed either in whole or in part by federal moneys, and the governing body of any such subdivision is authorized to designate the commissioner of highways as its agent for such purposes and to enter into an agreement with him prescribing the terms and conditions of such agency in accordance with Federal laws, rules, and regulations, and with this act. (Act Apr. 21, 1941, c. 345, §2, as amended Feb. 27, 1943, c. 90, §2.)

2554-¼h. State laws to govern.—All contracts for the construction, improvement, or maintenance of roads or bridges made by the commissioner of highways as the agent of any governmental subdivision shall be made pursuant to the laws of the State of Minnesota governing the making of such contracts for the construction, improvement and maintenance of roads and bridges on the trunk highway system of the state, provided, however, where the construction, improvement or maintenance of any road or bridge is financed wholly with Federal moneys, the commissioner of highways as the agent of any governmental subdivision may let contracts in the manner prescribed by the Federal authorities acting under the laws of the United States and any rules or regulations made thereunder, notwithstanding any state law to the contrary. (Act Apr. 21, 1941, c. 345, §3, as amended Feb. 27, 1943, c. 90, §3.)

2554-¼i. Funds to be deposited in State Treasury.—All moneys accepted for disbursement by the commissioner of highways pursuant to the terms of this act shall be deposited in the treasury of the State of Minnesota, and, unless otherwise prescribed by the authority from which the money is received, shall be kept in separate funds, designated according to the purposes for which the moneys were made available, and shall be deemed to be held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available to be expended in accordance with Federal laws and regulations and with this act. The commissioner of highways is authorized, whether acting for the State of Minnesota or as the agent of any of its governmental subdivisions, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement. (Act Apr. 21, 1943, c. 345, §4, as amended Feb. 27, 1943, c. 90, §4.)

2554-¼j. No personal liability created.—Nothing herein shall be construed as creating any personal liability upon the commissioner of highways or in any way authorizing him to create any liability on the part of the State of Minnesota when he is acting as the agent of any governmental subdivision thereof, or when he is acting at the request of the United States. (Act Apr. 21, 1941, c. 345, §5, as amended Feb. 27, 1943, c. 90, §5.)

2554-¼k. Repealer.—Mason's Supplement 1940, Section 2554, Subdivision (20), is hereby repealed. (Act Apr. 21, 1941, c. 345, §6; Feb. 27, 1943, c. 90, §1.)

2554-½. State patrolman may be discharged.
If a highway patrol register of eligibles once established is exhausted, a provisional appointment may be made to fill positions until re-establishment thereof by examination or otherwise, and three months limit does not apply. Op. Atty. Gen. (644b), Nov. 25, 1941.

2554-18. Same—Bonds, when may be issued, etc.
(b).
When arrest for violation of traffic laws is made by sheriff money should be paid into county treasury. Op. Atty. Gen. (199B-4), Jan 9, 1942.

Statute authorizes payment of $0.75 a day for board and washing for each prisoner in jail unless he is from some other county, and in that event statute authorizes payment of $0.85 a day, and there is a further provision that where offense was committed in a county other than that where prisoner is confined and there are not more than three prisoners in jail, charge for board shall not be more than $1.20 a day, together with necessary expenditures for clothing, bedding and medical aid. Op. Atty. Gen. (559A), Jan. 19, 1942, reversing Dec. 5, 1941.

Where state highway patrolman filed complaint in municipal court charging driving of a motor vehicle while under influence of intoxicating liquor "in violation of a city ordinance", fine should be paid to city clerk and should not be remitted to state treasurer. Op. Atty. Gen. (199B-4), Jan. 22, 1942.

2556. Trunk highways sinking fund.
State's current surplus funds, such as the trunk highway fund, may not be invested in U. S. bonds. Op. Atty. Gen. (454e), Oct. 8, 1942, Oct. 15, 1942.

2557. Construction and maintenance of trunk highways; etc.
County was not liable for any negligence of road foreman in instructing farmer how to drive his truck over soft place in highway over a cattle pass. Op. Atty. Gen. (844c-5), July 1, 1942.

(1).
City council has power to enter into agreement with commissioner of highways for improvement of a street forming part of trunk highway and pay therefore out of its general revenue fund or other funds available for that purpose. Op. Atty. Gen. (396c-17), July 15, 1941.

(3).
State Highway Department and City of Minneapolis could enter into an agreement relative to department paying for highway improvement within city upon a street designated by the commissioner as a temporary trunk highway. Op. Atty. Gen., (229a), Feb. 8, 1941.

Commissioner could enter into a contract for improvement of trunk highway in city, whereby city of Minneapolis would resurface with asphaltic concrete pavement, without necessity of advertising for bids. Op. Atty. Gen. (229e-2), Apr. 24, 1941.

2559. State road and bridge fund—Apportionment.—Subdivision 1. For the purpose of state aid in the construction and improvement of public highways, $1,200,000.00 of the moneys accruing to the state road and bridge fund from the excise tax on gasoline, together with all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to the fund, and all other moneys accruing to the state road and bridge fund, however provided, but excluding moneys derived from the excise tax on gasoline other than said $1,200,000.00, shall be expended on state aid roads.

Subdivision 2. On or before the first Tuesday in April of each year the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue to the state road and bridge fund during the current year, for expenditure on state aid roads and after first setting aside therefrom an amount not exceeding $50,000.00 for a reserve maintenance fund, to be expended as hereinafter provided, shall apportion the balance of the state road and bridge fund allocated for state aid roads among the different counties of the state

and the commissioner of highways shall immediately send a statement of such apportionment to the state auditor and to the county auditor of each county, showing the amount apportioned to each county for expenditure during such year. The amount so apportioned to each county shall be paid by the state to the county auditor of each of said counties out of the state road and bridge fund in the manner provided by law.

Subdivision 3. Not less than one per cent nor more than three per cent of the state road and bridge fund apportioned for expenditure on state aid roads available in any year and remaining after setting aside the funds hereinbefore provided for, shall be apportioned to any county.

Subdivision 4. The amount so apportioned to each of the counties for state aid roads shall be expended by the county board of each county in constructing, improving and maintaining state aid roads therein in conformity with the provisions of law now existing governing such expenditure on state aid roads, provided that at least forty per cent of the money so apportioned to each county shall be used for maintenance of state aid roads and bridges therein.

Subdivision 5. That any state aid heretofore apportioned to any county, but not yet paid over to the county, shall be paid to such county when and as soon as said state aid shall become due and payable under existing law notwithstanding any provision in this act. (As amended Apr. 9, 1941, c. 161, §1.)

Road and bridge fund moneys may be used to construct a garage building to house road machinery if it is deemed necessary and expenditure is reasonable. Op. Atty. Gen. (107b-16), correcting June 5, 1935; June 5, 1939; June 12, 1939.

A county may not continue to draw state aid for construction and maintenance of state aid roads if it has no county engineer, though it has an employee designated as Superintendent of Maintenance. Op. Atty. Gen. (229f), Sept. 16, 1942.

(2).
Public duties imposed upon named officials are continuous and if not performed on day designated by statute should be performed at earliest date possible thereafter. Op. Atty. Gen. (454e), May 5, 1941.

2559-3. Contingent fund for Department of Highways.—The state auditor and the state treasurer are hereby authorized and directed to continue to make available to the department of highways out of moneys in the state treasury appropriated for trunk highway purposes the sum of Five Thousand Dollars ($5000.00), or such lesser amount as the commissioner of highways may request to be used by said department as a contingent fund, subject however, to such rules and regulations for its use as may be prescribed by the commissioner of administration. (Act Mar. 1, 1943, c. 92, §1.)
[161.035]

2559-4. Commissioner to expend moneys. — The commissioner of highways is hereby authorized to use the moneys in the contingent fund for trunk highway purposes in facilitating and expediting the business of the department of highways, particularly in the handling of garnishments, emergency labor payrolls, expense accounts of employes, and in departmental litigation, and all acts of the commissioner of highways heretofore performed in the use of said fund are hereby in all things recognized and confirmed. (Act Mar. 1, 1943, c. 92, §2.)
[161.035]

The following is the preamble to c. 92, Laws 1943: "Whereas, for many years there has been available to the department of highways out of moneys appropriated for trunk highway purposess, a contingent fund under the control of the commissioner of highways; and

Whereas, the use of said fund has facilitated and expedited the business of the department of highways particularly in the handling of garnishments, emergency labor payrolls, expense accounts of employees, and departmental litigation; and

Whereas, it is to the best interests of the state of Minnesota that said contingent fund be continued in use and operation."

2560. Designation state aid roads—Revocation.
(4).
A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

2560-1. County boards may acquire land in certain cases.
Where county takes an easement for purpose of building a county aid road, stone taken from the right-of-way must be used as a part of the construction of this particular piece of road. Op. Atty. Gen. (377a-8(a)), Nov. 22, 1939.

2561. Designation of road on county line a state aid road.
Where a state aid road located on county line is widened by purchase of additional land on each side, both counties should be named as grantees in both easement fees, though the work of improving the road is to be paid for by only one county. Op. Atty. Gen. (380a-4), May 20, 1943.

2562. Maintenance of state aid roads—Subdivision 1. **County Board to maintain state aid roads.**—It shall be the duty of the county board of each county in which state aid roads have heretofore or may hereafter be designated, to provide for the proper maintenance of the same in accordance with the rules and regulations of the commissioner of highways.

Subdivision 2. **Preference given.**—In the expenditure of the funds for maintenance, preference shall be given to state aid roads improved as such, and especially such state aid roads, to the cost of construction or improvement of which the United States has contributed.

Subdivision 3. **Failure of county board to maintain.**—In case the county board of any county fails or neglects to maintain any state road, as to which it is hereinbefore directed preference shall be given in the expenditure of the funds set aside for maintenance purposes, in accordance with rules and regulations promulgated by the commissioner of highways, he may cause the same to be maintained and to pay the expense thereof from the "Reserve Maintenance Fund". He shall have power to enter into contracts for the performance of work or he may purchase necessary tools and materials and employ the necessary labor and cause the same to be done by day labor; provided, however, that the amount so expended in any one county in any one year shall not, together with the funds allotted to such county during such year, exceed an amount equal to three per cent of the total state road and bridge fund available for allotment and expenditure during such year; and provided further, that an amount equal to any sum so expended by the commissioner of highways in any county during any one year shall at the time of the next allotment of the state road and bridge fund be deducted from the allotment which would otherwise be made to such county and the amount so deducted shall be credited to the reserve maintenance fund; provided, further, however, that no county shall by reason of any such deduction receive in any one year less than one-half of one per cent of the total state road and bridge fund provided and expended during such year.

In the doing of the work provided herein, the commissioner of highways may contract with governmental subdivisions of the state for the performance thereof and such governmental subdivisions are hereby authorized to undertake and perform such work and to enter into contracts with the commissioner of highways for the performance and responsibility thereof upon such terms as may be agreed upon. (As amended Act Feb. 27, 1943, c. 91.)

A county may not continue to draw state aid for construction and maintenance of state aid roads if it has no county engineer, though it has an employee designated as Superintendent of Maintenance. Op. Atty. Gen. (229f), Sept. 16, 1942.

(1).
A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

2563. Procedure for constructing; etc.

A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

In case of either a state aid road or a county aid road, if advertisement for bids specifically refers to state highway department specifications in such a way as to make them a part of contract, providing specifically for an overrun up to 120% and an underrun not to exceed 80%, payment may be made therefor under proper authority of county. Op. Atty. Gen. (707B-7), Dec. 31, 1941; Jan. 7, 1942.

2564. State aid for roads.

A county may not continue to draw state aid for construction and maintenance of state aid roads if it has no county engineer, though it has an employee designated as Superintendent of Maintenance. Op. Atty. Gen. (229f), Sept. 16, 1942.

2565. Powers of county board.—

Subd. 1 * * * * *

Subd. 5. The county board at its July meeting may include in its annual tax levy an amount not exceeding ten mills on the dollar of the taxable valuation for the county road and bridge fund; provided that in any county containing according to the 1940 census, not less than 17,000 and not more than 18,000 inhabitants, and containing not less than 12 nor more than 14 full and fractional congressional townships, the county board at its July meeting may include in its annual tax levy an amount not exceeding 13 mills on the dollar of the taxable valuation for the county road and bridge fund. Such tax may be additional to the amount permitted by law to be levied for other county purposes. (As amended Act Feb. 27, 1941, c. 29, §1.)

Laws 1943, c. 376, authorizes St. Louis County to expend road and bridge funds in Duluth, and validates expenditures.

Where contract for repairing a county aid road provided that power poles should be removed by owners, and cooperative electric company refused to make two moves, and county agreed to pay for one move, cost to county was a necessary incidental expense which could properly be paid out of road and bridge fund. Op. Atty. Gen. (98a-12), Nov. 4, 1939.

County board may not appropriate funds or allow a bill for good road services presented by a voluntary association supported by dues from individual members. Op. Atty. Gen. (125B-21), Nov. 14, 1940.

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

While it would not be illegal to pay a contractor from county road and bridge fund to remove an obstruction in county ditch where damage was being caused to county roads by the disrepair of such ditch, it might be better to proceed by transferring the money to the general fund and paying the expense of cleaning a ditch therefrom. Op. Atty. Gen. (602f), July 23, 1943.

(1).

Though logical that highway engineer should select men employed under him, county board has a right to select men who are to do work if it insists on so doing, and it has authority to authorize appointment of a rodman and fix his salary on an annual basis payable monthly. Op. Atty. Gen., (122B-3), April 11, 1940.

Vacation of a county highway by a county board within a village, council merely consenting thereto, does not have effect of vacating the highway as a village street, if it is such as well as a county road. Op. Atty. Gen. (377a-15), June 16, 1942.

(2).

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

County may use money in county and bridge fund to remove snow from town roads, and county may enter into contract with township for removal of snow from township roads for a period of 1 year for a lump sum to be paid by township. Op. Atty. Gen., (377a-11), Mar. 17, 1941.

(5).

Amended. Laws 1941, c. 29 set out above.

2565-1. Appropriations from county road and bridge fund, etc.

Laws 1943, c. 10, §1, authorizes county board of any county in which is located a city of the third class, contiguous city of the first class situated in an adjoining county, and so located that a street or streets of the city of the third class connect up with and constitute a continuation of a street or streets of the city of the first class, may annually appropriate from its road and bridge fund to such city of the third class such sums of money which are available and which it deems advisable to aid such city of the third class in the construction and maintenance of its roads, streets or bridges as the governing body of such city may determine.

Laws 1943, c. 363, provides that: Whenever by reason of any exigency attributable, directly or indirectly, to conditions and emergencies of the present war, there shall be an unexpended surplus in any annual appropriation required by any law to be made by the county board of any county in this state now or hereafter having a population of not less than 225,000 nor more than 330,000 inhabitants from its road and bridge fund to towns, villages and cities of the third and fourth class in such county, for the construction and maintenance of town roads, streets or bridges therein, such unexpended surplus shall accumulate during the period of the present war emergency and until the cessation of hostilities as declared by proper federal authority, and shall thereafter, in its entirety, become available to such towns, villages and cities of the third or fourth class for the purposes as herein provided. County board may invest such funds during such period.

2569. County highway engineer.—

Subdivision 1. * * * * *

Subdivision 2. Such county highway engineer may be selected from a list of eligible, competent highway engineers, which list shall be submitted by the commissioner of highways to the county board in May of the year in which the term of office shall expire, and shall be appointed for a term of two years, provided, that when a new county highway engineer is appointed he may be appointed for one year only, and thereafter his appointment shall be made as hereinbefore set forth. The county highway engineer shall be a citizen of the state of Minnesota, and must have resided therein for not less than three years immediately preceding the date of his appointment. The salary of the county highway engineer shall be fixed by the county board and be payable the same as other county officers are paid. His salary shall not be reduced during his term of office, provided, however, that the salary of the county highway engineer may be reduced in the same proportion as the salary of the county board in such county.

Any engineer employed by the state of Minnesota when properly certified by the commissioner of highways may be employed as county highway engineer and during the period of such employment and for the purposes of such employment he may be granted leave of absence from the state service, notwithstanding any limitation on leaves of absence contained in the civil service act.

The director of civil service shall allocate a state civil service classification to any county highway engineer as may be from time to time requested by the commissioner of highways. Such allocation shall be made on the same basis and subject to the same provisions of law as pertain to engineering and similar positions in the state classified service. The director shall also give consideration to the education, professional attainments and experience of such county highway engineer for purposes of transfer to the state service. All county highway engineers who have had not less than two years service prior to such transfer, may be transferred to such state classification so allocated, without examination, but subject to a six months probationary period, in the state classified service. The director of civil service shall establish procedure for such transfer.

The commissioner of highways may certify any county highway engineer that he may deem qualified to the director of civil service as eligible to take any specific promotional examination held for civil engineer or civil engineering aid as classified by the state civil service commission. The service rating of such engineer shall include past service with the state and as county highway engineer, if he had prior service with the state highway department as a supervisory engineer. (As amended Act Apr. 26, 1941, c. 462, §1.)

Subd. 3 to Subd. 7 * * * * * * * * * * * * * * * * * *

Though logical that highway engineer should select men employed under him, county board has a right to select men who are to do work if it insists on so doing, and it has authority to authorize appointment of a rodman and fix his salary on an annual basis payable monthly. Op. Atty. Gen., (122B-3), April 11, 1940.

Term of county engineer appointed at first meeting in May is two years and until successor is appointed and qualified. Op. Atty. Gen. (122b-1), Apr. 23, 1942.

County engineer may not perform services for other municipalities in county, though compensation therefor is paid into county treasury, but where county engineer has very little work to do and is willing to do work for a city, receiving no compensation in addition to his salary from the county, and is ordered to do so by county board which receives compensation, there would probably be no serious objection if there were no other engineers left in the county on account of government work. Op. Atty. Gen. (122b-3), July 16, 1942.

A county may not continue to draw state aid for construction and maintenance of state aid roads if it has no county engineer, though it has an employee designated as Superintendent of Maintenance. Op. Atty. Gen. (229f), Sept. 16, 1942.

A county highway engineer may not at the same time act as such in two counties. Op. Atty. Gen. (122b-1), June 3, 1943.

Subd. (2).

Salary fixed for county highway engineers by Laws 1939, c. 99, §13, was not superseded or repealed by Laws 1941, c. 462, amending this section. Op. Atty. Gen. (122b-6), Aug. 10, 1943.

Subd. 3.

County highway engineer may not be appointed engineer in county ditch proceedings, but assistant county highway engineer may be so appointed. Op. Atty. Gen. (122b-3), Nov. 5, 1943.

2571. Power of town board.

Duty of town board to procure machinery involves a power and duty to determine what machinery shall be procured, and this determination is binding upon road overseers in the town. Op. Atty. Gen. (382b), March 12, 1943.

Where county constructs a new section in a state aid road, it may not by resolution transfer the old section of the road to a township and thus impose burden upon township of maintaining it, but may vacate it. Op. Atty. Gen. (377b-8), Apr. 2, 1943.

No authority exists for transfer of control of county road from county to town, but if a town wishes to maintain a county road as its own and county does not desire to maintain the road, the town may maintain the road without the necessity of any transfer or any vacation and re-establishment. Op. Atty. Gen. (377b-3), May 3, 1943.

(2).

Township may not construct a township road according to county specifications and pay for it and thereafter have county board designate road as county road and reimburse township for its expenditure, nor may township advance funds to county board for construction of county highway and have county reimburse township for funds advanced. Op. Atty. Gen. (380a-8), Aug. 18, 1941.

2573. Taxation for road purposes by towns.

Limitation on township levy for road and bridge fund is governed by §2573, and not §2060, and Laws 1939, c. 170, did not supersede all former provisions. Op. Atty. Gen., (519i), March 5, 1940, reversing Op. Atty. Gen., Nov. 23, 1939, and Op. Atty. Gen., Nov. 28, 1939.

Electors of a town can vote a levy up to 15 mills for road and bridge purposes, and in an emergency may levy an additional five mills for road and bridge purposes. Op. Atty. Gen., (519o), April 5, 1940.

Township has power to construct building to be used for storage of snow plows, tractors, and other road equipment, to be paid out of road and bridge fund. Op. Atty. Gen. (382a), Apr. 9, 1941.

Unless town has an assessed valuation of more than $1,000,000 and less than $8,000,000, it is limited to a 15 mill road and bridge levy by town meeting and, in an emergency, an additional 5 mill levy by town board, and is not entitled in addition thereto to a 10 mill town road drainage tax levy. Op. Atty. Gen. (519o), Jan. 19, 1942.

Town may not make a separate levy additional to and over and above the regular road and bridge levy for the purpose of snow removal. Op. Atty. Gen. (519k), Aug. 23, 1943.

Maximum levy by a town for road and bridge purposes is 20 mills. Id.

(c).

A tax levy of five mills additional road and bridge tax at annual meeting is void, and need for construction of a building to be used for storing and housing snow plows, tractors, and other road equipment does not constitute an "emergency". Op. Atty. Gen. (382a), Apr. 9, 1941.

2574. Town dragging fund and tax.—The auditor of each county shall annually extend upon the tax lists of his county in the same manner as is provided by law for extending the county school tax a tax of one mill on the dollar of the taxable property in each town outside the corporate limits of any borough, village, or city in any such town; provided, that in towns having an assessed valuation of $1,000,000 or more, the amount of such tax shall not exceed $1,000. The tax so levied shall be collected and the payment thereof enforced in the same manner as is provided by law for the collection and enforcement of other town taxes extended by the county auditor. The county treasurer shall settle with and pay over to the town treasurer such taxes when collected at the time and in the manner now provided by law with reference to other town taxes.

The proceeds of such tax levy shall be kept in a separate fund to be known as the dragging fund and expended by the town board only for the expense of procuring a suitable number of drags and dragging the roads of the town, in putting straw on sandy roads and removing snow from town and county roads. If, on the first day of April in any year, there shall be an unexpended balance in the dragging fund which exceeds in amount the sum of $100.00, the town board may transfer all or part of the amount in such dragging fund in excess of $100.00 to the town road and bridge fund. Such transfer shall not be made until it shall first affirmatively appear that the town board has therefore procured a suitable number of drags and that the roads of the town have been properly dragged.

The town board in each town, on recommendation of the town or district road overseer, may enter into contracts for the dragging of the roads of the town or district giving preference to the main traveled roads and roads constituting mail routes within their respective towns. The compensation which may be agreed to be paid for each time a road is dragged shall not exceed $1.50 per mile for each mile of road dragged.

The contract price shall be paid from the dragging fund in the same manner as other claims against the town, after approval by the road overseer. (As amended Mar. 15, 1943, c. 128, §1.)

No authority exists for transfer of control of county road from county to town, but if a town wishes to maintain a county road as its own and county does not desire to maintain the road, the town may maintain the road without the necessity of any transfer or any vacation and re-establishment. Op. Atty. Gen. (377b-3), May 3, 1943.

2575. Town road overseer.

Duty of town board to procure machinery involves a power and duty to determine what machinery shall be procured, and this determination is binding upon road overseers in the town. Op. Atty. Gen. (382b), March 12, 1943.

2578. Roads, Ferries, Bridges—Improvement by certain municipalities—Within or without boundaries—Manufacture of crushed rock.—The council of any village, borough or of any city of the fourth class or the town board of any town, or the county board of any county, may appropriate and expend such reasonable sums as it may deem proper to assist in the improvement and maintenance of roads lying beyond its boundaries and leading into it, and of ferries and bridges thereon whether they are within or without the county in which it is situated. Such municipalities may also engage in the manufacture of crushed rock for use on public highways and said crushed rock may be conveyed, by gift or sale, to other municipalities for such use. (As amended Act Apr. 20, 1943, c. 530, §1.)

A village operating under Laws 1885, c. 145, may make appropriations for improvements and maintenance of roads outside of village limits under this section. Op. Atty. Gen., (476B-13), March 7, 1940.

Village may not purchase land outside of limits for purpose of constructing a roadway thereon nor enter into a contract binding it to maintain a road outside limits for any definite number of years. Id.

Town board is authorized to appropriate and expend a reasonable sum as assistance for improvements and maintenance of a bridge outside limits of town on a road leading into town, but it may not contribute money to construction of a new bridge. Op. Atty. Gen., (442a-21), March 29, 1940.

Adjoining counties are empowered to operate a ferry across the Mississippi River where a bridge has been destroyed and it is necessary to take care of the traffic on a highway pending a shortage of material needed for a bridge project. Op. Atty. Gen. (370d), May 10, 1943.

County aid roads bordering lake and village and needing riprapping to be maintained by the county, and it is

entirely discretionary with village to assist. Op. Atty. Gen. (380b-7), July 22, 1943.

Though usual legal proceedings designating a town road were not observed, road could be established by user to the extent that village through which it extended could expend funds in the maintenance. Op. Atty. Gen. (379a-2), Oct. 6, 1943.

2580. Town road drainage tax.

Unless town has an assessed valuation of more than $1,000,000 and less than $8,000,000, it is limited to a 15 mill road and bridge levy by town meeting and, in an emergency, an additional 5 mill levy by town board, and is not entitled in addition thereto to a 10 mill town road drainage tax levy. Op. Atty. Gen. (519o), Jan. 19, 1942.

2581. Establishment of road by judicial proceedings.

To "lay out" a road means to designate its width as well as other dimensions. Highway between Sibley and Renville Counties, 213M314, 6NW(2d)626. See Dun. Dig. 8442a.

Establishing of highways is primarily a legislative function, exercised with respect to local roads by county and town boards, and in respect to county line roads by commissioners appointed by the district court. Id. See Dun. Dig. 8454, 8468, 8474.

Fact that width intended by commissioners could be ascertained by involved and uncertain calculation was not sufficient in report. Id. See Dun. Dig. 8474.

Petition and order appointing commissioners were not rendered invalid by failure to state width of proposed road, but required a new report of commissioners. Id. See Dun. Dig. 8474.

Where commissioners report their decision that proposed road was needed and desirable, such need will be assumed on hearing to confirm report, in absence of a conclusive showing to contrary. Id. See Dun. Dig. 8474.

Court cannot modify report nor add to it, nor may it direct that a road of different dimensions or one following a different route should be established. Id. See Dun. Dig. 8474.

It was immaterial that surveyor's plat of road was not filed before hearing, where confirmation by court was set aside on appeal and case sent back because report did not state width of road, since surveyor's plat filed after hearing may be used on second hearing. Id. See Dun. Dig. 8474.

Failure of commissioners to establish a road to state width of proposed road rendered their report and order confirming the same invalid and ineffective. Id. See Dun. Dig. 8474.

Function of court is limited to one of confirmation or rejection of the commissioner's report. Id. See Dun. Dig. 8481.

This section is the only way in which a new road on a county line can be established. Op. Atty. Gen., (379c-2), Aug. 12, 1941.

Two towns in different counties may establish a road along the county line between the two towns under either Mason's Stat. §2587, or Mason's Stat. §2581, provided the road does not extend to adjoining town. Op. Atty. Gen. (377b-10), June 15, 1943.

2582. Establishment, alteration; etc.

Establishment and alteration of county roads with federal aid. Laws 1941, c. 320.

Burden of constructing road falls on county, while expense of maintaining it falls on township through which it passes, though county may, in its discretion, appropriate money from its road and bridge fund to any town to aid in maintenance. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

In establishment of a county road, land should be acquired in the manner provided by this section, and not by eminent domain under the general statute. Id.

Where county constructing a highway obtains an easement from an adjoining owner, and highway runs through a gravel pit and county took out gravel from above level of highway and used it upon this and other roads, material necessarily removed in grading and improvement could be used on other parts of same road within reasonable distance from point of removal without paying landowner for it, but if removal of material, whether above or below grade, was not necessary to proper grading or improvement, or if material, though necessarily removed, was taken and used on some other part of road at an unreasonable distance, owner would be entitled to compensation for gravel in addition to compensation for easement. Op. Atty. Gen. (377a-8), Nov. 29, 1940.

Establishing of highways is primarily a legislative function, exercised with respect to local roads by county and town boards, and in respect to county line roads by commissioners appointed by the district court. Highway between Sibley and Renville Counties, 213M314, 6NW (2d)626. See Dun. Dig. 8454, 8468, 8474.

No authority exists for transfer of control of county road from county to town, but if a town wishes to maintain a county road as its own and county does not desire to maintain the road, the town may maintain the road without the necessity of any transfer or any vacation and re-establishment. Op. Atty. Gen. (377b-3), May 3, 1943.

2582-½. Road for military or national defense.—Whenever the county board of any county shall determine that it is necessary to establish a road or to alter an existing road for military or national defense purposes, the board may, in its discretion, establish such road or alteration and designate the route and width thereof, provided the entire cost of the right of way therefor is paid, assumed, or made available by the United States or some agency or department thereof. (Act Apr. 19, 1941, c. 320, §1.) [162.015]

2582-½a. Same—Acquisition of rights.—Upon establishing any such road or alteration, the county board may acquire the right of way therefor in the name of the county by purchase or gift or by condemnation in accordance with the provisions of Mason's Minnesota Statutes 1927, Chapter 41, as amended. (Act Apr. 19, 1941, c. 320, §2.) [162.015]

2582-½b. Same—Commissioner of highways as agent of county.—The county board of any county establishing or altering a road hereunder may designate the commissioner of highways of the State of Minnesota as agent of the county to acquire in the name of the county the right of way needed therefor by purchase or gift, or by condemnation in accordance with Mason's Minnesota Statutes 1927, Chapter 41, as amended, provided the entire cost of the right of way is paid, assumed, or made available by the United States or some agency or department thereof, and the commissioner of highways is hereby authorized to act as such agent. (Act Apr. 19, 1941, c. 320, §3.) [162.015]

2582-½c. Same—County or state aid road.—Any road established or altered hereunder shall be deemed to be a county road, and may be designated as a county aid or state aid road by the county board in accordance with the laws applicable to such roads. (Act Apr. 19, 1941, c. 320, §4.) [162.015]

2583. Establishment, alteration, or vacation by town boards.

Establishing of highways is primarily a legislative function, exercised with respect to local roads by county and town boards, and in respect to county line roads by commissioners appointed by the district court. Highway between Sibley and Renville Counties, 213M314, 6NW(2d) 626. See Dun. Dig. 8454, 8468, 8474.

Town board has no authority under this section to establish a new road of its own volition without submission of a petition. Op. Atty. Gen. (377b-10(d)), July 16, 1941.

Town board has authority to vacate a town road which lies between two tracts owned by a school district. Op. Atty. Gen. (377A-15), Jan. 5, 1942.

Where petition requesting establishment of a new road and vacating an old road was granted by township board and order filed with clerk of township, old road ceased to exist after two years notwithstanding that new road had not been constructed. Op. Atty. Gen. (377a-15), Sept. 1, 1942.

Town officers have right to hire county engineer to survey a proposed regular town road, but town is not liable for payment of county surveyor's fee when he is employed by interested landowners who objected to former survey, or to reimburse a farmer who paid the fee. Op. Atty. Gen. (122b), Oct. 6, 1942.

Where county constructs a new section in a state aid road, it may not by resolution transfer the old section of the road to a township and thus impose burden upon township of maintaining it, but may vacate it. Op. Atty. Gen. (377b-8), Apr. 2, 1943.

No authority exists for transfer of control of county road from county to town, but if a town wishes to maintain a county road as its own and county does not desire to maintain the road, the town may maintain the road without the necessity of any transfer or any vacation and re-establishment. Op. Atty. Gen. (377b-3), May 3, 1943.

Subd. 1.

Township board has no authority to vacate a street and alley constituting part of a plat, though they have in effect been treated and improved and maintained as township roads, proper procedure being a proceeding in court under another statute. Op. Atty. Gen. (377A-15), Oct. 3, 1941.

Subd. 3.

If tax forfeited lands will be isolated by vacation of a town road, county board may instruct county attorney to appear at hearing and object to vacation in behalf of state and county. Op. Atty. Gen. (425G), Oct. 15, 1941.

Subd. 6.
Register of deeds and auditor have authority to refuse to record proceedings of town board attempting to vacate a street and alley constituting part of a plat. Op. Atty. Gen. (377A-15), Oct. 3, 1941.
Subd. 8.
Action of board in carrying motion to table petition did not constitute a determination and board could consider new petition within year. Op. Atty. Gen., (379c-13(e)), April 17, 1940.

2584. Dedication of land for road.
(1).
Township funds may not be used for construction of a private road or cartway dedicated to the public. Op. Atty. Gen. (442a-21), Oct. 10, 1939.

2585. Cartways.
Village has no authority to construct a cartway for a resident of village who cannot gain access to local road. Op. Atty. Gen. (377-a), July 31, 1940.
(1).
A single petitioner landowner must make his petition under Subdivision 2 and pay all of damages. Op. Atty. Gen. (377b-1), July 28, 1941.
(2).
"Access," means reasonable or necessary access, and whether one-rod cartway can be enlarged to two-rod is a discretionary matter. Op. Atty. Gen. (377B-1), Sept. 13, 1940.
"Damages" refer only to those due to those for land taken and do not include cost of construction of cartway. Id.
Town board may reconsider its action in granting a petition for a cartway. Op. Atty. Gen., (377a-7), Feb. 25, 1941.
Cartways must connect with a public road. Op. Atty. Gen. (377b-1), Dec. 10, 1942.

2585-3. Portage defined.
Trails or portages on established canoe or boat routes dedicated to public use. Act Mar. 6, 1941, c. 49, allows certain counties to appropriate money for their improvement.

2586. Section line roads.
Unless section line road was established pursuant to this section, fact that it lies on section line has no bearing on its status as a public or private road. Op. Atty. Gen., (377b-7), May 29, 1941.

2587. Roads on town line.
Where two townships make agreement as to division of township and county line road for maintenance and repair purposes, and one township fails to keep its part in passable condition, freeholders may petition county board of county in which town responsible for repair and maintenance is located, and that county board may cause work to be done. Op. Atty. Gen. (279c-8(c)), Aug. 24, 1940.
It is doubtful that two townships in different counties may by joint action establish a road on county line. Op. Atty. Gen. (379C-2), Aug. 12, 1941.
Two towns in different counties may establish a road along the county line between the two towns under either Mason's Stat. §2587, or Mason's Stat. §2581, provided the road does not extend to adjoining town. Op. Atty. Gen. (377b-10), June 15, 1943.
Subd. 3.
Road on line between city and town established under this section is to be maintained pursuant to this section. Op. Atty. Gen. (379C-8C), Oct. 2, 1941.

2590. Dedication by user.
Stipulation of facts that public use of alleyway had been open and continuous for more than 15 years afforded basis for finding of owner's acquiescence and intent to dedicate. Dickinson v. Ruble, 211M373, 1NW(2d)373. See Dun. Dig. 2646.
Fact that public officials had made no repairs of an alleyway is of no consequence upon question of dedication at common law. Id. See Dun. Dig. 2647.
The "keeping in repair and working" of a road for six years must be under authority and at expense of government functioning through an appropriate agency. Op. Atty. Gen., (379a-2), May 3, 1940.
Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.
Four-rod road may be established by user when original road purchased was only two-rods. Op. Atty. Gen. (377A-4), Sept. 18, 1941.
Though usual legal proceedings designating a town road were not observed, road could be established by user to the extent that village through which it extended could expend funds in the maintenance. Op. Atty. Gen. (379a-2), Oct. 6, 1943.

2591. Use of railroad right-of-way.
Section prohibits public from acquiring any highway easement over tract of land owned by railroad adjoining right-of-way, even though public road was established prior to passage of Laws 1891, c. 21. Op. Atty. Gen. (831d), Dec. 19, 1939.

2592. Alteration of road.
Where petition requesting establishment of a new road and vacating an old road was granted by township board and order filed with clerk of township, old road ceased to exist after two years notwithstanding that new road had not been constructed. Op. Atty. Gen. (377a-15), Sept. 1, 1942.
Where county constructs a new section in a state aid road, it may not by resolution transfer the old section of the road to a township and thus impose burden upon township of maintaining it, but may vacate it. Op. Atty. Gen. (377b-8), Apr. 2, 1943.

2595. Contracts for bridges and roads.
(2).
Road machinery may not be rented without advertising for bids. Op. Atty. Gen., (707d-2), April 8, 1940.

2600. Drainage of roads.
A town has the same rights and is subject to the same liabilities as an individual in disposing of surface waters. Op. Atty. Gen. (844a-9), Aug. 10, 1943.
Drainage of county road by agreement with adjacent landowners. Op. Atty. Gen. (148a-8), Oct. 1, 1943.

2602. Toll bridges.
Any city or village may construct toll bridges. Laws 1941, c. 286.

2605. Bridges over state drainage ditches.
This section applies only to a certain state ditch constructed in Traverse County and opinion of attorney general of July 5, 1933 is erroneous and is overruled. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

2606. Reconstruction, repair; etc.
Township must repair or rebuild bridges on township road, and county must repair or rebuild bridges on county road, though constructed for and still used for crossing judicial ditches. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

2607. Impassable roads—Complaint by freeholders.
Where two townships make agreement as to division of township and county line road for maintenance and repair purposes, and one township fails to keep its part in passable condition, freeholders may petition county board of county in which town responsible for repair and maintenance is located, and that county board may cause work to be done. Op. Atty. Gen. (279c-8(c)) Aug. 24, 1940.

2609. Hedges and trees.
This section applies to a town road established in 1877 and subsequently improved, and on which a further improvement is contemplated, and town board may not appropriate wood and timber of trees necessarily cut down if the owner pays the expenses of such cutting. Op. Atty. Gen., (643d), July 3, 1941.

2612. Town and county boards to construct culverts.
A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. Op. Atty. Gen. (377a-3), Oct. 14, 1939.
Township is obliged to install a culvert for an abutting land owner so there is no defined driveway entering into road from farm. Op. Atty. Gen. (377a-3), July 17, 1940.
Where land is intersected by a railroad leaving no suitable approach to either portion of farm, statute contemplates installing two culverts. Op. Atty. Gen. (377A-3), Sept. 26, 1941.

2613. Condemnation of gravel beds.—Whenever the commission of highways, or any county or town board or common council of any village or city shall deem it necessary for the purpose of building or repairing public roads or streets within his or its jurisdiction, he or it may procure by purchase or condemnation, in the manner provided by law, any plot of ground, not exceeding 40 acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams, trucks or other vehicles to pass, and on the most practicable route to the nearest public road.

Whenever any county or town board shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may purchase any plot of ground located in an adjoining town

or county, not exceeding forty acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams, trucks or other vehicles to pass, and on the most practicable route to the nearest public road. (As amended Act Mar. 28, 1941, c. 77, §1.)

County may not purchase a quarter section of farm land for purpose of securing gravel from part of it and renting out the remainder, being limited to 20 acres. Op. Atty. Gen. (125a-41), Aug. 22, 1940.

Where county constructing a highway obtains an easement from an adjoining owner, and highway runs through a gravel pit and county took out gravel from above level of highway and used it upon this and other roads, material necessarily removed in grading and improvement could be used on other parts of same road within reasonable distance from point of removal without paying landowner for it, but if removal of material, whether above or below grade, was not necessary to proper grading or improvement, or if material, though necessarily removed, was taken and used on some other part of road at an unreasonable distance, owner would be entitled to compensation for gravel in addition to compensation for easement. Op. Atty. Gen. (377a-8), Nov. 29, 1940.

2615. Obstruction of or damage to highways.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

2616. Moving buildings over roads.

Mason's Minn. Stat. 1927, §2616, authorizing requirement from one about to move a building over a street or other public highway of a sum of money sufficient to cover reasonable expense of removal, held to be a declaration of state law as against which a village ordinance requiring a substantial sum in excess is ultra vires. Moore v. V., 207M75, 289NW837. See Dun. Dig. 6752, 6753.

One compelled unlawfully to pay village excessive sum of money for moving building over a street may recover the same, even if village got the money in its governmental capacity. Id. See Dun. Dig. 7462.

2617. Removal of snow—Authorized use of county equipment.—

Subdivision 1. It shall be the duty of the town board of each town, so far as funds are available for the expense thereof, to keep all town, county and judicial roads therein in a passable condition by the removal of snow therefrom; and for that purpose the road overseer is authorized to employ, by and with the consent of the town board, such men and teams and other equipment as may be necessary for the purpose. The town board may also provide for the erection of snow fences when deemed advisable.

Subdivision 2. It shall be the duty of the county board, so far as funds are available for the expenses thereof, to keep all state aid roads and state rural highways therein in a passable condition by the removal of snow therefrom. The county board may also provide for the erection of snow fences when deemed advisable.

Subdivision 3. The county board may by resolution adopted at a regular meeting thereof, authorize the use of county snow removal equipment and operators thereof, for the removal of snow upon either public or private property within the county, upon such terms and conditions as the county board shall determine, not less however, than the actual cost of the use of such equipment and operators to the county. (As amended Act Apr. 16, 1941, c. 276, §1.)

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

County may use money in county and bridge fund to remove snow from town roads, and county may enter into contract with township for removal of snow from township roads for a period of 1 year for a lump sum to be paid by township. Op. Atty. Gen., (377a-11), Mar. 17, 1941.

Section enables town to plow snow but does not compel it to do so, and it is only required to plow it when it has money for the purpose. Op. Atty. Gen. (377A-11), Jan. 29, 1942.

County may not at its own expense remove snow from any town, county or judicial road, and removal of snow from such roads is duty and responsibility of respective town boards, and in event county equipment is used it must be authorized by town board and a charge made by county to town at not less than actual cost of use of such equipment and operators to the county, since county can expend money for snow removal only with reference to state aid roads, and other sections of the statutes applying to maintenance of roads do not apply to snow removal. Op. Atty. Gen. (377a-11), March 1, 1943.

(2).

"State rural highways" means county aid roads and does not refer to township cartways, township roads, or state trunk highways. Op. Atty. Gen. (377a-11), May 29, 1941.

(3).

Only limitation upon county in regard to use of its equipment for snow removal is that it must secure actual costs of use of equipment and operators. Op. Atty. Gen. (377a-11), May 29, 1941.

GENERAL PROVISIONS APPLICABLE TO ALL ROADS

2662-2½d. Route 212 added to trunk highway.— Beginning at a point on Route No. 3 at or near Robbinsdale, thence extending in a northeasterly and easterly direction to a point on Route No. 62 easterly of New Brighton, affording necessary and reasonable means of communication to industrial areas engaged in the manufacture of essential war materials, and bringing into the trunk highway system an important route a portion of which has been heretofore improved with federal aid, and all of which has been approved for surveys and plans with federal funds by the Public Roads Administration. (Act Apr. 6, 1943, c. 324, §1.)

2662-2½e. Funds available for construction.— That funds are available for the construction, improvement and maintenance of the additional route of said trunk highway system hereinbefore set forth, sufficient therefor, in addition to the construction and maintenance of the several routes specifically described in said Article 16 of the Constitution, and the said additional route is added to the trunk highway system pursuant to the power and authority vested in the Legislature under said Article 16 of the State Constitution. (Act Apr. 6, 1943, c. 324, §2.)

2662-2½f. Commissioner of highways to locate route.—The Commissioner of Highways is hereby authorized and empowered to specifically and definitely locate the foregoing described route but in so locating the same he shall not deviate from the starting or terminus as set forth herein. All of the provisions of existing law defining the powers and duties of the Commissioner of Highways with reference to temporary and permanent location of trunk highways and other trunk highway matters are hereby conferred upon said Commissioner with respect to the foregoing route. (Act Apr. 6, 1943, c. 324, §3.)

2662-2½g. When construction is to begin.—No action shall be taken under this act, no materials purchased, no contracts let, no right of ways purchased, no condemnation proceedings shall be commenced hereunder and no construction of said new route commenced unless and until the Commissioner of Highways of the State of Minnesota is definitely assured and is reasonably satisfied that priorities will be had and that the materials and labor necessary for the construction of said new route are directly available and that no construction is to be commenced under this act unless commenced prior to the cessation of the present hostilities, it being the intent hereof that this is a war emergency measure designed to construct forthwith a highway that will accelerate the transportation of war employees to and from war plants situate along said new route. (Act Apr. 6, 1943, c. 324, §4.)

2662-2½h. Trunk highway No. 213 created.—There is hereby added to the trunk highway system a new route as follows: Route No. 213. Beginning at a point on Route No. 185 in Duluth, thence extending in an easterly direction to a point on the line between the State of Minnesota and Wisconsin. (Act Apr. 12, 1943, c. 399, §1.)

2662-2½ i. Same—Funds for construction of highway available.—That funds are available for the construction, improvement and maintenance of the additional route of said trunk highway system hereinbefore set forth, sufficient therefor, in addition to the construction and maintenance of the several routes specifically described in said Article 16 of the Constitution, and the said additional route is added to the trunk highway system pursuant to the power and authority vested in the Legislature under said Article 16 of the State Constitution. (Act Apr. 12, 1943, c. 399, §2.)

2662-2½ j. Same—Commissioner to locate route.—The Commissioner of Highways is hereby authorized and empowered to specifically and definitely locate the foregoing described route but in so locating the same he shall not deviate from the starting or terminus as set forth herein. All of the provisions of existing law defining the powers and duties of the Commissioner of Highways with reference to temporary and permanent location of trunk highways and other trunk highway matters are hereby conferred upon said Commissioner with respect to the foregoing route. (Act Apr. 12, 1943, c. 399, §3.)

MOTOR VEHICLES

2672. Definitions.—Wherever in this Act the following terms are used they shall be construed to have the meaning herein ascribed to them:

"Application for Registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.

Trucks used for transporting things other than passengers shall be classified and taxed as follows:

For a period beginning with the passage of this act and terminating September 30, 1945, there shall be a class of trucks known as Class F, which shall include all trucks, tractors, truck-tractors, trailers, and semi-trailers used exclusively to haul forest products, whether rough or finished (partially or completely), including logs, pulpwood, tie cuts, sawed or hewed ties, box bolts, firewood, surfaced or unsurfaced lumber, lath, piling, mining timber, lagging, posts and poles, from the place where the products are produced to the point where they are to be used, or to the points from which they will be sold to actual users, and to haul back to the point where such forest products were produced, supplies and equipment which are to be used or consumed exclusively by the owner of the truck or by the producer of such forest products.

A truck registered in Class F may also be used by the owner thereof to transport agricultural, horticultural, dairy and other farm products including live stock, produced by the owner of the truck from the farm to market, and to transport property and supplies to the farm of the owner, and trucks used in rendering occasional accommodation service for others in transporting farm products from a farm to market or supplies to a farm even though the same be paid for.

Class T trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers used exclusively by the owner of such truck to transport agricultural, horticultural, dairy and other farm products including live stock, produced by the owner of the truck from the farm to market, and to transport property and supplies to the farm of the owner, and trucks used in rendering occasional accommodation service for others in transporting farm products from a farm to market or supplies to a farm, or a farmers' cooperative even though the same be paid for, where such truck is owned by a person not engaged in the transportation business.

Class X trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers used exclusively in transporting property within the zone circumscribed by a line running parallel to the corporate limits of any city or village or contiguous cities and/or villages and 35 miles distant therefrom. The permitted zone of operation shall be a zone in which the postoffice address of the licensee is located unless at the time of application for license he designates some other zone. The postoffice address of the owner, or the zone selected for operation shall be stenciled by the owner in a conspicuous place on said motor vehicle. The X truck may be used by the owner thereof outside the zone for the purpose of transporting agricultural, horticultural, dairy and other farm products, including live stock produced by the owner of the truck from the farm to market and to transport property and supplies to the farm of the owner of the truck. Class X trucks may also be used by the owned thereof outside of the zone for the purpose of transporting logs and other forest products, including logs, pulpwood, tie cuts, sawed or hewed ties, bolts, firewood, rough unsurfaced lumber, square timbers, piling, mining timber, lagging, posts and poles, from the point where such products are produced to an assembly yard or railhead in the same county or contiguous county when such transportation constitutes a first haul of such products, and shall also include hauling property, equipment and supplies to the place where the production is to be performed, or materials used in highway construction, or contractors' outfits to the place where work is to be performed and/or vehicles used exclusively as service or repair cars going to or from the place rendering aid and assistance to the disabled motor vehicle. The situs of an X truck may be changed by the owner thereof on application.

Class Y trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers not included under Class T or Class X.

"Commercial Passenger Transportation" shall mean the carriage of passengers for hire between points not wholly within the limits of the same city, village or borough, provided that bus lines operating wholly within two or more contiguous cities, villages or boroughs, or between a city and a village, or villages contiguous thereto, and local bus lines carrying passengers from a railroad station from or to places in the vicinity thereof shall not be construed to be engaged in commercial passenger transportation.

"Highway." Any public thoroughfare for vehicles, including streets in cities, villages and boroughs.

"Motor Vehicles." Any self-propelled vehicles not operated exclusively upon railroad tracks, and any vehicle propelled or drawn by a self-propelled vehicle.

"Owner." Any person, firm, association or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

"Tractor." Any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently.

"Truck-tractor." Any motor vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Trailer." Any vehicle designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.

"Semi-Trailer." A vehicle of the trailer-type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight or that of its load rests upon and is carried by the towing vehicle.

"Truck." Any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform, rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passenger.

"Unloaded weight" shall mean the actual weight of the vehicle fully equipped without a load.

"Gross weight" shall mean the actual unloaded weight of the vehicle, either a truck, tractor, truck-tractor, semi-trailer or trailer, fully equipped for service plus the weight of the maximum load which the applicant has elected to carry on such vehicle.

"Registrar." The registrar of motor vehicles designated in this Act.

"Sworn statement." Any statement required by or made pursuant to the provisions of this Act, made under oath administered by an officer authorized to administer oaths.

"Dealer." Any person, firm or corporation regularly engaged in the business of manufacturing, or selling, purchasing and generally dealing in new and unused motor vehicles having an established place of business for the sale, trade and display of new and unused motor vehicles and having in its, his or their possession new and unused motor vehicles for the purpose of sale or trade. (As amended Apr. 26, 1941, c. 465, §1; Apr. 20, 1943, c. 536, §1; Apr. 24, 1943, c. 602, §1.)

Registration of motor vehicles engaged in commercial passenger transportation. Laws 1943, c. 98.

Refunds. Laws 1943, c. 285.

A farmer who uses a truck registered in the X class to haul for hire within a 35 mile zone may use his truck to haul his own produce to market outside of 35 mile zone and supplies back to his farm. Op. Atty. Gen., (632E-36), Feb. 9, 1940.

Rough lumber produced at portable saw mill does not come within phrase "logs and other like forest products". Id.

Lumber is a manufactured product, and cannot be classed as logs or as "like forest products" though latter include fence posts, pulp wood, telephone poles, rough ties, and other rough forms into which timber might be cut by simple methods on the ground where it is felled. Op. Atty. Gen., (632E-36), June 7, 1940.

Lumber is a manufactured product which does not come within phrase "other like forest products" and cannot be hauled beyond 35-mile limit in an X truck, though sawed on land by owner and transported for the first time. Op. Atty. Gen. (632E-36), June 7, 1940.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

A farmer wishing to salvage flax straw on farms of others under a form of lease whereby he recovers the straw as compensation for combining grain for farmer may not haul his straw to market on a T license or an X license on his truck, since he does not produce the product hauled. Op. Atty. Gen. (632E-36), Aug. 8, 1940.

Stencilling a greater weight than licensed weight is an election of gross weight, and owner and purchaser from owner are liable for an additional charge, even though actual loading has always been within licensed weight. Op. Atty. Gen. (632e-34), Oct. 4, 1940.

"Twin Cities" may not be used as designation of zone on X trucks. Op. Atty. Gen. (632e-36), May 7, 1941.

Persons using their vehicles exclusively in fur farming operation may register under class T and transport feeds to animals, transport animals from place to place and pelts taken from the animals, and persons so engaged and owning trucks which are otherwise used as to require their registration in class X may operate beyond limits of 35-mile zone in accordance with limitations contained in this section. Op. Atty. Gen. (632e-35), Oct. 16, 1941.

Dealers in trailers are motor vehicle dealers. Op. Atty. Gen. (632a-7). Feb. 1, 1943.

Constitutionality of appropriation from highway funds to various departments of the state. Cory v. King, 8NW (2d)614; note under Const. Art. 16, §2.

Authorized change of situs by X trucks permits carrying loads from old to new zone. Op. Atty. Gen. (632e-36), Apr. 7, 1943.

Laws 1943, c. 536 and Laws 1943, c. 602, amending this section, are not in conflict and effect should be given to each. Op. Atty. Gen., (632e-34), Apr. 30, 1943.

Owner is liable for tax based upon stencilled weight regardless of weight limitations of ODT. Op. Atty. Gen. (632e-1), Dec. 1, 1943.

2673. Vehicles owned and used solely in the transaction of official business by representatives of foreign powers, by the federal government, the State or any political subdivision thereof, or vehicles owned and used exclusively by educational institutions and used solely in the transportation of pupils to and from such institutions, shall be exempt from the provisions of this act requiring payment of tax or registration fees, but all such vehicles except those owned by the Federal Government, municipal fire apparatus, police patrols and ambulances, the general appearance of which is unmistakable, shall be registered as herein required and shall display tax exempt number plates furnished by the registrar at cost, provided, however, in the case of vehicles used in general police work the pleasure vehicles classification license number plates shall be displayed and furnished by the registrar at cost; but the exemption herein provided shall not apply to any vehicles, except such vehicles used in general police work, unless the name of the State Department or the political subdivision owning such vehicle shall be plainly printed on both sides thereof in letters not less than 2½ inches high, one inch wide and of a ⅜ inch stroke and shall be in a color giving a marked contrast with that of the part of the vehicle on which it is placed and shall be done with a good quality of paint that will endure throughout the term of the registration. The printing must be on a part of the vehicle itself and not on a removable plate or placard of any kind and shall be kept clean and visible at all times. Provided, however, that the owner of any such vehicle, desiring to come under the foregoing exemption provisions shall first notify the Chief or the State Trunk Highway Patrol who shall provide suitable seals and cause the same to be affixed to any such vehicle. Tractors used solely for agricultural purposes, or tractors, together with trailers or wagons thereto attached, occasionally hauling agricultural products or necessary commodities used on the farm from said farm to and from the usual market place of the owner, for drawing threshing machinery or for road work other than hauling materials, implements of husbandry temporarily moved upon the highway, road rollers and trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3,000 pounds used only with pleasure vehicles and not employed in the transportation of passengers or property for hire shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this Act, except that all trailers thus exempt shall be registered as herein required and shall display identification plates furnished by the registrar at cost. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines, feed grinders and corn shellers temporarily attached to them, shall be subject to the registration tax as herein provided, but the machine so attached shall not be subject to this tax but shall be listed for taxation as personal property as provided by law. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines or corn shellers permanently attached to them shall not be subject to the registration tax as herein provided, but shall be listed for taxation as personal property as provided by law. Motor vehicles which during any calendar year have not been operated on a public highway shall be exempt from the provisions of this Act requiring registration payment of tax and penalties for non-payment thereof, provided that the owner of any such vehicle shall first file his verified written application with the Registrar of Motor Vehicles, correctly describing such vehicle. Nothing herein shall be construed as repealing or modifying Laws 1929, Chapter 361, or Laws 1931, Chapter 217 and 220. (As amended Apr. 16, 1941, c. 237, §1; Apr. 22, 1941, c. 360, §1; Apr. 24, 1943, c. 628, §1.)

Laws 1943, c. 628, §2, provides that: the new provisions of this act shall apply and be effective only for the duration of the present existing war emergency and shall cease six months after the cessation of the hostilities as determined by competent federal authority.

Sec. 2, Act Apr. 22, 1941, c. 360, provides that the act shall take effect 30 days from the date of its passage and approval.

Motor vehicle shall be exempt from registration tax during owner's service in military or naval forces. Laws 1941, c. 7.

To be exempt from tax, motor vehicle carrying enumerated machines may not be used for any other purposes. Op. Atty. Gen. (632E-12), Oct. 18, 1939.

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

A portable welder mounted upon either two or four wheels, making welder mechanism an integral part of the whole, is a trailer subject to registration and tax. Op. Atty. Gen., (632E-33), Jan. 10, 1940.

Two-wheeled trailers with a gross weight of load and vehicle not exceeding 3,000 pounds, used only with a pleasure vehicle and not employed in transportation of passengers or property, must be registered and display identification plates, though they are used only for carrying duck boats and camping equipment. Op. Atty. Gen. (632E-33), Jan. 30, 1940.

Surplus commodities committee is not entitled to tax exempt license for trucks, though it owns truck really in trust for a number of municipalities. Op. Atty. Gen. (632e-12), Feb. 19, 1940.

Where feed grinder is temporarily attached to motor vehicle, motor vehicle is subject to registration tax and feed grinder to personal property tax, but if feed grinder is permanently attached, motor vehicle is only subject to registration tax and neither motor vehicle nor feed grinder is subject to personal property tax. Op. Atty. Gen., (421c-37), March 20, 1940.

Motor vehicles used by United States mail Star Route carriers must be registered in Minnesota although already registered in another state. Op. Atty. Gen. (632e), Mar. 26, 1941.

Rural Hennepin County Surplus Commodity Committee, agency of county, may register truck as tax exempt. Op. Atty. Gen. (632e-12), Nov. 21, 1941, modifying Feb. 19, 1940.

"General police work" should be limited to work performed by public officers or agents who are vested with power to make arrests and whose work may be of such nature as to require secrecy. Op. Atty. Gen. (632e-12), Dec. 26, 1941.

County should not buy federal use stamp for tax-exempt vehicles. Op. Atty. Gen. (532A-6), Jan. 21, 1942.

Upon defacement or loss, vehicle must be reregistered and plates issued at cost. Op. Atty. Gen. (632a-16), Apr. 2, 1943.

A motor vehicle is exempt from registration and tax while in movement by drive-away operator for delivery to private owner who immediately stores it and does not use it for the remainder of the calendar year, but verified application of non use is essential to exemption after delivery. Op. Atty. Gen. (632e-12), Apr. 14, 1943.

Laws 1941, c. 237, overlooked by Laws 1943, c. 628, should be given effect. Op. Atty. Gen. (632e-32), May 18, 1943.

Laws 1941, c. 360, and Laws 1943, c. 628, both amending this section, should both be given effect. Id.

Tax-exempt plates not required by Laws 1943, c. 628 on trailers attached to farm tractors. Op. Atty. Gen. (632a-16), July 19, 1943.

2673-2. Taxation of motor vehicles.

There is no double taxation of earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes, except a tax on motor vehicles. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9146.

2673-5. Exemptions from tax—Persons in armed services.—The motor vehicle of any person who engages in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the United States shall be exempt from the motor vehicle registration tax during the period of such active service and for 40 days immediately thereafter if the owner has filed with the registrar of motor vehicles a written application for exemption with such proof of military service as the registrar may have required and if the motor vehicle is not operated on a public highway within the state, except by the owner while on furlough or leave of absence. (Act Feb. 13, 1941, c. 7, §1; Apr. 16, 1943, c. 458, §1.)
[168.031]

Motor vehicles owned by persons serving in armed forces in active service and exempt from registration tax are also exempt from personal property tax. Op. Atty. Gen. (425c-25), June 22, 1943.

Members of armed forces are not exempt from payment of penalties for delayed registration unless application for tax exemption is made. Op. Atty. Gen. (632e-21), Dec. 21, 1943.

2673-6. Same—Refund of tax.—If such person shall have paid the tax for the year in which he enters upon such active service he shall surrender to the registrar when he applies for the exemption the number plates issued upon the registration. Upon proper application and surrender of the number plates, the registrar shall refund to the applicant from the motor vehicle license suspense fund the portion of the tax paid proportionate to the portion of the year during which the motor vehicle will not be used on any highway of the state. (Act Feb. 13, 1941, c. 7, §2.)
[168.032]

2673-7. Same—Necessity of payment of tax.—If such person shall not have paid the tax for the year in which he enters upon such active service, the registrar shall not accept his application until he has registered his motor vehicle and paid the portion of the tax with penalties, if any, proportionate to the portion of the year up to the date of application. (Act Feb. 13, 1941, c. 7, §3.)
[168.033]

2674. Rate of tax—How computed.—(a). Motor vehicles except as set forth in Mason's Supplement 1940, Section 2673, using the public streets or highways in the state of Minnesota shall be taxed in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village, as provided by law, and shall be privileged to use the public streets and highways, on the basis and at the rates for each calendar year as follows:

1. Motor vehicles for carrying passengers and hearses...2.2 per cent of value.

Provided that the minimum tax on all passenger motor vehicles under 2,000 pounds weight except as hereinafter provided shall be...$5.00 and the minimum tax on all passenger motor vehicles 2,000 pounds and over in weight shall be...$7.50.

2. The tax on Class "T" trucks with carrying capacity of less than 2,000 pounds, shall be 1.2 per cent on the base value.

The tax on Class "T" trucks with carrying capacity of 2,000 pounds and less than 3,000 pounds, shall be 1.44 per cent on the base value.

The tax on Class "T" trucks with carrying capacity of 3,000 pounds and over, shall be 2.4 per cent on the base value.

Provided, however, that the tax on Class "T" trucks with carrying capacity of less than 3,000 pounds shall be 1.92 per cent on the base value during the first and second years of vehicle life.

Provided that the minimum tax on all Class "T" and "X" trucks and tractors of one ton and under manufacturers' rated carrying or hauling capacity shall be $7.50 except that the minimum tax, on trucks converted from passenger vehicles, including those converted by the factory or a dealer by adding a pick-up box to a passenger vehicle before it was used as a passenger vehicle, shall be the same as the minimum on the passenger vehicle from which they were converted and the minimum tax on all trucks and tractors of over one ton and under two tons manufacturers' rated carrying or hauling capacity used only as permitted under Class "T" shall be $10.00 and the minimum tax on trucks and tractors of over one ton and under two tons manufacturers' rated carrying and hauling capacity used only as permitted under Class "X" shall be $15.00 and the minimum tax on all trucks and tractors of two tons or over and under three tons manufacturers' rated carrying or hauling capacity shall be $30.00 and the minimum tax on all trucks and tractors of three tons or over and under four tons manufacturers' rated carrying or hauling capacity shall be $60.00 and the minimum tax on all tucks and tractors of four tons or over and under five tons manufacturers' rated carrying or hauling capacity shall be $85.00 and the minimum tax on all trucks and tractors of five tons and over and under six tons manufacturers' rated carrying or hauling capacity shall be $125.00 and the minimum tax on all trucks and tractors of six tons and over manufacturers' rated carrying or hauling capacity shall be $150.00 and the minimum tax on trailers and semi-trailers shall

be $2.00 for each ton or fraction thereof of such capacity.

3. The tax on Class "X" trucks as defined shall be 3.4 per cent on the base value.

4. The tax on Class "F" trucks, tractors, truck-tractors, trailers and semi-trailers shall be 5 per cent of the base value, provided that the minimum tax on Class "F" tractors and truck-tractors shall be the same as the minimum tax provided herein for Class "X" tractors and the minimum tax on Class F trucks, trailers, and semi-trailers shall be twice the minimum tax provided herein for Class "X" trucks.

5. The tax on Class "Y" trucks used in intrastate commerce shall be as provided in section (a)-1 hereof.

The tax on Class "Y" trucks used exclusively in interstate commerce shall be as provided in Section (a)-3 hereof.

6. Buses and carriers of passengers for hire engaged in commercial passenger transportation, other than taxicabs and vehicles engaged in livery business shall pay an annual gross weight use tax which on a new vehicle for the first and second years shall be four times the tax paid by a Y truck of the same gross weight and said tax shall be determined in the manner provided for Class Y trucks as set forth in Sections (a)-1 and (a)-2 hereof, for the third and fourth years of the life of such vehicle the tax shall be three times the tax paid by Y truck of the same gross weight as the bus, for the fifth year of the life of such vehicle the tax sall be two times the tax paid by Y trucks of the same gross weight as the bus, for the sixth year of the life of such vehicle the tax shall be one and one-half times the tax paid by Y trucks of the same gross weight as the bus; for every year of the life of the vehicle after the sixth year the minimum tax on all commercial passenger busses of over 25 passenger seating capacity shall be $350.00 and on those of 25 passenger and less and over five passenger seating capacity, other than taxicabs and vehicles engaged in livery business, shall be $250.00. This section shall not apply to vehicles for the year 1939 on which the tax has been paid.

7. Motorcycles without side car....$3.00. Motorcycles, side car additional....$2.00.

8. Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.... $3.00 if weighing one ton or less, and an additional $2.00 for each additional ton or fraction thereof.

9. Value until the end of the first calendar year of vehicle life construing the year of the model designation as the first year of such life shall be construed to mean the "base price for taxation" as hereinafter defined.

For the purpose of fixing a base price for taxation from which depreciation in value at a fixed per cent per annum can be counted, such price is defined as follows:

The base price for taxation of a motor vehicle of which a similar or corresponding model, as defined in Mason's Supplement 1940, Section 2692, was being manufactured on August 1 preceding the year for which the tax is levied, shall be the manufacturers' list price of such similar or corresponding model in effect on such August 1. The base price for taxation of a motor vehicle of which no such similar or corresponding model was manufactured until after such August 1 shall be the manufacturers' list price at the factory when the vehicle taxed was first manufactured. The base price for taxation of a motor vehicle of which no such similar or corresponding model has been manufactured since a time prior to such August 1 shall be the price fixed by the registrar as a reasonable manufacturers' list price at the factory, on such August 1 if such vehicle has been then manufactured at prevailing costs.

After the first year of vehicle life the base value for taxation purposes shall be reduced as follows: ten per cent the second year, and 15 per cent the third and each succeeding year thereafter, but in no event shall such tax be reduced below the minimum.

When a motor vehicle first becomes subject to taxation during the calendar year for which the tax is paid, the tax on it shall be for the remainder of that year pro-rated on a monthly basis, one-twelfth of the annual tax for each calendar month, counting the month during which it becomes subject to the tax as the first month of such remainder. (As amended Apr. 28, 1941, c. 515, §1; Apr. 20, 1943, c. 536, §2; Apr. 24, 1943, c. 602, §1.)

(a)-1. Class "Y" Trucks.—The tax on a tractor, or truck-tractor shall be determined by the actual unloaded weight of the vehicle. A truck-tractor may also be licensed for a gross weight in excess of its actual unloaded weight, and the excess licensed weight thereby applied and paid for may be used to cover change-overs of such truck-tractor to a conventional truck including the weight of the maximum pay-load to be carried thereon, or may be applied on the gross weight of any semi-trailer to which it might be connected. The tax on a semi-trailer, trailer or truck shall be based on the gross weight of such vehicle. The gross weight shall be the actual unloaded weight of the vehicle plus the weight of the maximum load which the applicant has elected to carry in such vehicle and for which such vehicle has been licensed. This tax shall be known as a "gross weight use tax". The gross weight use tax on each vehicle shall be as follows:

Where the gross weight of the vehicle is 6,000 pounds or less, $25.00.

Where the gross weight of the vehicle is 6,000 pounds and less than 20,000 pounds the tax shall be $25.00 plus an additional tax of $15.00 for each 2,000 pounds of weight or major part thereof in excess of 6,000 pounds.

Where the gross weight of the vehicle is over 20,000 pounds and less than 30,000 pounds, the tax shall be $130.00 plus an additional tax of $40.00 each ton or major part thereof in excess of 20,000 pounds.

Where the gross weight of the vehicle is over 30,000 pounds, the tax shall be $330.00 plus an additional tax of $75.00 for each 2,000 pounds or major part thereof in excess of 30,000 pounds. (As amended Apr. 20, 1943, c. 549, §1.)

(a)-2. The applicant for a Y license shall state in writing upon oath among other things, the unloaded weight for such vehicle and the maximum load which the applicant proposes to carry thereon and such vehicle shall be licensed to carry as the maximum legal load the loadweight so selected, and no vehicle shall exceed such licensed loadweight by more than 1,000 pounds. The gross weight of the vehicle for which such license tax is paid shall be stenciled in a conspicuous place on said vehicle by the owner thereof and the weight of a tractor or truck-tractor shall be likewise stenciled in a conspicuous place thereon.

The Registrar of Motor Vehicles shall cancel the certificate of registration and/or license plate issued by him upon conviction of the owner and/or driver of such vehicle for transporting a gross weight exceeding the authorized gross weight by more than 1,000 pounds—unless such owner within thirty days after such conviction shall apply to increase the authorized gross weight on such vehicle to a level equal to or greater than the gross weight being transported at the time of his conviction and shall pay the necessary additional tax for such increase.

The tax imposed on Class Y trucks in each instance shall be increased 50% on a motor vehicle not equipped wholly with pneumatic tires. (As amended Act Feb. 19, 1941, c. 12, §1.)

(a)-3. * * * * * * * * * * * * * * * * * *.

(a)-4. Reports.—The Registrar of Motor Vehicles shall furnish to the owner of such vehicle appropriate blank forms on which to report the miles which said motor vehicle travels on the highways of this state. The owner of such vehicle shall file with such

Registrar of Motor Vehicles daily reports of such mileage traveled in Minnesota, if any, and shall keep such other records and furnish such information as said Registrar of Motor Vehicles may require. The Registrar of Motor Vehicles is authorized to require that any tractor, truck-tractor, semi-trailer, trailer or truck be equipped with a mechanical device approved by him to register the miles traveled by such motor vehicle, and such motor vehicle, including all appliances and all the books and records of said owner, shall be subject to inspection at any time by the Registrar of Motor Vehicles.

The owner of every motor vehicle subject to the truck-mile tax shall, on or before the 15th of each month, pay to the Registrar of Motor Vehicles the truck-mile tax due and payable for the preceding month. At the time of the payment of such tax, such owner shall file with the Registrar under oath upon a form prescribed by the Registrar, a report showing the truck miles operated during the preceding month and such other information as may be required. If the vehicle was not operated over the highways of this state during such month, the report should so state.

When such report has not been received by the registrar on or before the 15th day of the month in which it is due, he may notify the registered owner of such fact by registered mail or otherwise, but failure to send or receive such notice shall not operate to postpone or prevent the forfeiture of the deposit or bond as herein provided.

The Registrar of Motor Vehicles shall not issue a license plate under this section to a contract carrier or common carrier for motor vehicles operated as such in interstate commerce under the terms of this Act until and unless such owner of such motor vehicle engaged as a common carrier or contract carrier, shall have first fully complied with the terms of Chapter 170, Laws of 1933, as amended by Chapter 392, Laws of 1933, and shall have first obtained from the Railroad and Warehouse Commission the requisite permit by paying the fee therefor and depositing the public liability policy or bond as provided by said Chapter 170, Laws of 1933.

The Registrar of Motor Vehicles shall likewise not issue a license plate to the owner of a motor vehicle engaged as a common carrier or contract carrier until the owner of said motor vehicle so engaged has submitted and presented to said Registrar satisfactory evidence as to such owner's compliance with the terms and conditions of Chapter 170, Laws of 1933, as amended by Chapter 397, Laws of 1933, relating to the permit from the Railroad and Warehouse Commission, and the payment of the fee therein and the depositing of public liability insurance or bond as required by said laws.

The Registrar of Motor Vehicles may issue a license plate under this section to the owner of a motor vehicle which is operated in the service of a common carrier or contract carrier who has complied with the conditions precedent to the issuance of a license plate under this section to the owner of a motor vehicle; provided that such common carrier or contract carrier shall be subject to all the duties and obligations imposed by this section upon the owner of a motor vehicle for which a license has been issued under this section.

Provided further, that every owner of a motor vehicle subject to the provisions of this Act, Subdivision (a)-3 and (a)-4 hereof, shall also deposit with said Registrar of Motor Vehicles the sum of $50.00 for each and every motor vehicle required to be registered hereunder as security that the owner of said motor vehicle will pay the tax due hereunder and make such reports as required herein or as may be required by the Registrar of Motor Vehicles. The combination of a truck-tractor and semi-trailer or the combination of a tractor and trailer, shall, for the purposes of such deposit of $50.00 herein provided for, be regarded and considered as one motor vehicle.

Provided further that any common or contract carrier operating a motor vehicle or motor vehicles in interstate commerce subject to the provisions of this Act may file with the Registrar in lieu of said deposit of $50.00 a surety bond in such amount as the Registrar may prescribe, but not less than $200.00 conditioned that such common carrier or contract carrier will pay all taxes due hereunder for the operation of the motor vehicle or vehicles in the service of said common or contract carrier on the public highways of Minnesota, and will make such reports as required herein or as may be required by the Registrar; provided that the amount of the bond shall not exceed $200.00 for each vehicle covered thereby.

If the owner of such motor vehicle or such common carrier or contract carrier shall fail to file the required reports and pay the tax, if any, within 10 days after the required time for filing such reports, the Registrar of Motor Vehicles shall promptly, upon the expiration of said ten-day period, declare a forfeiture of the whole of said $50.00 deposit for each motor vehicle or such bond to the State to the extent necessary to pay the truck-mile tax then due but in no event less than $50.00 to the State and should said sum of $50.00 or the penalty of such bond be insufficient to fully pay the truck-mile tax then due, an action shall be brought in the name of the State of Minnesota to recover the deficiency thereof. A delivery to the Registrar of any report or payment as required by this act shall be construed to be within the requirements of this act if made to the Registrar at the motor vehicle division of his office in the State Capitol, or if deposited in the mail with postage and properly addressed to the Registrar at St. Paul on or before the last day permitted by law for making such report and payment. Whenever the Registrar of Motor Vehicles shall deem a bond filed as provided above insufficient to protect the state, he shall require the principal on such bond to file an additional bond in such amount as he shall prescribe conditioned as provided for in the original bond. If the principal on the bond shall fail to file forthwith such additional bond, the Registrar of Motor Vehicles shall cancel and take up the license plate or plates issued upon the vehicle or vehicles covered by the original bond and notify the Railroad and Warehouse Commission of such action.

If the owner of such vehicle shall fail to file the required reports or pay the tax within the time required, the Registrar of Motor Vehicles shall also cancel and take up the license plate issued on such vehicle and notify the Railroad and Warehouse Commission of such action. (As amended Mar. 19, 1943, c. 154, §1) * * * * * *.

(a)-5. * * * * * * * * * * * * * * *.

(b) 1. Reduction and abatement of taxes.—Motor vehicles not subject to taxation as provided in the foregoing section, but subject to taxation as personal property within the State of Minnesota, shall be assessed and valued at 33 1/3 per cent of the true and full value thereof, except motor vehicles which have been or may hereafter be, frozen, and the sale, transfer and distribution thereof restricted by the Federal Government or by any of its agencies or instrumentalities, which motor vehicles shall be assessed and valued at 5 per cent of the true and full value thereof, all to be taxed at the rate and in the manner provided by law for the taxation of ordinary personal property; provided, that, if the person against whom any tax has been levied on the ad valorem basis because of any motor vehicle shall, during the calendar year for which such tax is levied, be also taxed under the provisions of this act, then and in that event, upon proper showing, the Commissioner of Taxation shall grant to the person against whom said ad valorem tax was levied, such reduction or abatement of assessed valuation of taxes as was occasioned by

the so-called ad valorem tax imposed, and provided further that, if said ad valorem tax upon any motor vehicle has been assessed against a dealer in new and unused motor vehicles, and the tax imposed by this act for the required period is thereafter paid by the owner, then and in that event, upon proper showing, the Commissioner of Taxation, upon the application of said dealer, shall grant to such dealer against whom said ad valorem tax was levied such reduction or abatement of assessed valuation or taxes as was occasioned by the so-called ad valorem tax imposed. (As amended Act Mar. 4, 1943, c. 103, §1.)

2. **Application of act.**—This act shall apply to the ad valorem taxes on motor vehicles assessed in 1942 and payable in 1943. Any owner of or dealer in motor vehicles which have been frozen, and the sale, transfer and distribution thereof restricted as hereinbefore provided, may, on or before April 1, 1943, file a verified application with the county auditor of the county wherein such motor vehicle was assessed, setting forth the name and address of the applicant, the motor number, the year model, the name of the manufacturer and the body type of such motor vehicle and the full and true value thereof as fixed by the assessor or other public official for taxation purposes, requesting the county auditor to reduce the assessed valuation of such motor vehicle to 5 per cent and to compute the tax on such reduced assessed valuation, and if the auditor shall determine that said motor vehicle was frozen and the sale, transfer and distribution thereof restricted as hereinbefore provided, he shall thereupon reduce the assessed valuation from 33 1/3 per cent to 5 per cent and compute the tax on such reduced assessed valuation, and advise the applicant by mail of the amount of such tax as reduced. Such reduced tax shall be paid within 20 days after the effective date of this act, and unless so paid, the same shall be collected in the same manner, and subject to the same penalties, as ordinary personal property taxes.

3. **Auditor to refund tax paid.**—If the personal property tax for 1942, has been paid before it becomes delinquent, the county auditor, upon application by the taxpayer, shall forthwith refund the amount paid in excess of the amount of the tax as provided herein.

4. **Intent of act.**—It is hereby declared to be the intent of the legislature to give relief from ad valorem taxes upon motor vehicles which have been or may hereafter be, frozen, and the sale, transfer and distribution thereof restricted during the existing emergency, by the Federal Government or its agencies or instrumentalities, as a war measure for the conservation of essential war materials. (Feb. 19, 1941, c. 12, §1; Apr. 28, 1941, c. 515, §1; Mar. 4, 1943, c. 103, §1; Mar. 19, 1943, c. 154, §1; Apr. 20, 1943, c. 549, §1; Apr. 24, 1943, c. 602, §1.)

(c) to (f) * * * * *.

Conversion from one class to another Laws 1943, c. 286.

Upon failure of owner of truck registered under the truck-mile class to comply with requirements as to reports within ten days, it is mandatory that his deposit of $50 be forfeited, and if the deposit is sufficient to cover the tax, trucker may apply for new registration, without right to reinstatement of original registration. Op. Atty. Gen. (633h-5), Oct. 31, 1939.

Laws 1939, c. 388, amending this section, did not repeal Laws 1939, c. 253, amending this section, and both should be given effect. Op. Atty. Gen. (632E-35), Dec. 15, 1939.

Where licensed dealer sold trailer which was registered by buyer in truck-mile class, and assigned conditional sales contract to an individual who was not a licensed dealer and who repossessed trailer and desired to sell it to a purchaser who wished to operate in the X class, secretary of state may convert registration for new purchaser. Op. Atty. Gen. (632e-36), Sept. 19, 1940.

Registration of particular vehicle as a snowmobile involves question of fact for registrar of motor vehicles. Op. Atty. Gen. (632d), Dec. 2, 1941.

Buses registered in the "B" class and the "X" class for the year because they were privately owned and used exclusively as school buses, should be registered as engaged in commercial transportation where they are being operated by a buss company to haul construction workers to a war plant where they park all day and return in the evening. Op. Atty. Gen. (632a-19), Sept. 19, 1942.

Laws 1943, c. 536 and Laws 1943, c. 602, amending this section, are not in conflict and effect should be given to each. Op. Atty. Gen., (632e-34), Apr. 30, 1943.

Motor vehicles owned by persons serving in armed forces in active service and exempt from registration tax are also exempt from personal property tax. Op. Atty. Gen. (425c-25), June 22, 1943.

A school bus used during summer months for transporting patrons of summer resort must be registered for "commercial passenger transportation" and should not be permitted to operate under a license for the transferring of pupils in the schools, notwithstanding that it is being operated under a community plan. Op. Atty. Gen. (632e-11), July 19, 1943.

Owner is liable for tax based upon stenciled weight regardless of weight limitations of ODT. Op. Atty. Gen. (632e-1), Dec. 1, 1943.

(a).

Amended. Laws 1943, c. 536, §2.

Amended. Laws 1943, c. 602, §2. See above text.

(a)-1.

Amended. Laws 1943, c. 549. See above text.

Refunds. Laws 1943, c. 285.

Under the provisions of the Laws 1943, c. 549, while a truck tractor may be licensed for excess gross weight without a preliminary declaration by the taxpayer of his contemplation to convert the vehicle into a conventional truck, it may not be so converted until he has presented an application as required by §2676(b), 168.10, but a second use authorized under the excess gross weight license is to apply such excess weight on gross weight of any semi-trailer to which the truck tractors so licensed may be connected, and to avail himself of this use, the taxpayer is not obliged to submit a further application, but may apply the excess weight. Op. Atty. Gen. (632e-32), June 18, 1943.

(a)-2.

Allowance of 1000 pounds was made to compensate for accumulations of moisture, mud, snow and ice, and a conviction for operating vehicle with a greater weight than license under gross weight use tax is conviction for transporting excessive load weight. Op. Atty. Gen. (632e-36), Aug. 22, 1940.

Provision with regard to registration for gross load weight which vehicle was carrying at time of offense of transporting a greater gross weight than registration allowed, does not carry over into following year, but on application in the following year a full year's registration tax must be paid and there must be added thereto the arrears automatically becoming due on conviction for overloading. Op. Atty. Gen. (632E-28), Nov. 8, 1940.

(a)-3.

Non-resident truck operator cannot operate under both X registration and reciprocity provisions in different zones. Op. Atty. Gen. (632e-36), Oct. 4, 1940.

(a)-4.

Amended. Laws 1943, c. 154. See above text.

Transport company contracting with dealers to drive new vehicles from factory to dealer's place of business, whether within or without the state, cannot be registered in truck-mile class without cash or bond deposit. Op. Atty. Gen. (632e-34), Feb. 19, 1940.

Failure to complete registration would not relieve truck owner from liability to make required reports and payments, nor prevent forfeiture of entire deposit on failure to do so. Op. Atty. Gen., (632d-2), April 30, 1940.

(b).

Amended. Laws 1943, c. 103. See above text.

(c).

Motor vehicle dealers are still entitled to withhold payment of motor vehicle taxes until October 1 of current tax year, but time for dealers to list their vehicles and make application for deferment of tax is October 1 of year preceding calendar year for which tax is to be paid. Op. Atty. Gen. (632E-5), Sept. 17, 1941.

(f).

Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. State v. Palmer, 212M388, 3NW(2d)666. See Dun. Dig. 6618.

Minneapolis ordinance regulating motor bus transportation of passengers for hire from points without city to points within city and vice versa and requiring a license therefor was not nullified by Laws 1923, c. 418, §3(f), insofar, at least, as ordinance requires a license. Id.

2674-4. Taxation of certain motor vehicles.

Laws 1943, c. 98, §§1, 2, 3, provides that: Motor vehicles engaged in commercial passenger transportation as defined by Mason's Minnesota Statutes of 1927, Section 2672, on a fixed route, one terminus of which is a plant manufacturing war materials, and carrying no passengers between other points of destination on such route, shall be subject only to the tax prescribed by Mason's Supplement 1940, Section 2674, Subdivision (a), for motor vehicles carrying passengers but not engaged in commercial passenger traffic, except that the minimum tax to be paid shall be $25.00, and shall otherwise

be subject to all provisions of law applicable to motor vehicles engaged in commercial passenger transportation.

This act shall be effective until 60 days after cessation of hostilities in the present war as declared by proper federal authority and shall then expire.

Any motor vehicle which was operated during 1942 or 1943, in the manner and under the conditions prescribed by Section 1 hereof shall, for 1942 or 1943, be subject only to the tax therein provided. In case any person who shall have operated a motor vehicle in the manner and under the condition prescribed by Section 1 hereof shall have paid a tax for 1942 or 1943, in excess of the tax provided for in Section 1 hereof, he shall be entitled to have such excess payment refunded and the Secretary of State is hereby authorized to pay such refund.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 209M9, 295NW297. See Dun. Dig. 9140.

2674-8. Refund of taxes on certain motor vehicles.—Whenever a truck, tractor, truck-tractor, trailer or semi-trailer registered in the Y class, as defined by Mason's Supplement 1940, Section 2672, as amended by Laws 1941, Chapter 465, with payment of the gross-weight-use tax, as defined by Mason's Supplement 1940, Section 2674 (a)-1, is sold to a licensed dealer in motor vehicles or a user who will continue to operate the vehicle in this state, but not in the Y class, the record owner who sells it to such dealer or user is entitled to a refund as herein provided. Upon application and return of the Y plates and registration card issued therefor by the record owner so selling the vehicle the registrar may convert the Y registration to a registration in class X, as defined by Mason's Supplement 1940, Section 2672, as amended by Laws 1941, Chapter 465, and refund to the record owner under the Y registration an amount equal to the difference between the portion of the gross-weight-use tax that was paid to cover the calendar months of the year remaining after the month in which the change of ownership took place and the tax upon that vehicle for those remaining months at the rate of one-twelfth of the annual tax in class X for each of those remaining months. Such refund shall be made in accordance with the procedure provided by Mason's Supplement 1940, Section 2682. (Act Apr. 2, 1943, c. 285, §1.)
[168.163]

2675. Motor vehicles to be registered.

License required for transporting of motor vehicles. Laws 1941, c. 213.

Prosecution of the passenger in car being operated by another without plates. Op. Atty. Gen. (494B-5), June 20, 1940.

Motor vehicle must display number plate for current calendar year, and cannot display plate for succeeding year. Op. Atty. Gen. (632a-16), June 26, 1941.

License plates for current year must be displayed throughout calendar year and new plates obtained after October 1 may not be displayed until January 1 following. Op. Atty. Gen. (632A-16), Sept. 9, 1941.

2676. Owner shall file listing for taxation.—Offenses.—(a). Every owner of any motor vehicle in this state, not exempted by Section 2 or Section 14 hereof, shall as soon as he shall become the owner thereof and thereafter during the period October 1 to December 31 each year, both dates inclusive, file with the registrar on a blank provided by him, a listing for taxation and application for the registration of such vehicle, stating the name and address of the owner, and the nature of his ownership, the name and address of the person from whom purchased, name of manufacturer, name of motor vehicle, year manufactured, year and number of the model, engine and car number, type of body, the list price thereof at the factory, the weight of the vehicle in pounds, and its rated load carrying capacity or seating capacity, the number of cylinders, and such other information as the registrar may require. The said owner shall make an oath or affirmation before some officer authorized by law to administer oaths or affirmations that the statements made are correct and true; and any false statement wilfully and knowingly made in regard thereto shall be deemed perjury and punished accordingly; however, such listing for taxation and application for registration need not be sworn to when the applicant is listing the same vehicle for taxation and registration for the second or any succeeding time. The listing and application for registration by dealers or manufacturers' agents within the state, of motor vehicles received for sale or use within the state shall be accepted as compliance with the requirements of this act, imposed upon the manufacturer. (As amended Act Apr. 28, 1941, c. 515, §2.)

(b) to (d) * * * * *.

(b).

Under the provisions of the Laws 1943, c. 549, while a truck tractor may be licensed for excess gross weight without a preliminary declaration by the taxpayer of his contemplation to convert the vehicle into a conventional truck, it may not be so converted until he has presented an application as required by §2676(b), 168.10, but a second use authorized under the excess gross weight license is to apply such excess weight on gross weight of any semi-trailer to which the truck tractors so licensed may be connected, and to avail himself of this use, the taxpayer is not obliged to submit a further application, but may apply the excess weight. Op. Atty. Gen. (632e-32), June 18, 1943.

(c)(3).

Driving truck with a greater gross weight painted thereon than permitted under license. Op. Atty. Gen. (632a-22), May 20, 1942.

2677. Registrar shall issue registration certificate.

Where a trucker is convicted of transporting a greater gross weight than registration allows, there immediately becomes due taxes in accordance with the load, and such additional tax becomes an arrearage which must be paid for registration in a subsequent year, if not paid in year of offense by re-registration. Op. Atty. Gen. (633E-28), Nov. 8, 1940.

2678. Registrar shall furnish number plates.

In view of federal war regulations, secretary of state has authority to prescribe type of number plate, and need not furnish screws with year tab. Op. Atty. Gen. (385b-3), May 6, 1942.

Federal regulation providing for only 1 license plate prevails over state law, as a war measure. Op. Atty. Gen. (632a-16), July 26, 1943.

2679. Registrar to register only on proof of ownership.

Legislature, in addition to evidence required by this statute as to car from out state, could not require owner to go to expense of purchasing a surety company bond which would not only guarantee title but representation that might be made as to condition of car. State v. Ernst, 209M586, 297NW24, 134ALR643. See Dun. Dig. 4167a.

2680. Certificate to expire on December 31.—The registered owner's right to the registration certificate provided for herein and the right to use the number plates issued therewith shall expire upon the termination of ownership of any person in the motor vehicle for which the same was issued, and in any event at midnight on December 31 of the year for which issued. (As amended Act Apr. 28, 1941, c. 515, §3.)

2681. Transfer of ownership, destruction, etc.

Rights of a good faith purchaser from registered automobile owner are subject to those of assignee of a prior and duly recorded conditional sale contract. Slawik v. C., 209M428, 296NW496. See Dun. Dig. 4167a.

Bill of sale from a motor company would not authorize transfer of registration where right of motor company to sell car was based upon an agreement of owner to convey to a purchaser. Op. Atty. Gen., (632a-21), May 10, 1940.

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., (632E-24), Jan. 16, 1941.

Bills of sale, conditional sale agreements and chattel mortgages must be properly filed before any transfer of registration may be made on vehicles repossessed. Op. Atty. Gen. **(632a-21), June 26, 1941.**

Secretary of state, as registrar of motor vehicles, has no power to transfer title to motor vehicles, even though they have been abandoned and are desired for scrap, but he should make some notation upon the records showing that the vehicles have been scrapped and are no longer using the highways. Op. Atty. Gen. (632a-21), Oct. 31, 1942.

2682. Refunds.

Refunds. Laws 1943, c. 285.

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., (632E-24), Jan. 16, 1941.

Where a tank truck was registered in month of March and ten-twelfths of annual tax was paid and vehicle is permanently removed from state in June, refund credit should be one-half of a full year's registration fee. Op. Atty. Gen. (632e-24), June 16, 1942.

Refundment of license fee. Op. Atty. Gen. (632e-24), March 4, 1943.

2682-1. Class of registration of certain motor vehicles may be changed.—Upon application by the owner, the Registrar of Motor Vehicles may convert the registration of any truck, truck-tractor, trailer or semi-trailer from one class of registration to any other class of registration, provided that the owner pays the difference between the unused portion of the tax previously paid and the tax for the remainder of the year in the new class, and the conversion fee herein provided, and surrenders the number plates and registration card thereof for the old class. If the unused portion of the tax paid for registration in the class from which conversion is made exceeds the tax for the remainder of the year in the class to which converted, the Registrar shall refund the excess to the owner. In determining the unused portion of any tax under this section, the Registrar shall count the remaining months of the tax year beginning with the first month after the month in which application for conversion is made, and shall count one-twelfth of the full year's tax for each remaining month. When any such motor vehicle has been registered in a class for a period of not less than three months, it may be converted to a lower tax-rate class upon payment of a conversion fee of $2.00, which shall be deposited in the trunk highway sinking fund.

As used in this section the phrase "unused portion of the tax" means the portion of the annual tax already paid in any class to cover the months of the calendar year remaining after the month in which the conversion is made. (Act Apr. 2, 1943, c. 286, §1.)

[168.165]

Rate of tax in respective classes determinative of conversion fee. Op. Atty. Gen. (632e-34), Sept. 9, 1943.

2684. Passenger motor vehicles from other states. [Repealed.]

Repealed. Laws 1935, c. 355, §4.

Persons in military or naval services, licensed under laws of another state to operate a motor vehicle, may operate same in this state. Laws 1941, c. 275.

2684-1. Reciprocal permission to non-resident auto owners.—Any resident of any state, District of Columbia, Canadian province or other foreign power, who owns and is duly licensed under the laws of his own state or country to operate a motor vehicle upon the highways thereof, may also operate such motor vehicle personally or by his authorized driver upon the streets and highways of townships, boroughs, villages, and cities in this state, subject to the following conditions and limitations:

First. Upon condition that the exemptions provided by this act as hereinafter limited shall be operative as to a motor vehicle owned by a non-resident only to the extent that under the laws of the state or Canadian province of his residence (or that under the laws of the District of Columbia or other foreign power if that is his residence) like exemptions and privileges are granted to motor vehicles registered under the laws and owned by residents of Minnesota.

Second. Upon condition that any such motor vehicle so operated in this State by any such non-resident at all times shall carry and display all license number plates or like insignia required by the laws of the home state or country of said non-resident.

Third. Upon condition that such non-resident motor vehicle owner shall first file with the registrar of motor vehicles in this State an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such motor vehicle and the number of cylinders of the motor engine. Said written instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the state of Minnesota shall always be subject to all the laws, ordinances, rules and regulations applicable to like operation thereof by a citizen and resident of the state of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation in the same manner as a Minnesota citizen and resident owner and operator of a like motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceedings, legal process and other notices or papers may be served upon the under-signed owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the undersigned owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the state of Minnesota." (As amended Apr. 9, 1941, c. 149, §1; Act Apr. 28, 1941, c. 535, §1.)

A Minnesota railroad corporation licensed to do business in Wisconsin cannot operate trucks registered in Wisconsin in state of Minnesota, though only used to transport property belonging to railroad to points in Minnesota and not transporting property for any third person. Op. Atty. Gen., (632c-6), April 30, 1940.

Where a silo company incorporated under laws of Wisconsin has branch in that state and maintains their trucks licensed in that state, and also has an office and factory located in Minnesota where it maintains trucks licensed in Minnesota, used for intrastate hauling in Minnesota, such license in Wisconsin may deliver silos occasionally in Minnesota in interstate commerce without obtaining Minnesota license, if the trucks come under a reciprocity agreement between the states, providing secretary of state determines that Wisconsin trucks are not being regularly operated by owner in its business in this state. Op. Atty. Gen. (632-c-6), July 23, 1940.

Non-resident truck operator cannot operate under both X registration and reciprocity provisions in different zones. Op. Atty. Gen. (632e-36), Oct. 4, 1940.

A non-resident motor vehicle owner registering it under a certain classification without calling an application for reciprocity privileges cannot later have registration revoked and obtain a reciprocity permit or obtain a refund of registration tax. Op. Atty. Gen. (632E-32), Dec. 5, 1940.

A corporation organized under laws of Maine and licensed to do business in Missouri and Minnesota may not obtain a reciprocity permit for motor vehicles registered under laws of Missouri. Op. Atty. Gen. (632C), Dec. 10, 1940.

Reciprocity to vehicles transporting bulk petroleum products as granted in Laws 1943, c. 613. Op. Atty. Gen. (632c), Sept. 4, 1943.

2684-6. Limitations.—This act shall not apply to a passenger motor vehicle owned by a resident of any state, District of Columbia or any Canadian province temporarily residing in this state, while regularly employed therein under contract for a term of six months or more, nor to a passenger motor vehicle used to haul for hire except such a vehicle that may be owned

and registered in another state, the District of Columbia, or any Canadian province, and chartered for an occasional trip into or through Minnesota without taking on any additional passengers in this state.

The reciprocity provision of the act shall not apply to trucks, tractors, truck-tractors, semi-trailers and combinations of such vehicles engaged in transporting property for hire. The reciprocal provisions of this act shall apply to the owner of a truck exclusively used in transporting agricultural, horticultural, dairy and other farm products, including livestock, which the owner of the truck has produced or raised and such truck is used to transport such products from the farm to market and to transport property and supplies to the farm of the owner and trucks used in rendering occasional accommodation service for others in transporting farm products, including livestock, from a farm to market or supplies to the farm even though the same may be paid for where such vehicle is owned by a person not engaged in the transportation business. "Occasional" shall be construed to mean a special, individual round trip not to exceed, however, two such trips a month for any one such vehicle. The reciprocal provisions of this act shall apply to a truck for hire engaged in the transportation of livestock and farm products, provided, that such reciprocal provision shall apply to only one truck owned or operated by any person or corporation, and provided, further, that such truck does not use the highways of this state more than twice in any week and does not travel on the highways of Minnesota from the state line for a greater distance than 50 miles, provided, that this reciprocity provision as applied to feeder livestock shall extend for 150 miles from the state line. For the proper enforcement of this section the Registrar of Motor Vehicles may require such truck transporting livestock for hire to carry a plate to be furnished by said Registrar for a fee of $2.00, and the owner or operator to file such reports as may be necessary to compel a compliance with this section.

Every non-resident, including any foreign corporation carrying on business except as herein provided within this state and owning and operating in such business any motor vehicle in intrastate commerce within this state shall be required to register each such vehicle and pay the same tax and penalties, if any, therefor as is required with reference to like vehicles owned by residents of Minnesota.

The reciprocity privileges provided by this act shall apply also to a motor vehicle exclusively engaged in transporting commerce from a state or from any province in the Dominion of Canada exclusivly upon the streets of any city or village in the State of Minnesota.

Until six months after the termination of the war in which the United States is now engaged as proclaimed by authorized Federal authorities, the reciprocal provisions of this act shall apply also to all motor vehicles engaged in the transportation of petroleum products in bulk, whether the same are operated in privately-owned or for-hire service. (As amended Apr. 22, 1941, c. 382; Feb. 5, 1943, c. 18, § 1; Apr. 24, 1943, c. 613, §1.)

Op. Atty. Gen. (632-c-6), July 23, 1940; note under §2684-1.

Contract existing between United States and persons serving in Army, Navy, Marine Corps, and National Guard, whether voluntarily or under Selective Service Act, is not a "contract of employment" within section, and such persons are entitled to full reciprocity privileges to same extent and under same conditions that any other resident of any state is entitled to. Op. Atty. Gen., (632E), Jan. 13, 1941.

Operation of trucks by actual farmers as distinguished from operation by person engaged in business of transporting for hire has not been affected by amendment by Laws 1941, c. 382. Op. Atty. Gen. (632c), June 27, 1941.

If motor vehicle of foreign corporation is regularly operated in business within this state, motor vehicle must be registered though transportation by such vehicle is limited to interstate operation. Op. Atty. Gen. (632C), Mar. 6, 1942.

Secretary of state may extend reciprocity privileges to a non-resident owner for a vehicle that he operates in Minnesota exclusively in interstate commerce even though the non-resident owner has qualified under our corporation laws to do business in this state, provided the vehicle is not operated for hire. Op. Atty. Gen. (632c), May 26, 1943.

Reciprocity to vehicles transporting bulk petroleum products as granted in Laws 1943, c. 613. Op. Atty. Gen. (632c), Sept. 4, 1943.

2684-7. Does not apply to non-resident. [Repealed.]

Motor vehicles used by United States mail Star Route carriers must be registered in Minnesota although already registered in another state. Op. Atty. Gen. (632e), Mar. 26, 1941.

2684-8. Service of process on non-residents. [Repealed.]

Repealed. Laws 1943, c. 371.
See notes under §2720-105.

2684-9. Non-resident dealers in motor vehicles must register vehicles and pay tax.

This act does not involve denial of due process of law, impairment of contract rights, or burdening of interstate commerce, so as to confer jurisdiction on the federal district court of suit to restrain enforcement without regard to the amount in controversy. Reese v. H., (DC-Minn), 31FSupp435.

Amount in controversy for jurisdictional purposes was cost of bond for each car multiplied by number of cars brought into state for resale. Allegations as to losses or profits since enactment of the law were not pertinent. Id.

Statute requiring owner of used car originating outside state to go to expense of purchasing a surety company bond which not only guarantees the title but representation that may be made as to condition of the car offered for sale is unconstitutional. State v. Ernst, 209M586, 297NW24, 134ALR643. See Dun. Dig. 1608.

Section 4(b) of the Uniform Motor Vehicle Anti-Theft Act, which provides for $25 inspection fee for cars bought in another state and brought into Illinois, is unconstitutional, it being in effect not a regulatory measure but a burden upon and discrimination against interstate commerce. Clements v. H., 30NE(2d)(Ill)643.

A foreign truck taken in trade for a tractor and plow attachments was not subject to this act if of less value than tractor to be used upon highway, but is subject to act if tractor is to be used exclusively in farm work or is of less value than truck. Op. Atty. Gen. (632A-7), Feb. 19, 1940.

Act does not apply to a foreign used car brought into state as a trade-in on a new motor vehicle or as a trade-in on another used or second-hand car of greater value than vehicle so brought for purpose of sale or resale. Id.

A used car from a foreign state brought in and delivered to a Minnesota dealer with an order for a new car on future delivery, not yet manufactured, is exempt. Op. Atty. Gen. (632e-18), Sept. 12, 1940.

Registrar of motor vehicles has no authority to refund fees paid or to return bonds filed following determination that this act is unconstitutional. Op. Atty. Gen. (632a-7), May 7, 1941.

Bonds of used car dealers executed before statute was declared invalid are enforceable as contractual obligations. Op. Atty. Gen. (632A-7), Aug. 11, 1941.

Under Laws 1943, c. 631, §103, reimbursing person who paid fee under this act, money should be paid to the person who actually paid the fee. Op. Atty. Gen. (632a-7), June 21, 1943.

Validity of statute requiring filing of surety bond before sale of out-of-state used cars. 25MinnLawRev942.

2685. Manufacturers not using highways need not register.

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

2686. Manufacturer's and dealers in motor vehicles must be licensed. (a) No person, co-partnership or corporation shall engage in the business, either exclusively or in addition to any other occupation, of selling motor vehicles, new or used, or shall offer to sell, solicit or advertise the sale of motor vehicles, new or used, without first having acquired a license therefor as hereinafter provided. Application for such license and renewal thereof, shall be made to the registrar of motor vehicles, shall be in writing, and duly verified by oath. The applicant shall submit such information as said registrar may require, upon blanks provided by the registrar for such purpose. No application shall be granted nor a license issued to anyone, until and unless the applicant shall furnish proof satisfactory to the registrar of the following:

1. That the applicant has an established place of business. An established place of business when used in this act shall mean a permanent enclosed building or structure either owned in fee or leased at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and not for the purpose of evading this act, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place. Said place of business shall not mean residence, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

2. That if the applicant desires to sell, solicit or advertise the sale of new and unused motor vehicles, be must have a bona fide contract or franchise in effect with a manufacturer or distributor of the motor vehicle, or motor vehicles, he proposes to deal in. He shall also have adequate space in the building or structure wherein his business is conducted for the display of motor vehicle or vehicles and shall also provide for the repair and servicing of motor vehicles and the storage of parts and accessories in the city or village where his business is located and conducted, such service may be provided through contract with bona fide operators actually engaged in such services.

(b) If a license is granted, the licensee may be permitted to use unimproved lots and premises for sale, storage and display of motor vehicles; provided, however, that such unimproved lots and premises must be located within the county of the established place of business of the applicant.

If the applicant desires to set up an established place of business, as hereinbefore defined, in more than one county in this state, said applicant shall secure separate license for each county. No license for such additional county shall be issued until the registrar shall have been furnished with proof that the applicant has an established place of business as hereinbefore defined, in such additional county, and has otherwise complied with the requirements of this act for securing of license in the initial county.

If the licensee desires to remove from the established place of business occupied when the license is granted, to a new location, he shall first secure from the registrar of motor vehicles permission to do so. He shall be required to furnish proof satisfactory to the registrar that the premises to which he proposes to remove conform to the requirements of Section 1, Subdivision (a) hereof.

(c) The registrar shall grant or deny the application for such license within 60 days after the filing of the application. If said application is granted, said registrar shall license the applicant as a motor vehicle dealer for the remainder of the calendar year, and issue a certificate of license therefor as the registrar may provide upon which shall be placed a distinguishing number of identification of such dealer. Each application for such license, and application for the renewal thereof, shall be accompanied by the sum of $20.00, which shall be paid into the state treasury and credited to the general revenue fund. Such license, unless sooner revoked as hereinafter provided, shall, upon the furnishing of proof as in the initial application herein provided for, satisfactory to the registrar, be renewed by the registrar annually upon application by the dealer and upon the making of all listings, registrations, notices and reports required by the registrar, and upon payment of all taxes, fees, and arrears due from such dealer.

(d) Such license may be revoked by the registrar of motor vehicles upon proof satisfactory to him of either of the following:

(1) Violations of any of the provisions of Mason's Supplement 1940, Sections 2672 to 2674-7, inclusive, or Sections 2676, or 2682; 2684-1, to 2684-6, inclusive, 2689, 2690, and 2692 or Mason's Minnesota Statutes of 1927, Sections 2675, 2677 to 2681, inclusive, or 2683, 2687, 2688, 2694; or any of the provisions of this act.

(2) Violation of or refusal to comply with the requests and order of the motor vehicle registrar.

(3) Failure to make or provide to the registrar all listings, notices and reports required by him.

(4) Failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer.

(5) Failure to duly apply for renewal of license provided for herein.

(6) Revocation of previous license, of which the records of the registrar relating thereto shall be prima facie evidence of such previous revocation.

(7) Failure of continued occupancy of an established place of business as defined herein.

(8) Sale of a new and unsued current model motor vehicle other than the make of motor vehicle described in the franchise or contract filed with the original application or renewal thereof, without permission from the registrar.

(9) Sale of a new and unused current model motor vehicle to any one except for consumer use, or to a dealer duly licensed to sell the same make of motor vehicle.

(10) Material misstatement or misrepresentation in application for license or renewal thereof.

(e) The registrar shall issue to every motor vehicle dealer, upon a request from such motor vehicle dealer licensed as provided in subsection (a) hereof, one pair of number plates displaying a general distinguishing number upon the payment of five dollars to the registrar of motor vehicles. The registrar shall also issue to such motor vehicle dealer such additional pair of such number plates as said motor vehicle dealer may request, upon the payment of such motor vehicle dealer to the registrar of the sum of five dollars for each additional pair. Motor vehicles, new and used, bearing such number plates owned by such motor vehicle dealer, may be driven upon the streets and highways of this state by such motor vehicle dealer, or any employee of such motor vehicle dealer, for demonstration purposes, or for any purpose incident to the usual and customary conduct and operation of his business, in which he has been licensed under Mason's Supplement 1940, Section 2686, to engage. Motor vehicles, new or used, owned by such motor vehicle dealer and bearing such number plates, may be driven upon the streets and highways for demonstration purposes by any prospective buyer thereof for a period of 48 hours. Any motor truck, new or used, owned by such motor vehicle dealer and bearing said motor vehicle dealer's number plates may be driven upon the streets and highways of this state, for demonstration purposes by any prospective buyer for a period of seven days. Upon the delivery of such motor vehicle or motor truck, new or used, to said prospective buyer for said demonstration purposes, said motor vehicle dealer shall deliver to said prospective buyer a card or certificate giving the name and address of said motor vehicle dealer, the name and address of such prospective buyer, and the date and hour of such delivery. Such card or certificate shall be in such form as the registrar may provide to the motor vehicle dealer for such purpose, and shall be carried by such prospective buyer while driving said motor vehicle or motor truck.

(f) Every licensed dealer in motor vehicles, as above defined, may make application upon a blank provided by the registrar for that purpose for a general distinguishing number for use upon all new motor vehicles being transported from the dealer's source of supply or other place of storage, to his place of business, or to another place of storage, or from one dealer to another. A general distinguishing number shall be assigned by the registrar to such dealer for such purpose, and the registrar shall then issue to said dealer such number of pairs of such plates as the dealer may request, upon the payment by said dealer to said registrar of the sum of two dollars per pair. Such plates shall be known as "in transit" plates. The

registrar may issue such "in transit" plates, upon the payment of the sum of two dollars to said registrar, to dealers duly licensed in other states or provinces upon information furnished him in such manner as he may prescribe, and which satisfies him that persons or companies applying therefor are duly licensed dealers under the laws of such states or provinces.

(g) The registrar of motor vehicles, upon his own motion or upon the complaint of another, shall prepare and cause to be served upon the licensee complained of, a written notice or complaint setting forth, in substance, the violations charged, and shall require said licensee to appear at the time and place fixed therein before said registrar or authorized deputy, and show cause why his license should not be revoked.

The registrar shall, at the time and place fixed in said notice, proceed to hear and determine the matter on its merits. If the said registrar shall find the existence of any of the causes for revocation as set forth in Section (d) above, and shall determine that the licensee's license should be revoked, he shall make a written order to that effect, and a copy of such order shall be served upon such licensee in the manner provided by law for the service of summons in a civil action. Upon such revocation, if it be a motor vehicle dealer, he shall immediately return to the registrar all number plates, including any "in transit" plates, in his possession.

(h) Any party or person aggrieved by such order of revocation may appeal therefrom to any district court of the state within fifteen days after the service of a copy of such order upon the dealer complained of by the service of a written notice of appeal upon said registrar. The person serving such notice of appeal shall, within five days after the service thereof, file the same, with proof of service thereof, with the clerk of the court to which such appeal is taken, and thereupon said district court shall have jurisdiction over said appeal and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions insofar as the same are applicable. The complainant before the registrar, if there was one, otherwise the registrar of motor vehicles, shall be designated as the "Complainant," and the dealer complained of shall be designated as the "Defendant." No further pleadings than those filed before the registrar shall be necessary. The findings of fact of the registrar shall be prima facie evidence of the matter therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful and unreasonable it shall be vacated and set aside. Such appeal shall not stay or supersede the order appealed from unless the court, upon an examination of said order and the return made on said appeal, and after giving defendant notice and opportunity to be heard, shall so direct. When no appeal is taken from such order, the parties affected thereby shall be deemed to have waived the rights to have the merits of such controversy reviewed by a court, and there shall thereafter be no trial of the merits or re-examination of the facts by any district court to which application may be made from a writ to enforce the same.

(i) Any party to an appeal or other proceeding in the district court under the provisions of this act may appeal from the final judgment, or from any final order therein, to the supreme court in the same cases and manner as in civil action.

(j) The registrar is hereby authorized to enforce this act and he may also appoint under his hand a sufficient number of persons amongst his several employees, said additional employees however not to exceed three in number, to act as inspectors and investigators and who when so appointed, shall have full authority to enforce this act. Before entering upon their official duties, the oath of appointment of each of said additional employes shall be filed in the office of the secretary of state. The registrar, his inspectors or investigators, when traveling or otherwise pursuing their duties outside the office of the registrar, shall be paid for their actual expenses incurred out of the same funds as other employees of the registrar of motor vehicles.

(k) The registrar shall have, and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him, production of books, papers and other documents, articles or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and shall have full authority to administer oaths and to take testimony. All parties disobeying the orders of subpoenas of said registrar shall be guilty of contempt, as in proceedings in district courts of the state, and may be punished in like manner.

(l) Any person, co-partnership, or corporation, domestic or foreign, and any officer, or director, or employee of a corporation, domestic or foreign, who shall violate or neglect, fail or refuse to comply with any of the provisions of this act shall be guilty of a misdemeanor.

(m) This act shall not apply to any person, copartnership or corporation exclusively engaged in the business of selling house trailers. (As amended Apr. 10, 1941, c. 176, §1; Apr. 1, 1943, c. 265, §1.)

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

Sale of motor vehicles by finance company for purpose only of recouping its loans or investments does not constitute engaging in business of selling motor vehicles, unless it systematically undertakes to sell such vehicles for profit. Op. Atty. Gen. (632E-5), Oct. 28, 1939.

A person other than dealer or his employee driving without demonstration permit, may or may not be an employee of dealer within meaning of section. Op. Atty. Gen. (632e-5), Nov. 16, 1939.

Purpose of demonstration permit is to place in prospective purchaser's hands evidence of fact that he is operating vehicle with dealer's permission for demonstration purposes, and presence in vehicle of dealer or his employee would in itself imply that permission had been granted. Id.

One holding a dealer's license in this or in another state driving new vehicles from his source of supply or other place of storage to his place of business is only required to procure "in transit" plates at $2.00 per pair, after furnishing required information to registrar. Op. Atty. Gen. (632a-8), May 29, 1940.

If circumstances arise as a result of which a dealer wishes to sell a new and unused model motor vehicle of some other make than that which he has a contract or franchise to deal in, he may apply to registrar for motor vehicles setting forth in his application all facts and reasons relating to proposed sale of such new and unused motor vehicle of such other make, and such sale may be granted, but a general or blanket grant of authority should not be given, and present limitations upon sales of automobiles imposed by federal government and fact that some dealers must go out of business may be considered. Op. Atty. Gen. (632A-7), Mar. 16, 1942.

Dealers in trailers are motor vehicle dealers. Op. Atty. Gen. (632a-7), Feb. 1, 1943.

(c).

Where application was made for a dealer's license and fee of $20 was paid into treasury, and it later appeared that applicant was not qualified as a dealer, and no license was issued, there is no authority under law for refund of fee. Op. Atty. Gen. (632a-8), Dec. 2, 1939.

(e).

Dealer's plates may only be used in pairs, and a dealer moving two semi-trailers cannot put one plate of a pair on rear of each semi-trailer. Op. Atty. Gen. (632a-16), Nov. 8, 1940.

(f).

Minnesota highways may be used by duly licensed dealer in Minnesota or other states or provinces to transport new motor vehicles. Op. Atty. Gen. (632-a-8), Aug. 1, 1940.

(m).

Amended. Laws 1943, c. 265. See above text.

2686-4. Transportation of motor vehicles—License fee and plates—Additional plates—Penalties.—Any person, firm or corporation engaged in the business of transporting motor vehicles, not his own, by delivering, by drive-way or towing methods, either singly or

by means of the full method, the saddle mount method, the towbar method, or any other combination thereof, and under their own power, new vehicles over the highways of the state of Minnesota from the manufacturer or any other point or origin, to any point of destination, within or without the state of Minnesota, shall make application to the registrar of motor vehicles for a drive-a-way in transit license. This application for annual license shall be accompanied by a registration fee of $250.00 and shall contain such information as the registrar of motor vehicles may require. Upon the filing of the application and the payment of the fee, the registrar of motor vehicles shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle from the manufacturer, or any point of origin, to any point of destination within or beyond the state of Minnesota. Additional plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the registrar of motor vehicles upon the payment of a fee of two dollars for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the towbar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this act and upon conviction be fined not less than $50.00, and not more than $100.00 and all costs of court. Each day so operating without securing the license and plates as required herein shall constitute a separate offense within the meaning of this act. (Act Apr. 14, 1941, c. 213, §1.)
[168.053]

Application required by Laws 1941, c. 213, does not take place of petition required of interstate contract carriers provided by Laws 1933, c. 170, as affecting contractors connected with delivery of automobiles by the drive-a-way method, and former has in view payment to state of sum as contribution for use of highways, while latter has rather to do with expense arising from administration of law regulating public carriage. Op. Atty. Gen. (633), July 7, 1941.

A motor vehicle is exempt from registration and tax while in movement by drive-away operator for delivery to private owner who immediately stores it and does not use it for the remainder of the calendar year, but verified application of non use is essential to exemption after delivery. Op. Atty. Gen. (632e-12), Apr. 14, 1943.

2686-5. Same—Liability insurance.—Any person as hereinbefore defined pulling or towing any vehicle designed, equipped or intended to operate under its own power, said pulling or towing being accomplished by another vehicle when operating upon any public highway of the state of Minnesota, shall before such pulling or towing, file with the registrar of motor vehicles a liability insurance policy or bond covering public liability and property damage, issued by some insurance or bonding company, or insurance carrier authorized to do business in the state of Minnesota, which policy or bond shall be approved by the registrar of motor vehicles and shall be for not less than $10,000 for public liability and not less than $5,000 for property damage. (Act Apr. 14, 1941, c. 213, §2.)
[168.054]

Filing of policy of insurance as required by Laws 1941, c. 213, obviates required filing of any additional insurance as provided by Laws 1933, c. 170. Op. Atty. Gen. (633), July 7, 1941.

2686-6. Same—Safety, regulations.—In pulling or towing such motor vehicles, at least two safety chains shall be used in addition to tow bars and all sets shall be not less than 500 feet apart and no person shall operate such vehicle in excess of 35 miles per hour. (Act Apr. 14, 1941, c. 213, §3.)
[168.055]

2686-7. Same—Offenses—Application.—Any person violating the provisions of this section shall be guilty of a misdemeanor. The provisions of this act shall not apply where such vehicle is being towed as a temporary movement for the purpose of making repairs, or for the purpose of pulling or towing such vehicle from one point to another point for the purpose of making repairs, or on repossessed cars being towed by an agent or employee of any person or bona fide finance company in the state of Minnesota where such towing is incidental to the repossession of such vehicles. (Act Apr. 14, 1941, c. 213, §4.)
[168.056]

2686-8. Same—Fees—Disposition.—All fees derived from this act shall be paid into the state treasury and credited to the trunk highway sinking fund. (Act Apr. 14, 1941, c. 213, §5.)
[168.057]

2687. All *machines* must be registered—Exceptions.—Every motor vehicle (except those exempted in Section 2 of this act) shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouseman, mortgagee or pledgee. But, new and unused motor vehicles in the possession of a dealer solely for the purpose of sale, and used or second-hand motor vehicles which have not theretofore used the public streets or highways of this state which are in the possession of a dealer solely for the purpose of sale and which are duly listed as herein provided, shall not be deemed to be vehicles using the public streets or highways. The driving or operating of a motor vehicle upon the public streets or highways of this state by a motor vehicle dealer or any employee of such motor vehicle dealer for demonstration purposes or for any purpose incident to the usual and customary conduct and operation of his business in which he has been licensed under Mason's Supplement 1940, Section 2686, to engage, or solely for the purpose of moving it from points outside or within the state to the place of business or storage of a licensed dealer within the state or solely for the purpose of moving it from the place of business of a manufacturer, or licensed dealer within the state to the place of business or residence of a purchaser outside the state, shall not be deemed to be using the public streets or highways in the state within the meaning of this act or of Article 16 of the Constitution and shall not be held to make the motor vehicle subject to taxation under this act as one using the public streets or highways, if during such driving or moving the dealer's plates herein provided for shall be duly displayed upon such vehicle. (As amended Act Apr. 10, 1941, c. 176, §2.)

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under this section. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

A portable welder mounted upon either two or four wheels, making welder mechanism an integral part of the whole, is a trailer subject to registration and tax. Op. Atty. Gen., (632E-33), Jan. 10, 1940.

Use of dealer's plate is permissible: in actual demonstration to a prospective purchaser, purchaser being in car while it is being so demonstrated upon public highways; in calling for a prospective purchaser at his residence or place of business and returning car to dealer's place of business or driving it to residence or place of business of another prospective purchaser; in calling upon a prospective purchaser at his residence or place of business for purpose of demonstrating car to him there, even though he is not taken out in car upon highways; in operating upon public highways for purpose of limbering up motor and other running parts or ascertaining that car runs properly. Op. Atty. Gen. (632a-7), March 21, 1940.

A motor vehicle is exempt from registration and tax while in movement by drive-away operator for delivery to private owner who immediately stores it and does not

use it for the remainder of the calendar year, but verified application of non use is essential to exemption after delivery. Op. Atty. Gen. (632e-12), Apr. 14, 1943.

2688. Duplicate plates.—In the event of the defacement, loss or destruction of any number plates the registrar upon receiving and filing a sworn statement of the vehicle owner, setting forth the circumstances of the defacement, loss, destruction or theft of the number plates, together with any defaced plates and the payment of the fee of two dollars shall issue a new set of plates especially designed for that purpose by the registrar and so marked and numbered that they can be readily distinguished from the originals. Upon the return of defective number plates after the expiration of the manufacturer's guarantee thereof, the registrar upon the payment of a fee of 50 cents, may recondition such plates or issue duplicate plates in lieu thereof. The registrar shall then note on his records the issue of such new number plates and shall proceed in such manner as he may deem advisable to cancel and call in the original plates so as to insure against their use on another motor vehicle. Duplicate registration certificates plainly marked as duplicates may be issued in like cases upon the payment of a 25 cent fee. (As amended Act Feb. 20, 1943, c. 56, §1.)

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., Jan. 16, 1941.

Proper charge for lost plates is $2.00, whether it be 1942 plates alone, 1943 tab alone, or both. Op. Atty. Gen. (632a-16), Dec. 11, 1942.

Upon defacement or loss, vehicle must be reregistered and plates issued at cost. Op. Atty. Gen. (632a-16), Apr. 2, 1943.

Registrar is not authorized to waive fee of 50 cents for replacement of defective plates. Id.

2689. Transfer of ownership.—Every owner or transferor of a motor vehicle who fails or delays for more than seven days to surrender the registration certificate and existing number plates as herein provided, before he shall be entitled to sell and assign his right to have the tax paid by him credited to the transferee as herein provided, shall pay to the registrar a fee of 25 cents for each day, not exceeding two days, and if such delay continues more than 30 days thereafter, he shall pay to the registrar a fee of 50 cents per month for each additional month or fraction thereof, for not exceeding two months. The added fee for such failure or delay in reporting such transfer of ownership as required by law shall not be more than one-half the annual tax. A filing with, or delivery to the registrar of any application, notice, certificate or plates as required by this section shall be construed to be within the requirements of this section if made to the registrar or his deputy at an office maintained therefor, or if deposited in the mail or with a carrier by express with postage or carriage charge prepaid, and properly addressed to the registrar within seven days after the transfer of ownership or other occurrence upon which this section provides for such filing or delivery. (As amended Apr. 28, 1941, c. 515; Mar. 19, 1943, c. 153, §2.)

Penalties in instances of delay either in registering vehicles or applying for transfers which occurred prior to March 20, 1943, are to be computed under the former law, and penalty on such default, and default occurring March 20 and thereafter are to be computed under the rate provided for in the amendment by Laws 1943, c. 153. Op. Atty. Gen. (632e-21), Apr. 1, 1943.

2690. Payment of tax—Installments—Refunds—Penalty.

Subd. 1. **Time payable.**—The tax required under this act to be paid upon a motor vehicle for each calendar year becomes due when the vehicle first uses the public streets or highways in the State, and upon January 1 thereafter each year. Taxes due upon January 1 become payable upon October 1 preceding the calendar year for which they are assessed except those upon motor vehicles which shall first use the public streets and highways of this state between October 1 and the next followig December 31. The tax that becomes due January 1 next following upon such motor vehicles becomes payable at the time the tax for the current year becomes payable.

Subd. 2. **Installments.**—Every owner or person charged with the duty to register a motor vehicle or pay any tax payable hereunder on October 1, who fails or delays to register such motor vehicle and pay such tax on or before November 15 preceding the calendar year for which the tax is assessed shall, if the motor vehicle is registered and the tax paid on the first business day thereafter, pay to the registrar a fee of twenty-five cents for the delay; if the motor vehicle is registered and the tax is paid thereafter and prior to December 15 following, an additional fee of twenty-five cents, and, if the motor vehicle is registered and the tax is paid thereafter and before it becomes delinquent, an additional fee of fifty cents. Taxes for the current year shall become delinquent upon the expiration of seven days after the same became due unless paid.

Every owner or person charged with the duty to register a motor vehicle and pay any taxes hereunder who fails to register the same and pay such taxes as herein provided before the tax becomes delinquent, shall, before he shall be entitled to complete his registration as herein provided, pay to the registrar a fee of twenty-five cents a day for each of the first two days that he delays, and if the delay continues so that there is a total delay in excess of thirty days, he shall pay to the registrar for the delay in excess of thirty days an additional fee of fifty cents per month or fraction thereof for not exceeding two months.

Subd. 3. **Refunds.**—If any owner or person charged with the duty to register the motor vehicle and pay the tax for the following year that became payable during the period October 1 to November 15, both days inclusive, fails to pay that tax on or before November 15, he shall pay to the registrar a fee of twenty-five cents for that delay and an additional fee of twenty-five cents if he fails or delays to pay that tax until the month of December.

Subd. 4. **Tax a personal obligation.**—If any owner or person charged with the duty to register the motor vehicle and pay the tax for the following year that has become payable during the period November 16 to December 15, both dates inclusive, fails or delays to pay that tax within fifteen days after it became payable he shall pay to the registrar a fee of twenty-five cents for such delay.

Subd. 5. **Fee for failure to register.**—The added fee for failure or delay in registering and paying the registration tax shall not be more than one-half the annual tax and in no event more than a total of $2.50.

A filing with, or delivery to the registrar of any application, notice, certificate or plates as required by this section shall be construed to be within the requirements of this section if made to the registrar or his deputy at an office maintained therefor, or if deposited in the mail or with a carrier by express with postage or carriage charge prepaid, and properly addressed to the registrar within seven days after the transfer [of] ownership or other occurrence upon which this section provides for such filing or delivery. (As amended Apr. 28, 1941, c. 515, §4; Mar. 19, 1943, c. 153, §1.)

Motor vehicle must display number plate for current calendar year, and cannot display plate for succeeding year. Op. Atty. Gen. (632a-16), June 26, 1941.

License plates for current year must be displayed throughout calendar year and new plates obtained after October 1 may not be displayed until January 1 following. Op. Atty. Gen. (632A-16), Sept. 9, 1941.

Motor vehicle dealers are still entitled to withhold payment of motor vehicle taxes until October 1 of current tax year, but time for dealers to list their vehicles and make application for deferment of tax is October 1 of year preceding calendar year for which tax is to be paid. Op. Atty. Gen. (632E-5), Sept. 17, 1941.

Owner paying tax is entitled to refund when vehicle is junked before January 1 by a purchaser to whom registration was transferred and tax paid assigned. Op. Atty. Gen. (632e-24), March 15, 1943.

Penalties in instances of delay either in registering vehicles or applying for transfers which occurred prior to March 20, 1943, are to be computed under the former law, and penalty on such default, and default occurring March 20 and thereafter are to be computed under the rate provided for in the amendment by Laws 1943, c. 153. Op. Atty. Gen. (632e-21), Apr. 1, 1943.

Members of armed forces are not exempt from payment of penalties for delayed registration unless application for tax exemption is made. Op. Atty. Gen. 632E-(21), Dec. 21, 1943.

Subd. 3.

Person who owned car at time of removal from state, and not person who paid tax, is entitled to refund. Op. Atty. Gen. (632E-24), Jan. 20, 1942.

2692. Manufacturers to file statement.—Every manufacturer of a motor vehicle sold or offered for sale within this state, either by the manufacturer, distributor, dealer or any other person, shall, on or before the first day of August in each year, file in the office of the registrar a sworn statement showing the various models manufactured by him, and the retail list price, rated carrying capacity and manufacturer's shipping weight of each model being manufactured August 1 of that year; and shall also file with the registrar, in such form as manufacturers usually use for advertising, complete specifications of the construction of each model that has been manufactured by him. Upon each change in such price, carrying capacity or weight and upon the manufacture of each new model thereafter, such manufacturer shall in like manner file a new statement setting forth such change. Models shall be deemed similar if substantially alike and of the same make. Models shall be deemed to be corresponding models, for the purposes of taxation under Section 3 of this act, if of the same make and having approximately the same weight and type of body and chassis and the same style and size of motor. The registrar may refuse to register any new or first hand vehicle in this state unless the manufacturer thereof has furnished to the registrar the sworn statement herein provided, for the model of the motor vehicle that is offered for registration. Such list price, rated carrying capacity and listed weight of the vehicle, as set forth in the manufacturer's statement shall be the price, weight or carrying capacity on which the tax of a motor vehicle shall be computed under Seciton 3 of this act unless grossly at variance with fact. In all instances in which there have been added to a complete vehicle additional parts, equipment or accessories not included in the factory list price upon which the tax is computed in accordance with the requirements of Section 3 of this act, the reasonable cost thereof, if amounting in the aggregate to more than $50.00 shall be added to the list price upon which the tax is computed. Such added parts, equipment or accessories to the extent in value of $50.00 shall be exempt from taxation. The registrar shall have authority to fix the value, carrying capacity and weight of any rebuilt or foreign car or any car on which a record of the list price, carrying capacity or weight is not available in his office. (As amended Act Apr. 28, 1941, c. 515, §5.)

Act Apr. 28, 1941, c. 515, §7, provides that all other acts and parts of acts inconsistent herewith [2674(a), 2676(a), 2680, 2689, 2690, 2692] are hereby modified, amended or superseded so far as necessary to give full force and effect to the provisions of this act, the purpose of which is to continue the calendar year as the period for which the motor vehicle registration tax is assessed and the motor vehicle registrations are made, but to advance the date for registration. Section 8, of such act provides that this act shall take effect and be in force from and after October 1, 1941 except as to the provision of Section 5 which shall take effect and be in force from August 1, 1941.

A non-resident motor vehicle owner registering it under a certain classification without calling an application for reciprocity privileges cannot later have registration revoked and obtain a reciprocity permit or obtain a refund of registration tax. Op. Atty. Gen. (632E-32), Dec. 5, 1940.

2693. Secretary of state to be registrar.

Deputy registrars of motor vehicles do not come within term "occupation" in minimum wage law, nor are they entitled to benefits of social security laws of the state. Op. Atty. Gen. (385b-2), Dec. 3, 1942.

(b).

Employees in various offices of deputy registrars of motor vehicles, including those in Minneapolis, are not state employees, even though paid in part by state warrants. Op. Atty. Gen., (644), Jan. 8, 1941.

Employees of deputy registrar at Minneapolis are not employees of the state and services rendered by them are personal services to deputy registrar and not to state, and amount allotted to Secretary of State for expenditure for personal services may not be used for payment of personal services rendered to such deputy registrar, who is in a sense a contractor with state. Op Atty. Gen. (644B), Jan. 7, 1942.

(c).

This section constitutes a standing appropriation of fees received for transcripts of record for purpose of paying clerk hire and other expenses of furnishing transcript, though such fees must be paid to state treasurer daily. Op. Atty. Gen. (640a), Jan. 30, 1940.

Employees making registration lists after regular working hours and paid "overtime" must contribute part to retirement association fund. Op. Atty. Gen. (331a-12), July 29, 1941.

Under Laws 1943, c. 660, §52, registrar of motor vehicles may furnish transcripts of records at cost of preparation, and only excess above costs need be paid into state treasury. Op. Atty. Gen. (385b), May 21, 1943.

2695. Violations—Penalties.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

Driving truck with a greater gross weight painted thereon than permitted under license. Op. Atty. Gen. (632a-22), May 20, 1942.

2696. Violations of law; etc.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

2698. Same.

It is a violation of law for owner of a car to repaint his own plates. Op. Atty. Gen. (632a-16), Sept. 9, 1942.

2712-1. Chauffeurs' licenses.

Laws 1943, c. 36, provides for renewal of chauffeurs' licenses by members and former members of Armed Forces of the United States.

Phrase "not more than 60 days in any year" means 60 consecutive days. Op. Atty. Gen. (291i), Sept. 15, 1939.

Owner of a grain elevator transporting his own grain purchased from farmers in his own truck was not required to have a license. Op. Atty. Gen., (635d), Jan. 5, 1940.

A pupil, who complies with regulations of Department of Education, but is under 18 years of age and hence does not have a chauffeur's license, cannot transport other pupils and take pay from school district. Op. Atty. Gen. (635e), Aug. 26, 1940.

Driver of city fire truck must have chauffeur's license. Op. Atty. Gen. (635*l*), Nov. 13, 1940.

Driver of truck on U. S. Mail Star Route is subject to license. Op. Atty. Gen. (635c), Mar. 26, 1941.

Law does not apply to army and navy personnel in the performance of official duties. Op. Atty. Gen. (635c), May 13, 1943.

A mechanic taking a truck out on the street to check repairs is not a chauffeur, but a mechanic is a chauffeur while driving a truck or bus from a terminal to a given point as a replacement for a truck or bus that has been damaged. Op. Atty. Gen. (635d), July 2, 1943.

(4).

A priest using a school bus for purpose of transporting school children from school house to his church for religious instruction must have a chauffeur's license. Op. Atty. Gen. (635h), Oct. 2, 1940.

Act does not apply to pleasure vehicles, registered as such, and which are used only incidentally in transporting students to high school, unless vehicle is used to transport students by an adult person who has contract with school district. Op. Atty. Gen. (635E), Oct. 25, 1940.

2712-2. Secretary of State to establish chauffeur licenses division.—The secretary of state shall establish a chauffeurs' license division in the motor vehicle department of his office for the purpose of ascertaining and determining the qualifications of applicants for chauffeurs' licenses, and shall conduct examinations of applicants for such license at such times and places as he shall designate, and shall issue licenses only to such applicants as shall have attained the age of 18 years and shall be found to have a practical knowledge of the construction, mechanism and operation of motor vehicles and a sufficient knowledge of the traffic laws of this state, and other

needful qualifications, to enable him to drive with safety, and he may appoint such examiners and other employees as may be necessary in the conduct of the license division so established. Any deputy registrar of motor vehicles may be appointed by the secretary of state to conduct chauffeurs' examinations and any deputy registrar not serving on a stated salary when so appointed shall be allowed and paid 50 cents for each examinee for the first examination given to such examinee by him under such apointment to be paid by the secretary of state out of the same fund and in the same manner that salaries are paid to other employees serving in the chauffeurs' license division of the Motor Vehicle Department, such payment to be in addition to the fees allowed to such deputy as provided by law for registering motor vehicles. (As amended Feb. 1, 1943, c. 5, §1.)

This section **as amended by Laws 1943, c. 5** is amended by Laws 1943, **c. 135.**

Persons under 18 years of age may be denied chauffeurs' licenses. Op. Atty. Gen. (635e), Sept. 18, 1942.

2712-2a. Restricted chauffeurs' licenses may be issued.—Restricted chauffeurs' licenses may be issued to persons who have attained the age of 16 years and who are otherwise qualified as provided in Mason's Supplement 1940, Section 2712-2. Persons holding restricted chauffeurs' licenses shall not operate school buses or motor vehicles carrying passengers either as a common carrier or a contract carrier. The provisions of this section and all restricted chauffeurs' licenses shall expire 60 days after cessation of hostilities in the present war as declared by proper Federal authority. (Act Feb. 1, 1943, c. 5; Mar. 15, 1943, c. 135, §2.)

[168.401]

2712-4. Expiration of licenses.—All chauffeurs' licenses issued hereunder shall expire at midnight on December 31 of the year for which they are issued, but may be renewed without examination, if application for renewal is made during the month of December. During January and February next following, any chauffeur licensed in Minnesota who has made such application for the renewal of his chauffeur's license before January 1 may operate under the license issued to him for the preceding year until he receives his new chauffeur's license badge or is notified by the secretary of state that his license cannot be renewed. (As amended Act Apr. 19, 1943, c. 493, §1.)

November 30, 1941, falling on Sunday, December 1 is last day to make application for renewal of license. Op. Atty. Gen. (635d), Dec. 1, 1941.

2712-5. Application for examination—Fee.—Applications for examination and license hereunder shall be in writing upon such forms and shall contain such needed information as the secretary of state may prescribe, and shall be accompanied by the payment of an examination and license fee of one dollar and fifty cents. The fee for renewal of a chauffeur's license shall be one dollar if the application for renewal is made during the month of December; otherwise it shall be one dollar and fifty cents. All fees collected pursuant to this act shall be deposited in the general revenue fund. No fees, except overpayments and fees for renewals which are not allowed, that have been paid into the general revenue fund shall be refunded, but the secretary of state in his discretion, upon proper application within three months thereafter, may grant one re-examination without additional fee to a person who has been refused a license on a previous application. Refunds permitted by this act shall be made in the manner provided by law for making refunds and paid out of the general revenue fund. (As amended Apr. 24, 1941, c. 427, §1; Apr. 19, 1943, c. 493, §2.)

Determination of overpayment is a fact question for registrar of motor vehicles. Op. Atty. Gen. (635d), June 26, 1941.

2712-6. Revocation of licenses. — For sufficient cause upon complaint and after hearing, or upon report of conviction by any court in this state of violation of any provision of the Highway Traffic Regulation Act, or a municipal traffic ordinance, or upon report of conviction of any offense in any Province of the Dominion of Canada, which, if committed in this State, would be cause for revocation, the secretary of state may revoke the license of any chauffeur who, in the judgment of the secretary of state, should not be permitted to continue as a licensed chauffeur, provided, however, that if a licensed chauffeur is convicted in this state of a major offense, revocation by the secretary of state of his chauffeur's license shall be mandatory. For the purposes of this section, the term "major offense" shall be used to refer to any of the following offenses:

(a) Manslaughter resulting from the operation of a motor vehicle;

(b) Driving a motor vehicle, the operation of which requires a chauffeur's license, while under the influence of intoxicating liquor or narcotic drug;

(c) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used;

(d) Forfeiture of bail upon three charges of reckless driving all within the preceding 12 months;

(e) Failure of a driver of a motor vehicle involved in an accident to stop and disclose his identity at the scene of an accident resulting in the death or injury of a person.

Whenever a person is brought before any court charged with a "major offense," whether the charge be under state law or municipal ordinance, the court shall, before accepting a plea of guilty or entertaining a judgment of conviction pursuant thereto, inform the defendant that upon conviction not only will he be liable to a penalty, but the chauffeur's license that he may have must be revoked. Whenever in any court a licensed chauffeur is convicted of any violation of the Highway Traffic Regulation Act, or a municipal traffic ordinance, the court shall promptly report such conviction to the secretary of state together with any recommendations that the court may wish to make with reference to the chauffeur's license. Whenever the offense of which the licensed chauffeur is convicted is a "major offense" the court shall, as a part of the penalty, order the convicted chauffeur to return his chauffeur's badge promptly to the secretary of state. Failure on the part of a chauffeur to return the badge promptly to the secretary of state as ordered by the court shall constitute "contempt of court". The revocation of a chauffeur's license upon his conviction of a "major offense" shall be for a period of three, six, nine, or twelve months, the length of the period to be in each particular case as recommended by the court on the basis of the seriousness of the offense and the interest of public safety and welfare.

When at least three months of a period for which a chauffeur's license has been revoked have elapsed, and if the chauffeur's livelihood depends upon his employment as a licensed chauffeur, the secretary of state may, upon recommendation by the court in which the chauffeur was convicted, issue a limited license to such chauffeur on condition that proof of financial responsibility covering the vehicle or vehicles to be operated shall be filed in accordance with the provisions of the financial responsibility act. The secretary of state in issuing such limited license may impose such conditions and limitations as in his judgment are necessary in the interest of public safety and welfare, including re-examination as to the chauffeur's qualifications. Such license may be limited to the operation of particular vehicles, to particular classes of operation, and to particular conditions of traffic.

The badge, issued as evidence of a limited chauffeur's license, shall be of a special design to distinguish it from the regular unlimited chauffeur's license and, for the information of enforcement officers, the chauffeur operating under such license shall carry on his person at all times when operating

a motor vehicle, a certificate issued by the secretary of state indicating the limitations of such license. Such a limited chauffeur's license may also be issued by the secretary of state when in his judgment the privileges of a chauffeur should be limited in that manner because of convictions of other than major offenses against the traffic laws or ordinances or other conditions pertaining to the chauffeur's qualifications. (As amended Apr. 24, 1941, c. 427, §2; Apr. 7, 1943, c. 331, §1.)

If a court convicts a licensed chauffeur of any of offenses enumerated in paragraphs (a) to (e), it is mandatory that he revoke chauffeur's license whether conviction be under a statute or under an ordinance, and if conviction be of any other violation of the provisions of the Highway Traffic Act or of this act, court may in its discretion revoke license or leave it in effect. Op. Atty. Gen. (635d), Nov. 15, 1939.

Though court does not revoke license, secretary of state may demand that chauffeur found guilty of offense turn in his regular badge and issue to him a limited badge without delaying for interval of 3 months or more, and fee to be charged for limited license and special badge is $1. Op. Atty. Gen. (635d), Sept. 12, 1940.

Where court decides not to revoke license of a chauffeur, found guilty of an offense, it is not mandatory upon secretary of state that he revoke license. Id.

If Secretary of State acts upon a complaint of misconduct prior to effective date of Laws 1941, c. 427, amending this section, he must hold a hearing before making an order of revocation of license, but if he acts upon a report of conviction of an offense, he may order revocation without a hearing, and there was no requirement of a recommendation by judge who found chauffeur guilty. Op. Atty. Gen. (635d), July 18, 1941.

Laws 1941, c. 427, amending this section, had no application to license of one convicted before passage of act. Id.

Proof of financial responsibility is a condition precedent to issuance of a limited chauffeur's license, and three year requirement applies exclusively to driver's licenses. Op. Atty. Gen. (635d), Dec. 12, 1941.

Limited licenses to chauffeurs guilty of a major offense. Id.

Requirement for proof of financial responsibility is not a necessary condition precedent to issuance of a limited license, unless applicant is convicted of a major offense. Op. Atty. Gen. (635D), Jan. 20, 1942.

Proof of financial responsibility is required only of chauffeurs convicted of a major offense. Id.

Chauffeur's license may be revoked by Secretary of State where there has been a conviction for operating a motor vehicle while under influence of intoxicating liquor, though court ordered that license be not revoked. Op. Atty. Gen. (635d), Sept. 10, 1943.

2712-9. Renewal of chauffeurs' licenses of former members of armed forces.—Any person who has served in the army, navy or marine corps of the United States subsequent to December 7, 1941, and who has been honorably discharged therefrom or who has been granted a furlough or leave of absence therefrom prior to the cessation of hostilities in the present war as declared by proper federal authority, may, without payment of any fee or charge and without taking a physical examination except such as the Secretary of State may deem necessary, renew his chauffeur's license for the current calendar year at any time within one year after his discharge or during his furlough or leave of absence by making proper application therefor. (Act Feb. 15, 1943, c. 36, §1.)

2712-10. Honorable discharge to be prima facie evidence.—An honorable discharge or an order from proper authority granting a furlough or leave of absence shall be prima facie evidence of the right to privileges extended by this act. (Act Feb. 15, 1943, c. 36, §2.)

2713. Taking into custody for violation of act—Undertaking to appear, etc.

Inmates of a National Youth Administration Camp while driving government trucks are not employees the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

2717-1. Unauthorized driving, etc., of automobiles—Punishment.

If traveling salesman used employer's car for his own personal convenience without authority, he would be guilty of a crime and it could be inferred that use was with owner's consent as affecting liability of employer to third person, especially where operator is retained in employment and actively assists in defense of case. Schultz v. Swift & Co., 210M533, 299NW7. See Dun. Dig. 5486.

Since operation of a motor vehicle without owner's consent is a felony by law, it is reasonable to infer that possession by operator of a motor vehicle belonging to defendant is with his consent. Ballman v. Brinker, 211M 322, 1NW(2d)365. See Dun. Dig. 5834c.

UNIFORM HIGHWAY TRAFFIC ACT

TITLE II.—OPERATION OF VEHICLES—RULES OF THE ROAD

2720-3. Careless or heedless or dangerous driving—Gross misdemeanor. [Repealed.]

Repealed. Laws 1937, c. 464, §144.

1. In general.

Owner of filling station owes duty to an invitee of exercising ordinary care for his safety. Champlin Refining Co. v. W., (CCA8), 113F(2d)844.

One suddenly confronted by a peril through no fault of his own, who in attempt to escape does not choose best or safest way, should not be held negligent because of such choice, unless it was so hazardous that ordinarily prudent person would not have made it under similar circumstances. Dahlstrom v. H., 209M72, 295NW508. See Dun. Dig. 7020.

Driver of an automobile has right to assume that driver of another automobile will exercise due care by complying with applicable provisions of law and he may act upon that assumption until contrary appears. Schmitt v. Emery, 211M547, 2NW(2d)413, 139ALR1242. See Dun. Dig. 4162a.

Without any statutory rules, the general rules of negligence would apply and did apply before we had a traffic code. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW (2d)492. See Dun. Dig. 4162a.

In action by farm employee injured in barn when truck driven by farmer backed upon him, court is not concerned with traffic rules as applicable to streets and highways, and "barnyard justice" having met requirements of standard of conduct of ordinarily prudent person, it cannot be said that jury went wrong in rendering verdict for plaintiff. Narjes v. Litzau, 214M21, 7NW (2d)312. See Dun. Dig. 6016, 6997a.

Where there is no specific statutory rule applicable to operation of the vehicle involved in the case, ordinary principles of negligence law apply. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 4162a.

A cause of action arising out of an automobile accident in Wisconsin is governed by the law of that state. Darian v. McGrath, 215M389, 10NW(2d)403. See Dun. Dig. 1541.

2. Injury to guest or other occupant.

A person transported for benefit of owner or operator of an automobile is not a guest without payment for his transportation within Texas guest statute. Goldberg v. C., 206M450, 289NW512. See Dun. Dig. 6975a.

In action for death of passenger in defendant's car based upon excessive speed, failure to keep a proper lookout, negligently driving upon shoulder of road, and failure to reduce speed on return to pavement, evidence held to support verdict for defendant. Dahlstrom v. H., 209M72, 295NW508. See Dun. Dig. 6975a.

Contributory negligence of guest riding in front seat held properly submitted to jury. Klingman v. L., 209M 449, 296NW528. See Dun. Dig. 7026a.

In action for injuries to minor guest against driver of car in which he was riding and owner of service car evidence held to sustain finding that driver of service car as to direction of traffic and warning lights and driver of other car were both guilty of negligence. Olson v. Neubauer, 211M218, 300NW613. See Dun. Dig. 4167m.

Cause of action in favor of guest in automobile against negligent host is negligence of defendant—his invasion of plaintiff's rights by breach of duty to exercise due care not to injure him—resulting in plaintiff's personal injuries. Eklund v. Evans, 211M164, 300NW617. See Dun. Dig. 6975a.

In guest action, whether driver was guilty of negligence in starting to take a left fork and then turning sharply and stepping hard on brake to take right fork of highway while traveling 35 miles per hour held for jury. Winans v. Sinanovski, 211M606, 2NW(2d)127. See Dun. Dig. 6975a.

In action for injuries to girl five years old falling out of a taxicab while on way home from school, burden of proving contributory negligence was upon defendant. Thomsen v. Reibel, 212M83, 2NW(2d)567. See Dun. Dig. 7032.

"Willfulness" in a California automobile guest statute involved performance of deliberate or intentional act or omission regardless of consequences, and means something different from and more than negligence, however gross, and actual knowledge or its equivalent that an injury to a guest will be a probable result. Sohm v. Sohm, 212M316, 3NW(2d)496. See Dun. Dig. 6975a.

Evidence showing only that driver "dozed off" and ran into ditch, injuring guest, failed as a matter of law to prove driver guilty of "willful misconduct" within California automobile guest statute. Id.

In an action by a guest passenger for injuries received in another state, local court must take statute of such other state as construed by its highest court. Id. See Dun. Dig. 1541, 6975a.

Usually it is for the jury to say whether the circumstances command action on part of a passenger or guest in an automobile, and how much action, taking into consideration the experience and skill of the driver, his physical condition, condition of car, time of day or night, condition of highway, weather conditions, and amount of traffic. Hubenette v. Ostby, 213M349, 6NW(2d) 637. See Dun. Dig. 7026a.

It is the duty of a passenger or guest in an automobile to exercise ordinary care for his own safety and he must do the things to assure his safety that an ordinarily prudent person would do under the same or like circumstances. Id.

In action by automobile passenger injured when defendant permitted right front wheel to leave pavement and then attempted to get back on pavement again, causing car to skid on slippery pavement and crossing over to other side and turning over, jury was entitled to conclude that accident was caused solely by condition of highway and that defendant was not guilty of driving at an excessive rate of speed, or that she failed to keep a proper lookout or to keep her car under reasonable control. Marsh v. Henriksen, 213M500, 7NW(2d) 387. See Dun. Dig. 6975a.

Fact that prospective guest in automobile recovered for personal injuries in action against owner and host and driver is not conclusive against another guest who negligently closed automobile door on her foot, such negligent guest not being a party to former action and not being bound by decision therein. American Farmers Mut. Auto Ins. Co. v. Riise, 214M6, 8NW(2d)18. See Dun. Dig. 5171.

Liability of automobile driver for injuries to guest. Cummings v. T., 10SE(2d)(SC)322.

The automobile guest and the rationale of assumption of risk. 27MinnLawRev323.

The automobile guest and the rationale of assumption of risk. 27 MinnLawRev 429.

2½. Persons liable in general.

The emergency rule is but a specialized application of the general standard of reasonable care. Latourelle v. Horan, 212M520, 4NW(2d)343. See Dun. Dig. 6972a, 7020.

2¾. Acts in emergency.

Law does not require one to choose best way of escape from an imminent peril suddenly created by negligence of another. Stolte v. L., (CCA8), 110F(2d)226.

A verdict must stand where a jury could properly find that plaintiff had made an error in judgment which a reasonable man might make. Norling v. S., 208M143, 293 NW250. See Dun. Dig. 7020.

One faced with an emergency is bound to exercise only that caution and judgment which could be reasonably expected from an ordinarily prudent person under circumstances. Blom v. W., 209M419, 296NW502. See Dun. Dig. 7020.

Refusal of instruction on sudden peril was not prejudicial where under the circumstances defendant had no choice of action, and did not make any, it appearing that when defendant saw plaintiff's stalled car he immediately applied his brakes and thereafter had no control of car whatever. Corridan v. Agranoff, 210M237, 297 NW759. See Dun. Dig. 6972a.

Where plaintiff before entering a trunk highway from a private driveway saw defendant's car approaching very fast from 550 to 600 feet from where she entered and crossed highway to her own right side thereof and traveled some 50 feet before collision occurred in her lane of traffic, testimony held to warrant an instruction on sudden emergency in behalf of plaintiff as well as defendant. Packar v. Brooks, 211M99, 300NW400. See Dun. Dig. 7020.

Emergency rule is but a special application of the general standard of reasonable care, requiring jury to consider fact of sudden peril where there was a real peril and party seeking to invoke it did not contribute thereto. Ignoring stop sign warranted submission of rule to jury. Zickrick v. Strathern, 211M329, 1NW(2d)134. See Dun. Dig. 4167b, 6972a.

Driver of an automobile confronted by a sudden peril through no fault of his own should not be held negligent because he does not choose best or safest way to escape, unless choice involves hazards that no ordinarily prudent person would have incurred under similar circumstances. Schmitt v. Emery, 211M547, 2NW(2d)413, 139ALR1242. See Dun. Dig. 6972a.

If pedestrian was on wrong side of roadway, and conditions underfoot due to a recent considerable fall of snow did not justify his being there as a matter of due care, his position of peril was the result of his own negligence, and he was not entitled to the benefit of the emergency rule. Nicholas v. Minnesota Milk Co., 212M 333, 4NW(2d)84. See Dun. Dig. 4171, 7020.

Emergency rule is that one suddenly confronted by a peril, through no fault of his own, who, in the attempt to escape, does not choose the best or safest way, should not be held negligent because of such choice, unless it was so hazardous that the ordinarily prudent person would not have made it under similar conditions. Id. See Dun. Dig. 6972a, 7020.

One approaching a grade railroad crossing at 30 miles per hour in a dense fog could not with merit claim that he was confronted with a sudden and unexpected emergency when he first discovered the presence of a train, created because inadequate signs may have lulled him into a feeling of safety, especially absence of a reflector, since if there was any emergency it was clearly of his own making by failing to exercise a degree of care required of him as a matter of law. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 7020.

The emergency rule is inapplicable unless it be first determined that there existed a real peril to which the party seeking its protection did not contribute by his own want of care. Id. See Dun. Dig. 6972a, 7020.

The emergency rule does not excuse negligence, since it is but a special application of the general requirement of that degree of care which the circumstances would have dictated to ordinary prudence. Id. See Dun. Dig. 6972a, 7020.

A motorist who by driving at high speed with defective brakes contributed to the predicament with which he was confronted was not entitled to have his case considered under the sudden emergency rule. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 6972a.

The choice of action by the driver of an automobile confronted by a sudden peril through no fault of his own is not to be tested by inquiry whether it was the best or most effective under the circumstances, but rather by comparison with what reasonably might be expected of the average prudent driver under similar circumstances. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d) 406, 147ALR945. See Dun. Dig. 7020.

Trial court properly submitted the question of contributory negligence under the emergency rule where truck had entered intersection before "Go" sign turned to "Stop" and then suddenly stopped causing rear end collision by car in which plaintiff was riding. Id.

Emergency is an important factor in determining negligence and contributory negligence. Id.

In guest action wherein host became startled on discovering deer on highway and went into ditch, there was no basis for application of emergency doctrine due to his failure to keep proper lookout. Hutzler v. McDonnell, 239Wis568, 2NW(2d)207. See Dun. Dig. 6972a.

3. Respondeat superior

See notes under §2720-104.

Whether an employee's act of entrusting his employer's motor vehicle to one who had previously performed services for owner for purpose of performing an act authorized by owner, for which employee rewarded operator by giving him permission to use motor vehicle for a personal use, was within scope of employee's authority, express or implied, held for jury. Ballman v. Brinker, 211M322, 1NW(2d)365. See Dun. Dig. 5834c.

An automobile is not within the special rule of strict liability applicable to "an inherently dangerous instrumentality." Wineman v. Carter, 212M298, 4NW(2d)83. See Dun. Dig. 5833, 5834c.

A person is not liable for negligence of a mere guest, absent any relationship of principal and agent, master and servant, partnership, or joint enterprise. American Farmers Mut. Auto Ins. Co. v. Riise, 214M6, 8NW(2d)18. See Dun. Dig. 6975a.

While liability of automobile host arising out of accident in this state is determined by laws of this state, law of forum governs proof in court of facts alleged, that is, sufficiency of evidence to raise an issue for jury is to be determined by law of forum. Hutzler v. McDonnell, 239Wis568, 2NW(2d)207. See Dun. Dig. 1541, 6975a.

4. Contributory negligence.

A passenger in rear seat who is not controlling and has no right of control over driver, and is not aware of danger of collision until collision is unavoidable is not guilty of contributory negligence as a matter of law. Goldberg v. C., 206M450, 289NW512. See Dun. Dig. 7026a.

A verdict must stand where a jury could properly find that plaintiff had made an error in judgment which a reasonable man might make. Norling v. S., 208M143, 293 NW250. See Dun. Dig. 7020.

Contributory negligence in an emergency is to be determined by whether or not plaintiff exercised the caution and judgment which could reasonably be expected from an ordinarily prudent person under the circumstances. Smith v. C., 209M268, 296NW132. See Dun. Dig. 7020, 7021.

In guest action, where a host started to take left fork and then suddenly turned to right fork of highway, causing car to turn over, whether act of host was caused by contributory negligence of plaintiff by shouting at her, held for jury. Winans v. Sinanovski, 211M606, 2NW (2d)127. See Dun. Dig. 7026a.

A normal boy in his sixteenth year was guilty of contributory negligence as matter of law in so driving an automobile, which defendant permitted him to drive, that it collided with another parked on the street, collision being result of his inattention while picking up a lighted cigarette which he had just dropped. Wineman v. Carter, 212M298, 4NW(2d)83. See Dun. Dig. 4167b, 7020, 7029.

No contributory negligence could be predicated upon failure of guest in automobile, failing to see a car approaching upon a side road and not warning driver of its approach, where defendant driver testified that he himself saw the lights of the car with which he later collided, and another guest testifying that he called driver's attention to the lights. Hubenette v. Ostby, 213 M349, 6NW(2d)637. See Dun. Dig. 7026a.

In action by farm employee for injuries received in barn when truck driven by farmer backed upon him, it could not be said that plaintiff was guilty of contributory negligence as a matter of law, though he stated on the trial that he told defendant that he was in a hurry

and guessed it was as much his fault as it was defendant's. Narjes v. Litzau, 214M21, 7NW(2d)312. See Dun. Dig. 7033.

Last clear chance doctrine and wilful and wanton negligence. 24MinnLawRev81.

4¼. Imputed contributory negligence.

Negligence of driver is not imputable to passenger in rear seat. Goldberg v. C., 206M450, 289NW512. See Dun. Dig. 7038.

Driver's negligence in approaching a railroad crossing could not be imputed to sleeping passengers. Krause v. C., 207M175, 290NW294. See Dun. Dig. 7038.

A passenger in an automobile is not required to exercise care and caution required of driver at railroad crossing. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8193.

Driver's negligence at railroad crossing is not imputable to a guest passenger. Id. See Dun. Dig. 7038.

Negligence which is a material element or substantial factor in producing or happening of an injury is proximate cause although there is no physical contact or impact. Smith v. C., 209M268, 296NW132. See Dun. Dig. 7000.

In action by a married woman who was riding with her husband in defendant's car in Wisconsin, which was being driven by plaintiff's husband at time of accident and injury, wherein plaintiff testified that she had no knowledge of any arrangement between her husband and the defendant as to the driving of the car, the burden of going forward with the proof to show that the husband was the agent of the plaintiff rather than of the defendant was on defendant. Darian v. McGrath, 215M389, 10NW(2d)403. See Dun. Dig. 7038.

Contributory negligence of a husband operating upon a public highway an automobile, of which his wife was a co-owner and in which she was riding at the time of its collision with the truck of a third person, is not imputable to the wife merely because of such facts, either under the common law or the safety responsibility act, in an action by her to recover damages for personal injuries against the third party because of his negligence. Christensen v. Hennepin Transp. Co., 215M394, 10 NW(2d)406, 147ALR945. See Dun. Dig. 7038.

At common law a driver's negligence is not imputable to an owner consenting to the use of his car, except where the legal relationship existing between the parties otherwise affords basis for such a result. Id.

Ownership of an automobile in which the owner is riding, but which is being driven by another, does not establish as a matter of law right of control in the owner, since right of control may be surrendered where the owner parts with the possession of his car to another, parties then standing in the relationship of bailor and bailee. Id.

The owner of an automobile may be the operator's guest, and where the owner is the guest, the operator's contributory negligence is not imputable to the owner, except where the operator is the owner's servant or agent or where the operator and the owner are engaged in a joint enterprise, and mere family relationship is not enough. Id.

4½. Proximate cause.

In action by guest in one automobile against driver of another automobile evidence held not to require submission of contributory negligence to jury. Guin v. M., 206 M382, 288NW716. See Dun. Dig. 7026a.

Question of causal relation is ordinarily one of fact and should be determined by jury in exercise of practical common sense rather than by application of abstract principles. Sankiewicz v. S., 209M528, 296NW909. See Dun. Dig. 7011.

Once question of concurrent negligence of two defendants is affirmed, as it is by a verdict, there is no room for further argument on question of causation. Olson v. Neubauer, 211M218, 300NW613. See Dun. Dig. 4167m.

In guest action, evidence held sufficient to support finding that negligence of driver in turning sharply and stepping hard on brake, and not blow-out of tire, was proximate cause of upset. Winans v. Sinanovski, 211M 606, 2NW(2d)127. See Dun. Dig. 7005.

An unlicensed driver is neither barred from recovering for injuries received by himself in an automobile accident or liable as a matter of law for injuries sustained by another, because there is no causal connection between his failure to comply with licensing statute and accident. Mahowald v. Beckrich, 212M78, 2NW(2d)569. See Dun. Dig. 6976, 6999, 7027.

In action for wrongful death in automobile collision, there could be no recovery from driver of other car if death was due solely to negligence of servant of deceased driving his car, but such servant would be liable. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 2620.

Last clear chance doctrine and wilful and wanton negligence. 24MinnLawRev81.

6. Evidence.

In action for death of passenger in automobile in collision on railroad crossing evidence held not to establish that deceased was negligent in riding with host who had drunk beer, there being no testimony that deceased saw him drink or that he was physically under the influence of the liquor. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8193.

In action for death of a guest passenger in automobile at railroad crossing burden was upon railroad to show that deceased was guilty of negligence. Id. See Dun. Dig. 8201.

Conversation and conduct of drivers in two car collision are admissible, and courts in other jurisdictions have so held as to statements as to insurance. Odegard v. Connolly, 211M342, 1NW(2d)137. See Dun. Dig. 3300, 3409.

In action for death of pedestrian struck by defendant's car while standing close to edge of shoulder between two cars involved in a collision, burden of proof was on defendant to show that decedent was guilty of contributary negligence. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 7032.

7. Res ipsa loquitur.

Res ipsa loquitur doctrine did not apply in action by automobile guest who sat in front seat with driver and had full knowledge as to dangerous curve and speed and every movement of car during progress of trip until accident occurred. Klingman v. L., 209M449, 296NW528. See Dun. Dig. 7444.

Rule of res ipsa loquitur permits but does not compel an inference that defendant was negligent. Marsh v. Henriksen, 213M500, 7NW(2d)387. See Dun. Dig. 7044.

8. Questions for jury.

In automobile collision cases court has adopted a policy of hesitation when contributory negligence as a matter of law is attempted to be founded on estimates of distances. Salters v. U., 208M66, 292NW762. See Dun. Dig. 4167o.

Cutting a corner in making a left turn is only prima facie evidence of negligence, and question of contributory negligence for a violation of any highway traffic regulation is a question of fact for the jury and not one of law for the court. Yien Tsiang v. Minneapolis St. Ry. Co., 213M21, 4NW(2d)630. See Dun. Dig. 4162a.

In action by automobile guest against host, wherein it appeared that defendant during the entire day had persistently driven at speed which statute makes prima facie unreasonable, imprudent unlawful, and negligent, question of contributory negligence, including plaintiff's assumption of the hazards of driving at the speed indicated by the evidence, were for the jury. Hubenette v. Ostby, 213M349, 6NW(2d)637. See Dun. Dig. 7026a, 7041b.

9. Instructions.

It is only when a defendant has been placed in imminent peril by some other person's negligence that emergency instruction may be given; not when he confronts danger by reason of his own conduct. Anderson v. G., 206M367, 288NW704. See Dun. Dig. 7020.

Where there is no evidence to sustain a contrary view, an instruction that certain defendants did not discover plaintiff in a position of peril until they saw the Ford turn from behind Buick onto north lane of travel was correct. Schmitt v. Emery, 211M547, 2NW(2d)413, 139 ALR1242. See Dun. Dig. 9783.

In action by farmer against trucker hauling lambs to market, an instruction that relationship between farmer and trucker was that of a carrier and passenger was not prejudicial where court expressly defined defendant's duty in terms of "a person of ordinary prudence under the same or similar circumstances." Anderson v. Hegna, 212M147, 2NW(2d)820. See Dun. Dig. 422.

Where contributory negligence was pleaded as a defense, question whether testimony was such that defendant was entitled to an instruction on contributory negligence was presented, though it does not appear that a specific request for an instruction thereon was made, defendant's counsel having called to attention of trial court its failure to charge thereon and elicited from the court the suggestion that such failure was "deliberate". Hubenette v. Ostby, 213M349, 6NW(2d) 637. See Dun. Dig. 7060.

It was error to charge that it is more difficult for a street car to stop by reason of its weight than for a motor vehicle to stop. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 9785.

2720-4. Speed—Reasonable and proper speed—Etc. [Repealed.]

Whether defendant overtaking and crashing into towed coupe while passing through a hamlet was guilty of excessive or negligent speed held for jury. Erickson v. M., 206M58, 287NW628. See Dun. Dig. 4167e.

2720-8. Vehicles operated by peace officers in performance of duties, Etc. [Repealed.]

In action for death of a fireman riding on rear step or platform of fire truck at time it was struck and overturned at an intersection, court erred in submitting an issue of contributory negligence to jury. Anderson v. G., 206M367, 288NW704. See Dun. Dig. 4173.

2720-18. Right of way between vehicles or vehicles and street cars at intersections—Etc. [Repealed.]

Negligence in a daylight collision at a street intersection held for jury. Meyer v. A., 206M72, 287NW680. See Dun. Dig. 4164e.

2720-19. Entering highway from alley, private road or drive—Etc. [Repealed.]

In action by passenger on a street car which collided with a large truck coming out of an alley, negligence of motorman held for jury. Reiton v. S., 206M216, 288 NW155. See Dun. Dig. 4164f.

In action for death of a fireman riding on rear step or platform of fire truck at time it was struck and overturned at an intersection, court erred in submitting an issue of contributory negligence to jury. Anderson v. G., 206M367, 288NW704. See Dun. Dig. 4173.

(a).

Driver of heavy truck was entitled to assume that one approaching highway on a private road would yield right-of-way, at least until a reasonable basis to conclude the contrary appeared, and it was a question for jury to determine whether he was guilty of contributory negligence with respect to defendant who was having trouble to get his truck up steep slope to a level shoulder. Salters v. U., 208M66, 292NW762. See Dun. Dig. 4164f.

2720-48. Front and rear lamps—Head lamps—Motorcycle lamps—Etc. [Repealed.]

Where there was evidence that unlighted coupe was entirely off travelled lane of highway, and car which had been towing it was two feet nearer center of highway with lights on, violation of statute and proximate cause were questions for jury. Erickson v. M., 206M58, 287NW 628. See Dun. Dig. 4167c.

2720-54. Parking lights. [Repealed.]

Where there was evidence that unlighted coupe was entirely off travelled lane of highway, and car which had been towing it was two feet nearer center of highway with lights on, violation of statute and proximate cause were questions for jury. Erickson v. M., 206M58, 287NW 628. See Dun. Dig. 4167c.

Whether defendant was guilty of negligence in not discovering a towed unlighted coupe stopped on extreme right side of highway on a moonlight night, held for jury. Id.

TAX ON GASOLINE, ETC., USED FOR MOTOR OR OTHER VEHICLES ON HIGHWAYS

2720-70. Definitions. [Repealed.]

Repealed. Laws 1941, c. 495.

Repealed. Laws 1943, c. 79.

Tax on fluids not otherwise taxed as gasoline and used as fuel for motor vehicles. Laws 1941, c. 494.

Constitutionality of appropriation from highway funds to various departments of the state. Cory v. King, 214 M535, 8NW(2d)614; note under Const. Art. 16, §2.

Taxes paid for gasoline used in stationary engines furnishing power for processing sand and gravel to be used in highway construction or repair work should be refunded. Op. Atty. Gen. (324k), Oct. 5, 1942.

(b).

Laws 1925, c. 297, as amended by Laws 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. Hallett Const. Co. v. Spaeth, 212M531, 4NW(2d)337. See Dun. Dig. 9576e.

(d).

While §2720-86 indicates an intent that licensing provision shall apply to those persons who engage in business of buying or selling petroleum products as a distributor, division may in its administrational law require an inshipper of furnace oil for its own industrial concern to be licensed. Op. Atty. Gen. (325a-5), Sept. 28, 1939.

2720-71. Excise tax on gasoline.—There is hereby imposed an excise tax of four cents per gallon on all gasoline used in producing and generating power for propelling motor vehicles used on the public highways of this state. This tax shall be payable at the times, in the manner, and by persons specified in Mason's Minnesota Statutes of 1927. Section 2720-77, and in Mason's 1940 Minnesota Supplement. Section 2720-72. (As amended Apr. 9, 1941, c. 162, §1.)

Under section 10 of the Hayden-Cartwright Act of June 16, 1936, 49 Stat. 1521 as amended by the Buck Act of Oct. 9, 1940, 54 Stat. 1060 (4 Mason's U. S. Code Ann. §12), providing that all taxes levied by the state upon sales of gasoline and other motor vehicle fuels may be levied upon such fuel sold by or through post exchanges located in the United States Military Reservations when such fuels are not for the exclusive use of the United States, state of Minnesota was entitled to payment of taxes collected on sales of gasoline at the Fort Snelling Post Exchange, as against contention that the Minnesota gasoline tax was not a sales tax but a use or property tax. State v. Keeley, (C.C.A.8) 126 F. (2d) 863, rev'g State v. Ristine, (DC-Minn) 36 F. Supp. 3. See Dun. Dig. 9576e.

Laws 1925, c. 297, as amended by Laws 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. Hallett Const. Co. v. Spaeth, 212M531, 4NW(2d)337. See Dun. Dig. 9576e.

State motor vehicle fuel tax held intended as compensation for use of public roads of state, and legal. Acme Freight Lines v. L., 197So(Fla)499. Cert. den., 61SCR141.

Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

Taxes paid for gasoline used in stationary engines furnishing power for processing sand and gravel to be used in highway construction or repair work should be refunded. Op. Atty. Gen. (324k), Oct. 5, 1942.

2720-71a. Certification of amount at time act takes effect—Payment of taxes.—It shall be the duty of every distributor and of every person who sells gasoline to certify to the commissioner of taxation the number of gallons of gasoline in his possession at the time this act takes effect, reporting same in a manner approved by the commissioner of taxation, and to pay the additional tax herein provided on said gasoline in his possession by not later than the 25th day of the month in which this act takes effect; provided that in such certification each distributor and person selling gasoline who had tax paid gasoline in possession on September 1, 1940, may take credit for the amount thereof against the amount of gasoline required to be certified to the commissioner by this section. (Added Apr. 9, 1941, c. 162, §2.)

2720-71b. Effective date.—This act shall take effect the first day of the month following approval thereof by the Governor. (Added Apr. 9, 1941, c. 162, §3.)

2720-71½. Gasoline distributors to report to oil inspector. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-71½a. Excise tax on other motor fuels.—There is hereby imposed an excise tax of the same rate per gallon as the gasoline excise tax upon all combustible gases and liquids, including liquefied gases, which exist in the gaseous state at a temperature of 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, and any liquid petroleum product or substitute therefor that is used to generate power for the propulsion of motor vehicles upon the public highways of this state, or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, not otherwise taxed as gasoline. (Act Apr. 28, 1941, c. 494, §1.)

[296.025]

Tax on substitutes for gasoline used in stationary engines to furnish power for processing sand and gravel to be used in highway construction or repair work should be refunded. Op. Atty. Gen. (324k), Oct. 5, 1942.

2720-72. Certified statements by chief oil inspector; etc. [Repealed.]

Repealed. Laws 1941, c. 495.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. Arneson v. W. H. Barber Co., 210M42, 297 NW335. See Dun. Dig. 9142.

Tax paid on gasoline which has been lost by reason of fire, leakage or other circumstance cannot be refunded. Op. Atty. Gen. (324K), Dec. 23, 1940.

2720-73. Taxes paid deposited with active state depository designated by Executive Council; etc. [Repealed.]

Repealed. Laws 1943, c. 79.

2720-74. Penalty and interest on nonpayment of tax, etc. [Repealed.]

Repealed. Laws 1941, c. 495.

Lien does not arise until date of inspection of gasoline and is not superior to a chattel mortgage on distributor's personal property executed and recorded prior thereto. State v. Heskin, 213M368, 7NW(2d)1. See Dun. Dig. 9161, 9165, 9576e.

State in creating a lien on personal property of a distributor for gasoline taxes, inspection fees, and penalties, has the power to make its lien superior to existing encumbrances, but if it intends such a drastic measure to entrench its treasury, it should so provide in plain unmistakable language. Id. See Dun. Dig. 9576e.

2720-75 to 2720-77. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-78. Gasoline deemed intended for use in motor vehicles; etc. [Repealed.]

Repealed. Laws 1941, c. 495.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. Arneson v. W. H. Barber Co., 210M42, 297 NW335. See Dun. Dig. 9142.

Laws 1925, c. 297, as amended by Laws 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. Hallett Const. Co. v. Spaeth, 212M531, 4NW(2d)337. See Dun. Dig. 9576e.

2720-79. Reimbursements in certain cases—Penalties for false statement. [Repealed.]

Repealed. Laws 1941, c. 495.

Editorial note.—Act Apr. 28, 1941, c. 491, §1, amended Mason's Supp. 1940, §2720-79, to read as follows: Any person who shall buy and use gasoline for any purpose other than use in motor vehicles or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, and who shall have paid any excise tax required by this act to be paid directly or indirectly through the amount of such tax being included in the price of such gasoline or otherwise, shall be reimbursed and repaid the amount of such tax paid by him upon presenting to the inspector a verified claim in such form and containing such information as the inspector shall require and accompanied by the original invoice thereof, which claim shall set forth the total amount of such gasoline so purchased and used by him other than in motor vehicles, or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, and shall state when and for what purpose the same was used. If the inspector be satisfied that the claimant is entitled to payment, he shall approve the claim. Upon the approval of any such claim the inspector shall draw his check on the gas tax account payable to the person entitled thereto. No such repayment shall be made unless the claim and invoice shall be presented to the inspector within four months from the date of such purchase.

Any person who shall buy and use gasoline for aeronautical or aviation purposes, may at the time of purchase or thereafter, fill out and file with the inspector a verified statement setting forth the total amount of gasoline so bought and used by him for aeronautical or aviation purposes and such other information as the inspector shall require, which statement shall be accompanied by the original invoice therefor. If claim for the repayment of such tax is not made within four months from the date of such purchase, all excise taxes collected on such gasoline bought and used for aeronautical or aviation purposes shall be placed in a separate fund and shall be expended solely for any one or more of the following purposes or objects:

(1) The marking of state trunk highways, or land or buildings nearby or adjacent thereto, with navigation markers indicating such things as highway numbers, towns, distances, direction indicators and other similar aviation aids.

(2) The acquisition, construction and maintenance of strip landing fields nearby or adjacent to state trunk highways in such locations as the Minnesota Aeronautics Commission may approve.

(3) The maintenance and support of the Minnesota Aeronautics Commission.

Funds may be expended for (1) or (2) above, by the Commissioner of Highways without further appropriation, but funds may be used for (3) above only in such amounts and manner as the legislature may from time to time specifically direct.

Every person who shall make any false statement in any claim or invoice presented to the inspector, or who shall knowingly present to the inspector any claim or invoice containing any false statement, or shall collect, or cause to be paid to him or to any other person any such refund without being entitled thereto, shall forfeit the full amount of such claim and be guilty of a misdemeanor.

[296.18]

Act Apr. 14, 1941, c. 220, authorizes a refund of gasoline tax to a village of less than 600 inhabitants, in a county containing 13 townships and having population of 12,900 to 13,000, where village failed to make application within 4 months.

See note under §3787-40.

Notes of Decisions

Laws 1925, c. 2979, as amended by Laws 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. Hallett Const. Co. v. Spaeth, 212M531, 4NW(2d)337. See Dun. Dig. 9576e.

Government owned federal land bank is exempt from gasoline tax under §2720-80, but it cannot obtain a refund by proceeding under this section. Op. Atty. Gen. (324e-1), Oct. 17, 1939.

Tax paid on gasoline which has been lost by reason of fire, leakage or other circumstance cannot be refunded. Op. Atty. Gen. (324K), Dec. 23, 1940.

Tax on gasoline used for aeronautical or aviation purposes is placed in separate fund if no claim for refund is made within six months of date of purchase, providing such taxes are identified within six months by verified statements, and appropriation of $10,000 from that fund is ineffective until that much has accumulated. Op. Atty. Gen. (234C), Aug. 9, 1941.

Taxes paid for gasoline used in stationary engines furnishing power for processing sand and gravel to be used in highway construction or repair work should be refunded. Op. Atty. Gen. (324k), Oct. 5, 1942.

2720-79½. Distributors to report the amount on hand. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-80. Gasoline used by United States not subject to tax—Refunds. [Repealed.]

Repealed. Laws 1941, c. 495.

Under section 10 of the Hayden-Cartwright Act of June 16, 1936, 49 Stat. 1521 as amended by the Buck Act of Oct. 9, 1940, 54 Stat. 1060 (4 Mason's U. S. Code Ann. §12), providing that all taxes levied by the state upon sales of gasoline and other motor vehicle fuels may be levied upon such fuel sold by or through post exchanges located in United States Military Reservations when such fuels are not for the exclusive use of the United States, state of Minnesota was entitled to payment of taxes collected on sales of gasoline at the Fort Snelling Post Exchange, as against contention that the Minnesota gasoline tax was not a sales tax but a use or property tax. State v. Keeley, (C.C.A.8) 126 F. (2d) 863, rev'g State v. Ristine, (DC-Minn) 36 F. Supp. 3. See Dun. Dig. 9576e.

Government owned federal land bank is exempt from gasoline tax, but cannot proceed solely under §2720-79 to obtain a refund. Op. Atty. Gen. (324e-1), Oct. 17, 1939.

2720-81. Gasoline used in foreign or interstate commerce; etc. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-82. Tax in lieu of other taxes; etc. [Repealed.]

Repealed. Laws 1941, c. 495.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. Arneson v. W. H. Barber Co., 210M42, 297 NW335. See Dun. Dig. 9142.

Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

2720-84 and 2720-85. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-86. Dealers must be licensed. [Repealed.]

Repealed. Laws 1941, c. 495.

While section indicates an intent that licensing provision shall apply to those persons who engage in business of buying or selling petroleum products as a distributor, division may in its administrational law require an inshipper of furnace oil for its own industrial concern to be licensed. Op. Atty. Gen. (325a-5), Sept. 28, 1939.

2720-87. Unlicensed dealers shall not be inspected. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-88. Licenses. [Repealed.]

Repealed. Laws 1941, c. 495.

(b).

A general regulation of commissioner of taxation that all applicants must furnish bonds entirely irrespective of proof of financial responsibility would be contrary to legislative intent, notwithstanding use of word "may". Op. Atty. Gen. (324), Aug. 12, 1940.

2720-89 to 2720-91. [Repealed.]

Repealed. Laws 1941, c. 495.

2720-92a. Apportionment of gasoline tax funds.

County aid roads bordering lake and village and needing riprapping to be maintained by the county, and it is entirely discretionary with village to assist. Op. Atty. Gen. (380b-7), July 22, 1943.

2720-92b. Commissioner of highways, state treasurer and state auditor to apportion funds.—On or before the first Tuesday in April of each year the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue during the current calendar year to the state road and bridge fund from the excise tax on gasoline, and after first setting aside $1,200,000 to be expended for state aid roads, shall apportion the balance of the sum among the several counties of the state for county aid roads as herein provided and the commissioner of highways shall forthwith send a state-

ment of such apportionment to the state auditor and to the county auditor of each county showing the amount apportioned to each county during such year for county aid roads. (As amended Apr. 9, 1941, c. 160, §1.)

2720-92d. Limitations of amount to each county.—Not less than three-fourths of one per cent nor more than three per cent of the moneys accruing to the state road and bridge fund apportioned for expenditure on county aid roads shall be apportioned to any one county in any one year. In the making of such apportionment regard shall be had to the mileage of county and town roads and the traffic needs and conditions of the respective counties. (As amended Apr. 9, 1941, c. 160, §2.)

2720-93. Use and disposition of gas tax.—The money apportioned to each county under the provisions hereof and not used to pay interest or principal on county road or bridge bonds as hereinafter provided, shall be used solely in the construction, improvement and maintenance of county aid roads therein, including bridges, culverts and other structures appurtenant to such county aid roads, and shall be expended by the county board on such county aid roads as it shall determine and in the manner herein provided. All county aid roads constructed under the provisions of this act shall be constructed under the supervision and according to plans and specifications made by the county highway engineer, filed with the county auditor and approved by the county board. Provided that in any county where 40 per cent or more of the real estate taxes for any year are unpaid on the date that taxes for said year become delinquent according to law, the county board of such county may, in the year such taxes become delinquent, use at least 50 per cent of the moneys so appropriated to said county for the purpose of paying any part of the interest or principal on bonds or warrants heretofore or hereafter issued by the county for road or bridge purposes.

In any county where 30 per cent or more of the real estate taxes for any year are unpaid on the date the taxes of said year become delinquent according to law, the county board of such county may, in the year such taxes become delinquent, use at least 25 per cent of the money so apportioned to said county for the purpose of paying any part of the interest or principal on bonds or warrants heretofore or hereafter issued by the county for road or bridge purposes. The provisions of this subdivision are hereby declared to be an emergency measure and shall be in force, and every law now in force inconsistent with this subdivision is hereby suspended, until April 20, 1943. (As amended Act Apr. 21, 1941, c. 339, §1.)

Provided, further, that in any county having an assessed valuation of less than $750,000 the county board, by unanimous vote and with the approval thereof by the village council of any village of said county, may designate as a county aid road any street, streets, or parts of streets within the platted or unplatted portion of any such village, and may appropriate such sums of money for improving the same as they may, on motion, determine. Provided, further, that the county board by a majority vote may rescind said designation.

Provided, further, that in any county having an area of not less than 1700 square miles and not more than 2000 square miles, and having not less than 50 full or fractional Government townships and not more than 60 full or fractional Government townships, and having an assessed valuation of not less than $2,500,000 and not more than $3,000,000, the county board thereof, by unanimous vote thereof, may transfer 60 per cent of the money so appropriated to the county aid road and bridge fund of the county to the general road and bridge fund of the county. (As amended Apr. 9, 1941, c. 129, §1; Apr. 21, 1941, c. 339, §1.)

Laws 1943, c. 243, provides that in counties having 76 to 80 full or fractional congressional townships, an assessed valuation of $2,000,000 to $5,000,000, any transfers of gas tax funds to revenue of county which transfers occurred more than ten years prior to passage of this act are validated.

2720-94a. Emergency act. [Repealed.]

Repealed. Laws 1941, c. 339, §2.

2720-95. Distribution of gasoline tax by county boards to towns.

A county has a very wide discretion in apportioning money and townships have no control. Op. Atty. Gen. (324q), June 17, 1941.

2720-96. Unorganized townships.

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

FARM TRACTOR FUEL

2720-100. Definitions.—The words, terms and phrases in this Act are for the purposes hereof defined as follows:

(a) "Farm tractor fuel A," by whatever name called, means and includes any liquid prepared, advertised, offered for sale, and sold for use as or used for the generation of power for the propulsion of tractors, that when tested by the methods of the petroleum division of the bureau of mines, United States Government, and the American Society for Testing Material (A.S.T.M.) meets the following specifications:

1. Shall be free from water and suspended matter.
2. The initial boiling point shall not be lower than 225 degrees Fahrenheit.
3. When ten per cent has been recovered in the receiver the temperature shall not be lower than 276 degrees Fahrenheit.
4. When 95 per cent has been recovered in the receiver the temperature shall not be lower than 464 degrees Fahrenheit.
5. The end point shall not be higher than 540 degrees Fahrenheit.
6. Shall be colored in a manner approved by the Commissioner of Taxation.

(b) "Crude petroleum farm tractor fuel" means and includes any basic petroleum product in its natural, undeveloped and unblended state, and when offered for sale, sold for use as or used for the generation of power for the propulsion of tractors, and shall meet the following specifications:

1. It shall be free from water and suspended matter.
2. Upon distillation, when 95 per cent has been recovered in the receiver the temperature shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit, or if less than 95 per cent is recovered in the receiver the end point shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit.
3. After distillation to the end point, residue shall not exceed three per cent.
4. Shall be colored in a manner approved by the Commissioner of Taxation.

(c) "Farm Tractor Fuel B" means and includes any processed or unprocessed petroleum product prepared, advertised, offered for sale, sold for use as or used for the generation of power for the propulsion of tractors, that when tested by the methods of the petroleum division of the bureau of mines, United States Government, and the American Society for Testing Material (A.S.T.M.) meets the following specifications:

1. It shall be free from water and suspended matter.
2. Upon distillation, when 95 per cent has been recovered in the receiver the temperature shall not be lower than 464 degrees Fahrenheit nor heigher than 540 degrees Fahrenheit, or if less than 95 per cent is recovered in the receiver the end point shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit.
3. After distillation to the end point, residue shall not exceed three per cent.

4. Shall be colored in a manner approved by the Commissioner of Taxation. (As amended Apr. 2, 1941, c. 116, §1.)

2720-100a. Oil inspection division to make rules and regulations.—The Commissioner of Taxation shall have the power and authority to make all reasonable rules and regulations for the enforcement of this act. (As amended Apr. 2, 1941, c. 116, §2.)

2720-100b. Farm tractor fuel to be inspected.—All farm tractor fuels, as defined herein, shall be subject to the laws of the State of Minnesota with reference to the inspection of petroleum products and shall be subject to the same fees for inspection as is provided for in the inspection of gasoline and kerosene. (As amended Apr. 2, 1941, c. 116, §3.)

2720-100c. Not to be subject to tax.—Farm tractor fuels, as herein defined, may be inshipped into and sold in the State of Minnesota and shall not be subject to the Minnesota state gasoline tax; provided, however, that when any such tractor fuels are used for the operation of machinery for the purpose of constructing, reconstructing, or maintaining the public highways, the product will then be considered gasoline for purposes of taxation and shall be taxed in accordance with existing laws and/or rules and regulations issued by the Commissioner of Taxation. (As amended Apr. 2, 1941, c. 116, §4.)

2720-100d. Blending prohibited.—Blending of farm tractor fuels with taxable petroleum products is prohibited. (As amended Apr. 2, 1941, c. 116, §5.)

2720-100e. Violations—Penalties.—(1) Any person who shall inship, sell or blend farm tractor fuels in violation of the provisions of this act shall be guilty of a gross misdemeanor and such inshipment, sale or blending shall be sufficient cause for cancellation of a distributor's license.

(2) Any person who operates any motor vehicle on a public highway, except a farm tractor occasionally run on the highway in actual farm operation, on any tractor fuel defined in this act shall be guilty of a misdemeanor and upon conviction thereof his current motor vehicle license and license plates shall be cancelled, forfeited and surrendered for the balance of the year; and the court in passing sentence shall require surrender of the license plates and fix a period of not less than sixty days nor more than six months during which that person shall not be entitled to apply for a new motor vehicle license or plates, and shall notify the Secretary of State thereof. (As amended Apr. 2, 1941, c. 116, §6.)

2720-100e1. Statement filed.—Every person who sells farm tractor fuel shall file with the Commissioner of Taxation on or before the 25th day of each month a statement under oath on forms to be prescribed by the Commissioner of Taxation setting forth (1) the amount of such fuel purchased by him during the preceding month, the dates of such purchases, and the name and address of the seller; (2) the amount of such fuel sold by him during the preceding month, the dates of such sales and the name and address of the purchaser and the amount sold to each. At the time of every such sale the purchaser shall deliver to the teller, on forms to be prescribed by the Commissioner of Taxation, a statement of the amount of such fuel purchased, and the dates thereof, and a declaration that such fuel is to be used exclusively in farm tractors. One copy of said statement shall be retained by the seller and the original filed with the Commissioner of Taxation at the time of filing the sworn statement required by this section. Any person violating the provisions of this section, and any person making a false statement on any of the forms required by this section shall be guilty of a gross misdemeanor. (Added Apr. 2, 1941, c. 116, §7.)
[296.49]

2720-100e2. Provisions separable.—If any section, provision, or part of this act, or any application thereof, shall be declared unconstitutional or invalid, it shall not in any way affect any other section, provision, or part hereof of any other application hereof. (Added Apr. 2, 1941, c. 116, §8.)

SAFETY RESPONSIBILITY ACT

Financial responsibility laws were passed in 1941 in Illinois, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Texas and Wisconsin.

2720-101. Definitions.

Statute is a remedial one and should be construed as such. Christensen v. Hennepin Transp. Co., 215M394, 10 NW(2d)406, 147ALR945. See Dun. Dig. 5834c.

2720-102. Drivers license forfeited when.

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. Ausman v. H., 208M13, 292NW421.

Commissioner of highways is required to revoke license of a driver convicted on a first offense of driving a motor vehicle while intoxicated without the necessity of a recommendation by the court before which the conviction was had. Martinka v. Hoffmann, 214M346, 9NW(2d)13. See Dun. Dig. 4167aa.

Where a court has not by order or recommendation revoked a license, it is duty of traffic engineer to see that financial responsibility provision is complied with, and he can then issue a license. Op. Atty. Gen., (291f), Oct. 6, 1939.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court, and this is true as to violation of a city ordinance. Op. Atty. Gen., (291f), June 12, 1940, reversing Op. Atty. Gen., May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

2720-103. Driver's license suspended when.

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. Op. Atty. Gen. (454-E), Jan. 10, 1940.

2720-104. Motor vehicles operated with permission of owner.

See notes under §2720-3, note 3.

Where son obtained permission to use father's automobile for trip to Minneapolis from Duluth to attend football game, intending not to go to Minneapolis but to drive some friends to Chicago, and met with an accident while enroute to Chicago, he was not using the car with his father's permission, expressed or implied, at time of accident, within omnibus clause of insurance policy. Liberty Mut. Ins. Co. v. S., (DC-Minn), 34FSupp 885.

Where insured's son met with accident while using insured's automobile, and actions for injuries were instituted in state court by the son's guests at time of accident, insurer could maintain proceeding under federal declaratory judgment act for determination of liability under policy. Id.

If a carrier leases his vehicles to another carrier or to a shipper he should do so under such terms and conditions as will make operations conducted by such vehicles operations of such other carrier or shipper; otherwise operations will be his. U. S. v. Steffke, (DC-Minn), 36F Supp257.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. Kangas v. W., 207M315, 291 NW292. See Dun. Dig. 5834a.

Where plaintiff, an employee of a partnership of which defendant was a member, was injured in a collision between a truck owned and operated by him and defendant's truck operated by another employee of partnership, both drivers being engaged in due course of partnership business and in furtherance of a common enterprise, and where neither defendant in his individual capacity nor driver of his truck was insured or self-insured as required by Mason Minn. St. 1940 Supp, §4272-5, but both drivers and partnership were insured under compensation act, plaintiff's motion to strike from defendant's answer allegations in respect of plaintiff's election to take benefits accruing under compensation act was properly granted in common-law action for damages based on negligence of defendant's driver. Gleason v. Sing, 210M253, 297NW720. See Dun. Dig. 5834c.

Evidence held to sustain finding that defendant was driver of car involved in collision. Leifson v. Henning, 210M311, 298NW41. See Dun. Dig. 5834c.

If traveling salesman used employer's car for his own personal convenience without authority, he would be guilty of a crime and it could be inferred that use was

with owner's consent as affecting liability of employer to third person, especially where operator is retained in employment and actively assists in defense of case. Schultz v. Swift & Co., 210M533, 299NW7. See Dun. Dig. 5834c.

Consent is to be determined like any other fact, and where relation of master and servant exists between owner and operator, however relevant relationship may be, it is not determinative of scope of consent except as parties have adopted it as measure thereof. Id.

Proof of defendant's ownership and that operator is an employee of owner of automobile driven on public street or highway makes out a prima facie case that owner consented to operation of his car at time of accident, and this prima facie case is not overcome by uncontradicted testimony of interested witnesses if evidence is for any cause inconclusive in its nature, as where different conclusions may be reasonably drawn from it or where its credibility is doubtful. Id.

An owner who consents to operation of his automobile by another upon a public street or highway is liable under safety responsibility act for negligence of operator. Id.

Owner's mental reaction upon discovery of a collision claimed to have been caused by unauthorized use of his automobile by his employee for his own personal convenience at time of accident is relevant on question whether servant was operating car with master's consent, and therefore correspondence between master and servant, a traveling salesman, was relevant. Id.

Whether an employee's act of entrusting his employer's motor vehicle to one who had previously performed services for owner for purpose of performing an act authorized by owner, for which employee rewarded operator by giving him permission to use motor vehicle for a personal use, was within scope of employee's authority, express or implied, held for jury. Ballman v. Brinker, 211 M322, 1NW(2d)365. See Dun. Dig. 5834c.

Since operation of a motor vehicle without owner's consent is a felony by law, it is reasonable to infer that possession by operator of a motor vehicle belonging to defendant is with his consent. Id.

Plaintiff is aided by a prima facie case which arises from proof that at time of accident operator was using a motor vehicle belonging to defendant. Id.

Burden of proving presence of consent rests with plaintiff as one of elements of cause of action. Id.

Principle of liability under statute goes beyond confines of law of agency, and judicial inquiry goes solely to presence or absence of consent by owner. Id.

Evidence that father furnished price of three cars bought and registered by his adult children, all living under parental roof, furnished gasoline for them, and had permission to use cars when he so desired, held to sustain finding that father was owner of one of cars which was cause of injury to a third person. Krinke v. Timm, 211M510, 1NW(2d)866. See Dun. Dig. 5834c.

In action for wrongful death in automobile collision, there could be no recovery from driver of other car if death was due solely to negligence of servant of deceased driving his car, but such servant would be liable. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 2606, 2620.

Cases holding a corporation liable for negligence of its agent even though injured party is agent's wife are clearly distinguishable from cases holding that a partnership is not liable for negligence of a partner who injured his wife. Karalis v. Karalis, 213M31, 4NW(2d)632. See Dun. Dig. 5834c.

The Safety Responsibility Act merely created the relationship of principal and agent between the owner of a car and person driving it with his consent, and it did not change the law of partnership or of husband and wife. Id.

Neither partners individually nor partnership are liable for injuries to wife of a partner caused by the partner's negligent driving of a partnership car. Id.

A person is not liable for negligence of a mere guest, absent any relationship of principal and agent, master and servant, partnership, or joint enterprise. American Farmers Mut. Auto Ins. Co. v. Riise, 214M6, 8NW(2d)18. See Dun. Dig. 5834c.

A verdict for the death of a minor child is not subject to reduction or apportionment because the liability is based on the negligence of the father's employee, the father being one of the beneficiaries of the verdict. Turenne v. Smith, 215M64, 9NW(2d)409. See Dun. Dig. 2616, 5834c, 5844, 7041. See 27MinnLawRev579.

Owner's responsibility statute does not apply to Minnesota cars while operated in Wisconsin, which has no such statute. Darian v. McGrath, 215M389, 10NW(2d)403. See Dun. Dig. 5834c.

Contributory negligence of a husband operating upon a public highway an automobile, of which his wife was a co-owner and in which she was riding at the time of its collision with the truck of a third person, is not imputable to the wife merely because of such facts, either under the common law or the safety responsibility act, in an action by her to recover damages for personal injuries against the third party because of his negligence. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d) 406, 147ALR945. See Dun. Dig. 5834c.

2720-105. Non-resident owner to be responsible.

See notes under §2684-8.

Parking place at gasoline service station was not a "public highway" within meaning of New York statute, allowing service on secretary of state in case of accidents involving vehicles driven by non-residents. Finn v. S., (DC-NY), 35FSupp638.

Where tire on defendant's truck went flat near plaintiff's service station, and he drove into station to have tire repaired, and while plaintiff was inflating tire lock rim was forced off injuring him, such accident could not be construed as having arisen from defendant's use of the public highway. Id.

Where at time accident happened statute provided for service on secretary of state, and at time suit was begun law had been changed so as to require service on commissioner of motor vehicle department, nonresident defendant had no substantive right requiring service on secretary of state, nor was he prejudiced by service on commissioner rather than secretary, where both statutes provided for mailing copy of summons and complaint to him. Zavis v. W., (DC-Wis), 35FSupp689.

This law was enacted for protection of persons who might be injured, rather than to provide any convenience for nonresident user of highways. Id.

There is no question as to the power of the legislature to pass such a law. Id.

This section does not violate either the commerce provisions or the equal protection clause of the Federal Constitution. Panzram v. O'Donnell, (DC-Minn), 48F Supp74. See Dun. Dig. 1701, 4897, 7812a.

Georgia Non-resident Motorist Act is constitutional. Lloyd Adams, Inc. v. L., 10SE(2d)(Ga)46.

Provision for substituted service of process in action against non-resident user of highway in state applies to action in which an award of workmen's compensation is sought. Maddry v. M., 197So(La)651.

Statute of North Dakota relating to process upon nonresident motorists does not apply where owner and operator had legal residence or domicile in state, and one who removes from place of domicile with intention not to reside there any longer and to remove to another state is still a resident and has his domicile in state as long as he remains therein, and domicile continues until he acquires another domicile elsewhere. Northwestern Mortgage & S. Co. v. Noel Const. Co., 71ND256, 300NW 28. See Dun. Dig. 7812a.

An action for wrongful death against a nonresident motorist is transitory and is triable in any county designated by plaintiff. Claseman v. Feeney, 211M266, 300NW 818. See Dun. Dig. 10109.

2720-108. Commissioner to furnish record.

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. Op. Atty. Gen. (454-E), Jan. 10, 1940.

2720-111. Commissioner to cancel bond.

Proof of financial responsibility is a condition precedent to issuance of a limited chauffeur's license, and three-year requirement applies exclusively to driver's license. Op. Atty. Gen. (635d), Dec. 12, 1941.

Limited licenses to chauffeurs guilty of a major offense: Id.

2720-113. Motor vehicle liability policy.

Policy which required insured to cooperate with insurer held one "required" by New Jersey financial responsibility statute, and hence liability of insurer was absolute and lack of cooperation was not a defense. Merchants Indemnity Corp. v. P., (CCA3), 113F(2d)4.

DRIVERS LICENSE LAW

2720-142. Definitions.

Uniform act adopted by North Carolina, 1941.

2720-143. Motor vehicle driver's license.

An unlicensed driver is neither barred from recovering for injuries received by himself in an automobile accident or liable as a matter of law for injuries sustained by another, because there is no causal connection between his failure to comply with licensing statute and accident. Mahowald v. Beckrich, 212M78, 2NW(2d)569. See Dun. Dig. 6976, 6999, 7027.

Lack of a driver's license in violation of statute is not even evidence of negligence. Id. See Dun. Dig. 6976.

2720-143a. Persons in military or naval forces—Exemptions—Statement for certificate of registrar.—Any person who is engaged in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the United States, and who owns and is duly licensed under the laws of another state to operate a motor vehicle upon the highways thereof, may operate such motor vehicle personally or by his authorized driver

upon the streets and highways of townships, villages and cities in this state, subject to the following conditions and limitations, to-wit:

(a) That the exemptions provided by this act as hereinafter limited shall be operative as to a motor vehicle owned by such member of the army or navy only during the remainder of the year for which such motor vehicle is licensed in such other state.

(b) That any such motor vehicle so operated in this state by any such member at all times shall carry and display all number plates or like insignia required by the laws of the state in which such motor vehicle is registered.

(c) That such motor vehicle owner shall file with the registrar of motor vehicles such proof of military or naval service as the registrar may have required.

(d) That such motor vehicle owner shall first file with the registrar of motor vehicles in this state an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such motor vehicle, and the number of cylinders of the motor engine. Said written instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the State of Minnesota shall always be subject to all the laws, ordinances, rules, and regulations applicable to like operation thereof by a citizen and resident of the State of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation, in the same manner as a Minnesota citizen and resident owner and operator of a like motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceedings, legal process and other notices or papers may be served upon the undersigned owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the undersigned owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the State of Minnesota." (Act Apr. 16, 1941, c. 275, §1.)
[168.034]

2720-143b. Same—Certificate of registrar—Issuance.—As soon as any motor vehicle owner entitled to the privileges herein extended shall have complied with the provisions hereof the registrar of motor vehicles shall issue to him a certificate stating that he is entitled to operate such motor vehicle within this state during the time authorized hereunder; but subject, nevertheless, to suspension, revocation or cancellation for any cause that would justify similar action with respect to any motor vehicle license or registration issued to any citizen or resident of this state. Such certificate shall be prima facie evidence that the motor vehicle therein described may be lawfully operated in this state. When any change shall have been made in the ownership, or foreign license or number plates, of any motor vehicle operating in this state under a certificate as above provided, said certificate shall be void, and within seven days thereafter shall be surrendered to the registrar of motor vehicles. (Act Apr. 16, 1941, c. 275, §2.)
[168.035]

2720-143c. Same—Operating without certificate—Penalties.—Any foreign motor vehicle operating at any time without such certificate or other lawful authorization shall be subject to seizure and the driver thereof to arrest by any law enforcing officer of this state; and upon conviction of such driver for operating in this state without license, such motor vehicle may be sold in the same manner as on execution sale for debt and the proceeds may be applied to satisfy any penalty or fine imposed and to pay any costs or expenses incurred in connection with such arrest, seizure, and sale. (Act Apr. 16, 1941, c. 275, §3.)
[168.036]

2720-143d. Same—False statement for certificate—Felony.—Any person who files any statement or written instrument hereinabove required, knowing that the same is false or fraudulent in whole or in part, shall be guilty of a felony; and such felony shall be deemed to have been committed at the time when and place where such false or fraudlent statement was filed in this state. (Act Apr. 16, 1941, c. 275, §4.)
[168.037]

2720-143e. Same—Rules and regulations of registrar.—The registrar of motor vehicles may promulgate such rules and regulations, from time to time, as may be reasonably necessary to accomplish the purpose of this act. (Act Apr. 16, 1941, c. 275, §5.)
[168.038]

2720-143f. Same—Application of act.—This act shall apply only to passenger motor vehicles which are not used in transporting persons or property for hire. (Act Apr. 16, 1941, c. 275, §6.)
[168.039]

2720-144. Who are exempt.—The following persons are exempt from licenses hereunder:

(1) Persons licensed as chauffeurs under the laws of the state of Minnesota while operating motor vehicles in the performance of their duties as such chauffeurs;

(2) Any person while driving or operating a motor vehicle in the service of the Army, Navy, or Marine Corps of the United States;

(3) Any person while driving or operating any farm tractor, or implement of husbandry temporarily operated or moved on a highway;

(4) A non-resident who is at least 15 years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may operate a motor vehicle in this state only as a driver;

(5) Any non-resident who is at least 18 years of age, whose home state or country does not require the licensing of drivers may operate a motor vehicle as a driver only, for a period of not more than 90 days in any calendar year if the motor vehicle so operated is duly registered for the current calendar year in the home state or country of such nonresident. (As amended Apr. 7, 1943, c. 331, §2.)

2720-144a. Who may not receive driver's license.—The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of 15 years; nor to any person under 18 years unless the application for license is approved by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a person under the age of 18 has no living father, mother or guardian, the license shall not be issued to such person unless his application therefor is approved by his employer.

(2) To any person whose license has been suspended during the period of suspension except that a suspended license may be reinstated during the period of suspension upon the licensee furnishing proof of financial responsibility in the same manner as provided in the Safety Responsibility Act.

(3) To any person whose license has been revoked except upon furnishing proof of financial responsibility in the same manner as provided in the Safety Responsibility Act and if otherwise qualified.

(4) To any person who is an habitual drunkard as determined by competent authority or is addicted to the use of narcotic drugs.

(5) To any person who has previously been adjudged insane, inebriate, epileptic or feeble-minded unless the Department is satisfied that such person is competent to operate a motor vehicle with safety to persons or property.

(6) To any person who is required by this act to take an examination, unless such person shall have successfully passed such examination.

(7) To any person who is required under the provisions of the safety responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof.

(8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

(9) To any person when, in the opinion of the commissioner, such person is afflicted with or suffering from such physical or mental disability or disease as will affect such person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways; nor to a person who is unable to read and understand official signs regulating, warning and directing traffic. (As amended Act Apr. 28, 1941, c. 517, §1.)

Commissioner of highways is required to revoke license of a driver convicted on a first offense of driving a motor vehicle while intoxicated without the necessity of a recommendation by the court before which the conviction was had. Martinka v. Hoffmann, 214M346, 9NW(2d)13. See Dun. Dig. 4167aa.

Amendments of 1941 took away provisions for revocation only upon recommendation of court and put law back where it was prior to 1939. Op. Atty. Gen. (291k), June 6, 1941.

Under 1941 amendment power of revocation is now vested in commissioner of highways, and a justice of the peace should report to commissioner every conviction under act, and for minor violations where revocation is not compulsory, a justice of the peace might as a condition to suspending sentence, impose restrictions on right of a defendant to operate his motor vehicle. Op. Atty. Gen. (291F), Aug. 12, 1941.

2720-144h. Change of address.—Whenever any person, after applying for or receiving a driver's license, shall change his permanent domicile from the address named in such application or in the license issued to him, or shall change his or her name by marriage or otherwise, such person shall, within thirty days thereafter, make application for a duplicate driver's license upon a form furnished by the department; such application or duplicate license shall show both the licensee's old address and his new address or his former name and new name as the case may be. Such application for a duplicate license, upon change of address or change of name, shall be accompanied by all certificates of driver's license then in the possession of the applicant together with the required fee. (As amended Apr. 24, 1943, c. 610, §2.)

2720-144i. Licenses to be filed in alphabetical order.

(a) * * * * *.

(b) * * * * *.

(c) The department may cause the application for driver's licenses and instruction permits, and records in connection therewith, to be destroyed immediately after the period for which issued, except that the driver's record pertaining to revocations, suspensions, convictions and accidents shall be cumulative and kept for a period of at least five years. (As amended Apr. 24, 1943, c. 610, §3.)

2720-145a. Courts to report to commissioner.

Commissioner of highways is required to revoke license of a driver convicted on a first offense of driving a motor vehicle while intoxicated without the necessity of a recommendation by the court before which the conviction was had. Martinka v. Hoffmann, 214M346, 9NW(2d)13. See Dun. Dig. 4167aa.

2720-145b. Revocation of licenses.

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. Ausman v. H., 208M13, 292NW421. See Dun. Dig. 4167*l*.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court, and this is true as to violation of a city ordinance. Op. Atty. Gen., (291f), June 12, 1940, reversing Op. Atty. Gen., May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

Commissioner of highways is required to revoke license of a driver convicted on a first offense of driving a motor vehicle while intoxicated without the necessity of a recommendation by the court before which the conviction was had. Martinka v. Hoffmann, 214M346, 9NW(2d)13. See Dun. Dig. 4167aa.

Under 1941 amendment power of revocation is now vested in commissioner of highways, and a justice of the peace should report to commissioner every conviction under act, and for minor violations where revocation is not compulsory, a justice of the peace might as a condition to suspending sentence, impose restrictions on right of a defendant to operate his motor vehicle. Op. Atty. Gen. (291F), Aug. 12, 1941.

2720-145d. Petition for reinstatement of licenses.

Martinka v. Hoffmann, 214M346, 9NW(2d)13; note under §2720-144a, 171.04.

Where commissioner revoked driver's license for first offense of drunken driving without recommendation by the court to that effect, such license should be reinstated. Op. Atty. Gen., (291f), June 12, 1940.

2720-145h. Violations a misdemeanor—Exceptions.—Any person whose driver's license or driving privilege has been canceled, suspended or revoked as provided in this act, and who shall operate any motor vehicle, the operation of which requires a driver's license, upon the streets or highways in this state while such license or privilege is canceled, suspended or revoked shall be guilty of a misdemeanor. (As amended Apr. 7, 1943, c. 331, §3.)

2720-146a. Same—Moneys paid into state treasury.—All money received under the provisions of this act shall be paid into the state treasury and shall be credited to the general revenue fund. (As amended Apr. 24, 1943, c. 610, §4.)

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. Op. Atty. Gen. (454-E), Jan. 10, 1940.

2720-146b. Driver license—Renewal of.—Driver's licenses issued before September 1, 1943, shall expire upon the next birthday of each licensee thereafter.

The expiration date for each drivers license issued after September 1, 1943, shall be the birthday of the driver in the fourth year following the date of issuance of such license.

The birthday of the driver as used herein shall be the birthday as indicated on his application for a driver's license.

Upon application and payment of the required fee driving privileges shall be extended or renewed on or preceding the expiration date of an existing driver's license without examination unless the Commissioner has reason to believe that the licensee is no longer qualified as a driver.

Any valid driver's license issued to a person on active duty with the armed forces of the United States shall continue in full force and effect without requirement for renewal until 60 days after the date of his discharge from such service. (As amended Apr. 24, 1943, c. 610, §1.)

2720-146b1. Effective July 1, 1943.—This act shall become effective July 1, 1943. (Act Apr. 24, 1943, c. 610, §5.)

HIGHWAY TRAFFIC REGULATION ACT

ARTICLE I.—WORDS AND PHRASES DEFINED

2720-151. Definitions.

(4).

In action for death of fireman riding on rear step of fire truck when it was struck at an intersection by defendant's automobile while he was driving with car window closed and radio on, it was error to submit question of emergency to jury in connection with negligence of defendant. Anderson v. G., 206M367, 288NW 704. See Dun. Dig. 4173.

Vehicles used by aeronautics commission and its inspectors may be designed as emergency vehicle and use red light and siren. Op. Atty. Gen. (234c), July 25, 1941.

(28).

The test in determining whether a roadway is public or private depends upon the right of the public generally to use the way for vehicular travel rather than the amount of travel or use made thereof, and a road on state land may be a "private road" within meaning of traffic laws. Merritt v. Stuve, 215M44, 9NW(2d)329. See Dun. Dig. 4154.

(29).

Where a driveway leading into a parking lot located wholly upon state penitentiary grounds was controlled by prison authorities for its own use and the public having business therewith and such driveway was unsuited for and not used as a public thoroughfare, it did not come within the purview of "street or highway", but it is rather within the definition of "private road or driveway". Merritt v. Stuve, 215M44, 9NW(2d)329. See Dun. Dig. 4164g.

(30).

Duty of pedestrian on divided highway. Wojtowicz v. Belden, 211M461, 1NW(2d)409; note under §2720-207. See Dun. Dig. 4166.

(32).

Phrase "intended for the use of pedestrians", refers to an area actually in use at time being by pedestrians rather than to some indefinite and unascertained strip which may subsequently come into use for a pathway or sidewalk. St. George v. L., 209M322, 296NW523. See Dun. Dig. 4166.

(34).

A "through highway" must be designated as a "through highway" by the erection of stop sign at intersection, and erection of a sign "trunk highway" is not sufficient to require a person to come to a full stop. Op. Atty. Gen. (989a-21), Aug. 4, 1943.

(35).

O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d) 665; note under §2720-196(a), 169.20(1).

(36).

If there is no "sidewalk" or path, there is no "crosswalk." St. George v. L., 209M322, 296NW523. See Dun. Dig. 4166.

(42).

Railroad and warehouse commission has exclusive control of all matters involving railroad crossings and warning devices, but commissioner of highways has certain powers concerning approach signs on highways, and former can compel a railroad within a reasonable time to comply with general order fixing minimum standards and requirements for crossing signs, and a railroad has no vested rights to retain an old sign until such time as reconstruction would be required in maintenance of railroad. Op. Atty. Gen. (369m), Apr. 16, 1941.

ARTICLE II.—OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

2720-155. Application of act.

(a).

Provision in Uniform Motor Vehicle Act making it applicable to drivers of vehicles owned or operated by state or any county, city, town, district or other political subdivision, did not abrogate common law immunity from liability for negligence. Arms v. Minnehaha County, 7NW (2d)(SD)722. See Dun. Dig. 4162a.

(d).

Exclusion of one actually engaged in work upon roadway from regulations of act was not a legislative direction that such persons shall similarly be exempt from mandate of common law imposing obligation of reasonable care commensurate with circumstances upon those who in discharging contract duties must pursue activities upon public way. Hockenhull v. Strom Const. Co., 212M 71, 2NW(2d)430. See Dun. Dig. 4162a.

In action for injuries received when a road sweeper collided head-on with automobile on right side of highway while road construction was under progress and there were great clouds of dust, sweeper hitting automobile after it had stopped between a deep ditch and a ridge of gravel in center of highway, negligence, contributory negligence, and assumption of risk, were for jury. Id. See Dun. Dig. 4167t.

(e).

O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d) 665; note under §2720-196(a), 169.20(1).

A motorist stopping at and then entering a "thru" street at an intersection and making a left turn is not guilty of contributory negligence as a matter of law in case of collision with a streetcar, where streetcar was not so close at the time he entered as to constitute an immediate hazard and he did not discover that there was danger of collision until it was too late to avoid it. Yien Tsiang v. Minneapolis St. Ry., 213M21, 4NW(2d)630. See Dun. Dig. 4167i.

2720-158. Not to restrict local authorities.

City of Minneapolis has power to regulate parking, but no power to tax it. Hendricks v. C., 207M151, 290NW428. See Dun. Dig. 4171a.

It does not appear that fee of five cents, to be charged for parking regulated by meters, so much exceeds cost of installation, maintenance and regulation of meters as to result in a tax and condemn whole project as for revenue rather than regulation. Id. See Dun. Dig. 4171a.

To do business upon public streets is not a matter of right like the right of ordinary travel, nor is the right to carry on such a business to be placed upon the same basis as that of conducting a lawful occupation upon private property within a municipality, and this is true as to transportation business for private gain. State v. Palmer, 212M388, 3NW(2d)666. See Dun. Dig. 4165, 6618.

Local bodies may regulate angle or parallel parking on streets and roadways other than state trunk highways without approval of state highway commissioner. Op. Atty. Gen. (989-a-16), Nov. 29, 1940.

Compensation of officers in Minnetonka Township in Hennepin County. Op. Atty. Gen. (439b), June 17, 1941.

(a)(4).

Where a truck trailer was proceeding on left roadway of a two-roadway highway, separated by a parkway in the middle of which there were street car tracks, each of such roadways being designated as a one-way street, and truck driver turned right at intersection for purpose of getting on proper roadway, one-way statute was applicable and such fact that it was nighttime went not only to motorman's negligence, but to contributory negligence of plaintiff, and if the motorman was in any way misled or failed to see the tractor because of direction in which its headlights cast their light, that condition might be a factor which caused or helped to cause accident within rule of Guile v. Greenberg, 192M548, 257 NW649. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW (2d)665. See Dun. Dig. 4167i.

ARTICLE III.—TRAFFIC SIGNS, SIGNALS AND MARKINGS

2720-160. Traffic signs, signals, and markings.

Crossing held not extra-hazardous so as to require more than ordinary highway and railroad signs at crossing, as affecting motorist injured by running into 19th car of train. Krause v. C., 207M175, 290NW294. See Dun. Dig. 8174.

Railroad and warehouse commission has exclusive control of all matters involving railroad crossings and warning devices, but commissioner of highways has certain powers concerning approach signs on highways, and former can compel a railroad within a reasonable time to comply with general order fixing minimum standards and requirements for crossing signs, and a railroad has no vested rights to retain an old sign until such time as reconstruction would be required in maintenance of railroad. Op. Atty. Gen. (369m), Apr. 16, 1941.

A "through highway" must be designated as a "through highway" by the erection of stop sign at intersection, and erection of a sign "trunk highway" is not sufficient to require a person to come to a full stop. Op. Atty. Gen. (989a-21), Aug. 4, 1943.

2720-161. Commissioner to place signs and traffic control devices on trunk highways.—

(a) The commissioner shall place and maintain such traffic-control devices, conforming to the manual and specifications, upon all state trunk highways as he shall deem necessary to indicate and to carry out the provisions of this act or to regulate, warn, or guide traffic; provided, however, said commissioner may construct and maintain signs at the entrance of each city, village or borough, which sign shall have placed thereon the name of the city, village or borough and the population thereof; and provided further that the commissioner may construct and maintain other directional signs upon the trunk highways and such signs shall be uniform. (As amended, Act Apr. 24, 1941, c. 419, §1.)

(b) * * * * *

2720-164. Colors for devices.

(a).

This provision is of no assistance to defendant even though he entered intersection before plaintiff, where evidence justified a finding that he entered unlawfully in face of a yellow-under-green signal. Litman v. Walso, 211M398, 1NW(2d)391. See Dun. Dig. 4164e.

(b).
Provisions requiring vehicular traffic facing a yellow signal following green to stop applies also to yellow-under-green signal. Litman v. Walso, 211M398, 1NW(2d) 391. See Dun. Dig. 4164e.

Entering intersection against yellow-under-green signal was prima facie evidence of negligence. Id.

Trial court properly submitted the question of contributory negligence under the emergency rule where truck had entered intersection before "Go" sign turned to "Stop" and then suddenly stopped causing rear end collision by car in which plaintiff was riding. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d)406, 147ALR945. See Dun. Dig. 4164d.

Where a driver stops at the intersection line pursuant to a "Stop" signal, he is not required to give any signal before he stops. Id.

It is the duty of the driver of a motor vehicle to be on the lookout for, to discover, and to obey implicitly traffic control signals. Id.

Where the driver of a motor vehicle enters an intersection with the "Go" signal of an automatic device and signal changes to "Stop" before he has crossed it, he is required to give a signal of intention to stop in the intersection. Id.

2720-166. Placing of unauthorized signs prohibited.

As affecting negligence, a railroad bi-secting a crossing of trunk highways has no jurisdiction or control over the usual state highway "crossroad" sign, usual circular disk sign "R.R." in large black letters with significant black cross on a light background, or the "junction" sign, which were prepared, installed, and maintained by state highway department. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 8177.

2720-166a. Display of red lights forbidden in certain cases.—No person or corporation shall place, maintain or display any red light or red sign, signal, or lighting device or maintain the same in view of any highway or any line of railroad on or over which trains are operated in such a way as to interfere with the effectiveness or efficiency of any highway traffic control device or signals or devices used in the operation of a railroad. Upon written notice from the commissioner of highways such person or corporation maintaining or owning or displaying said prohibited light shall promptly remove the same, or change the color thereof to some other color than red. Where such prohibited light or sign interferes with the effectiveness or efficiency of the signals or devices used in the operation of a railroad, the Railroad and Warehouse Commission shall have authority to cause the removal of the same and the Commission shall have authority to issue notices and orders for such removal. The Commission shall proceed as provided in Mason's Minnesota Statutes of 1927, Sections 4637, 4638, 4639, 4640, 4631, and 4642, and acts amendatory thereof, with a right of appeal to the aggrieved party as provided in Mason's Minnesota Statutes of 1927, Section 4651. (Act Mar. 16, 1943, c. 141, §1.)
[169.073]

2720-166b. Same—Violation a misdemeanor. — It shall be a misdemeanor for any person or corporation to maintain or display any such light after written notice thereof from said commissioner of highways or the Railroad and Warehouse Commission that such light constitutes a traffic hazard and has ordered the removal thereof. (Act Mar. 16, 1943, c. 141, §2.)

ARTICLE IV.—ACCIDENTS

2720-168. Accidents.

A driver is not criminally liable for failure to stop and failure to render aid to an injured person when he does not know that an accident has happened, or injury has been inflicted, or a death has occurred. Behrens v. State, 140Neb671, 1NW(2d)289.

(a).
Mere requirement of stopping in case of accident without indication of what the driver is to do, held not void for uncertainty, in view of other provisions and general purpose of act. State v. M., 102Pac(2d)(Idaho)915.

2720-173. Report of accidents to police and highway department—Confidential.—

Subd. 1 to 7. * * * * * * * * * * * * * * * * * * *.

Subdivision 8. **Reports confidential—Exceptions.**—All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the department for accident prevention purposes, except that the department and any law enforcement department of any municipality or county in this state shall upon written request of any person involved in an accident disclose to such person, his executor, administrator or legal counsel, the name and address of any person or persons involved in an accident, the name and address of any witnesses to said accident, the name and address of any officer who has investigated said accident, the license number of any motor vehicle involved therein and the date and place of such accident. No such report or contents thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, and no person in any trial or action shall be examined or testify as to such report nor as to the making thereof or the contents thereof, except that the department shall furnish upon demand of any person who has, or claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such report be made to the department. Disclosing any information contained in any accident report except as provided herein is unlawful and a misdemeanor. Provided, however, that legally qualified newspaper publications shall upon request to a law enforcement agency be given an oral statement covering only the time and place of the accident, the names and addresses of the parties involved, and a general statement as to how the accident happened, without attempting to fix liability upon anyone, but said legally qualified newspaper publications shall not be given access to the hereinbefore mentioned confidential reports, nor shall any such statements or information so orally given be used as evidence in any court proceeding, but shall merely be used for the purpose of a proper publication of the news. (As amended Act Apr. 25, 1941, c. 439, §1; Apr. 20, 1943, c. 548, §1.)

Whether an officer may testify to facts within his knowledge, if called as a witness, is a question for the court, but statute makes it clear that report of accident shall not be used in evidence. Op. Atty. Gen., (989a-1), Oct. 26, 1939.

Police officers properly refused to give any information to newspapers concerning an automobile accident. Op. Atty. Gen. (851i), Oct. 1, 1942.

ARTICLE V.—CRIMINAL NEGLIGENCE, DRIVING WHILE INTOXICATED AND RECKLESS DRIVING

2720-175. Criminal negligence defined.

County attorney's argument is to be condemned where he stated "I have been county attorney for this county now for—this is my tenth year. During that time I have probably handled some two thousand cases. I have never yet had a case where so much evidence came in, direct evidence, circumstantial evidence, and so many alibis, and I must say in frankness that I have never had such a strong case of the violation of the law." State v. Cook, 212M495, 4NW(2d)323. See Dun. Dig. 2478.

In prosecution for causing another's death by driving an automobile in a reckless and grossly negligent manner, court properly refused to instruct that if a second car struck deceased after he was struck by defendant's car and impact of second car was sufficient to cause death, there should be a verdict of not guilty even though deceased was already mortally wounded, where there was no evidence from which jury could infer that any car other than defendant's dealt a fatal blow to deceased, and there was no question but what wound inflicted by defendant was fatal. Id. See Dun. Dig. 4241.

In prosecution for causing death by driving an automobile in a reckless and grossly negligent manner, a requested instruction that "Even though defendant was driving negligently, unless you are satisfied beyond a reasonable doubt the accident was not unavoidable, you must bring in a verdict of not guilty" was properly refused as imposing a greater burden on state than the law required. Id. See Dun. Dig. 4241.

Failure to provide for benefit of defendant in an action for criminal negligence a stenographic transcript of proceedings at locus in quo, at which defendant was not present, recording court's comments to jury relating to objects identified, was a denial of due process. State v. Clow, 215M380, 10NW(2d)359. See Dun. Dig. 1641.

Decedent's statements made at hospital 11 hours after accident in response to questions propounded to her by state's witness were not spontaneous in nature and were too far removed in point of time to be considered as part of the res gestae in a prosecution for criminal negligence. Id.

Complaint should set forth in detail how person was killed and basis of reckless or grossly negligent acts. Op. Atty. Gen. (133B-8), Sept. 15, 1941.

Intoxicated person driving a car could not be charged with criminal negligence arising out of death of policeman who was pursuing in another car and was thrown to pavement and killed when he attempted to alight from car in which he was riding before it stopped, act of policeman being an intervening efficient cause. Op. Atty. Gen. (494B-5), Jan. 12, 1942.

2720-176. Person under influence of drugs or liquor prohibited from driving vehicle.—(a). It is unlawful and punishable as provided in subdivision (b) of this section for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive or operate any vehicle within this state.

(b). Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than ten days nor more than 90 days, or by a fine of not less than $10.00, nor more than $100.00. On a second subsequent conviction he shall be punished by imprisonment for not less than 30 days nor more than 90 days, or a fine of not less than $25.00 nor more than $100.00, and his license to drive shall be revoked for not less than 90 days. (As amended Apr. 28, 1941, c. 552, §1.)

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. Ausman v. H., 208M13, 292NW421. See Dun. Dig. 4167*l*.

The legislative purpose of protecting the public from the menace of drivers operating motor vehicles while intoxicated should not be thwarted by a construction that does violence to the clear and unambiguous language of the statutes relating thereto. Martinka v. Hoffmann, 214M346, 9NW(2d)13. See Dun. Dig. 4167*l*.

Commissioner of highways is required to revoke license of a driver convicted on a first offense of driving a motor vehicle while intoxicated without the necessity of a recommendation by the court before which the conviction was had. Id. See Dun. Dig. 4167aa.

Prohibition and penalty against driving while intoxicated is "regulation" within title. State v. Mee, 292NW (SD)875.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court, and this is true as to violation of a city ordinance. Op. Atty. Gen., (291f), June 12, 1940, reversing Op. Atty. Gen., May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

Commissioner must revoke license for a second offense, though first offense occurred prior to passage of Laws 1939, Chapter 430. Op. Atty. Gen. (291-f), July 15, 1940.

Amendments of 1941 took away provisions for revocation only upon recommendation of court and put law back where it was prior to 1939. Op. Atty. Gen. (291k), June 6, 1941.

License should not be revoked until appeal is determined. Op. Atty. Gen. (291f), Dec. 8, 1941.

2720-177. What is reckless driving—Penalty.

Though mere excessive speed is not sufficient upon which to base a finding of willful and wanton misconduct, a finding of such conduct under South Dakota guest statute was warranted where evidence indicated a desire of host to give passengers the thrill of a lifetime and for that purpose took a narrow gravel road with dips so as to give passengers same effect they would get on a Gargantuan roller coaster, instead of driving on a level oiled road, at a speed of 80 miles per hour. Ressmeyer v. Jones, 210M423, 298NW709. See Dun. Dig. 6975a.

Kansas statue providing that person driving vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving is not void for uncertainty. State v. Davidson, 105Pac(2d)(Kan)876.

ARTICLE VI.—SPEED RESTRICTIONS

2720-178. Speed limitations.

War powers of Governor. Laws 1943, c. 252.

Conflict in evidence in respect to collision between two automobiles at intersection of two state highways, within limits of a city, made defendant's negligence and plaintiff's decedent's contributory negligence proper jury issues. Ost v. U., 207M500, 292NW207. See Dun. Dig. 4167e.

Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. Anderson v. J., 208M373, 294NW224. See Dun. Dig. 4167e.

Whether it was negligence as to a guest to drive in nighttime at speed of 30 to 35 miles per hour more than 3½ miles over a paved highway on which there were patches of ice which were difficult to see because of occasional snow flurries, and car skidded on ice patch and hit telephone pole, held for jury. Schultz v. R., 209M 462, 296NW532. See Dun. Dig. 4167e.

A jury is not to be criticized if it considers hazards of alley driving in a closely built residential section such as to require a high degree of care on part of motorists, that is, such conduct as will exhibit a degree of care properly proportioned to hazard. Allerdyce v. Martin, 210M366, 298NW363. See Dun. Dig. 4167e.

Physical facts established negligence of defendant at highway crossing as to excessive speed and failure to keep a proper lookout. Ristow v. Von Berg, 211M150, 300 NW444. See Dun. Dig. 4167e.

In action for injuries received when a road sweeper collided head-on with automobile on right side of highway while road construction was under progress and there were great clouds of dust, sweeper hitting automobile after it had stopped between a deep ditch and a ridge of gravel in center of highway, negligence, contributory negligence, and assumption of risk, were for jury. Hockenhull v. Strom Const. Co., 212M71, 2NW (2d)430. See Dun. Dig. 4167e.

Whether speed of 35 to 40 miles per hour on approaching intersection was negligent and contributed proximately to collision with car coming from right held for jury. Mahowald v. Beckrich, 212M78, 2NW(2d)569. See Dun. Dig. 4167e.

In action by automobile guest against host, wherein it appeared that defendant during the entire day had persistently driven at speed which statute makes prima facie unreasonable, imprudent, unlawful, and negligent, question of contributory negligence, including plaintiff's assumption of the hazards of driving at the speed indicated by the evidence, were for the jury. Hubenette v. Ostby, 213M349, 6NW(2d)637. See Dun. Dig. 7026a, 7041b.

In action by automobile passenger injured when defendant permitted right front wheel to leave pavement and then attempted to get back on pavement again, causing car to skid on slippery pavement and crossing over to other side and turning over, jury was entitled to conclude that accident was caused solely by condition of highway and that defendant was not guilty of driving at an excessive rate of speed, or that she failed to keep a proper lookout or to keep her car under reasonable control. Marsh v. Henriksen, 213M500, 7NW(2d)387. See Dun. Dig. 4167e.

In action for death of truck driver as result of head-on collision while vehicles were on a curve of a cement paved trunk highway, whether defendant driving 40 miles an hour was guilty of negligence as to speed held for jury. Weber v. McCarthy, 214M76, 7NW(2d)681. See Dun. Dig. 4163, 4167e.

(a).

Although a truck driver got his car off pavement and entirely onto shoulder, in order to avoid a skidding car approaching from front, it should be left to jury whether, his speed being admittedly not less than 32 miles per hour, it was negligent for him not to have stopped his car. Schweikert v. P., 206M596, 289NW828. See Dun. Dig. 4167e.

Whether negligence of motorist in not avoiding collision with a pedestrian who was standing in front of a service truck parked on wrong side of highway with headlights on but without flares was an intervening and sole cause of death of pedestrian, who was using a flashlight to warn approaching drivers, held for jury. Duff v. Bemidji Motor Service Co., 210M456, 299NW196. See Dun. Dig. 4167e.

Whether a motorist was guilty of negligence in colliding with a service truck on wrong side of highway with headlights on but without flares held for jury. Id.

One approaching a grade railroad crossing at 30 miles per hour in a dense fog could not with merit claim that he was confronted with a sudden and unexpected emergency when he first discovered the presence of a train, created because inadequate signs may have lulled him into a feeling of safety, especially absence of a reflector, since if there was any emergency it was clearly of his own making by failing to exercise a degree of care required of him as a matter of law. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 4167e.

A boy 20 years of age approaching a grade railroad crossing in a dense fog at 30 miles per hour was guilty of contributory negligence as a matter of law. Id.

Plaintiff was not correct in his assertion that the reasonableness of the speed at which he was driving should be determined by the condition of the highway "apparent" to him. Id. See Dun. Dig. 4167e, 7012.

In collision between automobile passing behind a street car pulling out of a wye with street car backing into wye, contributory negligence of plaintiff was for jury. Solberg v. Minneapolis St. Ry. Co., 214M274, 7NW (2d)926. See Dun. Dig. 4167e.

In action for death of a boy five years of age struck by streetcar when crossing street question of speed and control of streetcar was for jury in determining negligence. Deach v. St. Paul City Ry. Co., 215M171, 9NW(2d) 735. See Dun. Dig. 4167e.

(b).
Whether plaintiff stopped at sign before entering a through highway and saw no car coming from left for a distance of 225 feet in a thirty mile zone, or was guilty of contributory negligence, held for jury, though she made no further lookout after leaving stop sign. Neubarth v. Fink, 210M55, 297NW171. See Dun. Dig. 4164f.

One failing to heed an obligation to stop before entering a through highway, recklessly driving into intersection and obstructing passage of an automobile then in plain sight, would be guilty of contributory negligence as a matter of law. Id.

Violation of law and negligence were for jury. Odegard v. Connolly, 211M342, 1NW(2d)137. See Dun. Dig. 4167e, 4167f, 4167h.

(c).
It is for jury to determine whether or not it is contributory negligence to drive a motorcycle at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. Fickling v. N., 208M538, 294NW848. See Dun. Dig. 4164e.

(h) (1937 Act).
That there was an accident does not establish violation of statute by plaintiff or that speed was not decreased sufficiently. Norling v. S., 208M143, 293NW250. See Dun. Dig 4167e.

2720-179. Shall not impede traffic.

In collision at intersection where plaintiff's motor was disabled and he was pushing car by hand, if it was error to read to jury statutes relating to slow driving and driving of unsafe vehicles on highway, such statutes were not those of controlling propositions of law and attention should have been called thereto promptly and before motion for new trial in order to require reversal upon appeal. Greene v. Mathiowetz, 212M171, 3NW(2d)97. See Dun. Dig. 9797, 9798.

2720-181. Exceptions.

Laws 1943, c. 252, authorizes governor to fix speed limit by proclamation when requested by president. Such speed limits to expire July 1, 1945, or 60 days after cessation of hostilities.

Vehicles used by aeronautics commission and its inspectors may be designed as emergency vehicle and use red light and siren. Op. Atty. Gen. (234c), July 25, 1941.

ARTICLE VII.—DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING, ETC.

2720-182. Driving.

In action for injuries received when a road sweeper collided head-on with automobile on right side of highway while road construction was under progress and there were great clouds of dust, sweeper hitting automobile after it had stopped between a deep ditch and a ridge of gravel in center of highway, negligence, contributory negligence, and assumption of risk, were for jury. Hockenhull v. Strom Const. Co., 212M71, 2NW(2d) 430. See Dun. Dig. 4164b.

(1).
A pedestrian is not guilty of contributory negligence as a matter of law for failure to look for an automobile approaching on wrong side of street, because ordinarily he has no reason to foresee or to anticipate danger from that direction. Aide v. Taylor, 214M212, 7NW(2d)757, 145 ALR530. See Dun. Dig. 4164a.

2720-183. Shall pass on right side.

In head on collision between motorcycle and automobile passing another car, negligence and contributory negligence held for jury. Stolte v. L., (CCA8), 110F(2d) 226.

Negligence and contributory negligence in head-on collision on a curve in winter time, held for jury. Sankiewicz v. S., 209M528, 296NW909. See Dun. Dig. 4163.

In action by driver of automobile for loss of arm when vehicle was side-swiped by truck traveling in opposite direction, court did not err in refusing requested instruction concerning liability in case resting arm on window sill was negligent and proximate cause of injury sustained, though given instruction did not treat proximate cause of injury separate from proximatee cause of collision. Jaenisch v. Vigen, 209M543, 297NW29. See Dun. Dig. 9777.

Whether driver of automobile was guilty of negligence in riding with his arm on window sill at time his car was side-swiped by another car held for jury. Id. See Dun. Dig. 7023.

In a head-on collision near crest of a hill issue as to which driver was on wrong side of highway held for jury. Id. See Dun. Dig. 4163.

In head-on collision evidence held to sustain finding that defendant was driving on wrong side of road. Leifson v. Henning, 210M311, 298NW41. See Dun. Dig. 4163.

Where defendant's truck came into almost simultaneous collision with two passenger cars, both traveling in a direction opposite to that of defendant, and defendant's one claim on the trial was that two passenger cars approached him abreast of each other, that one or both of them was negligently on his side of the road and that in an effort to avoid a collision he drove so far to the right as to get his right front wheel onto the shoulder, question as to what the law would have been if the truck was disabled in lane of oncoming car due to a former accident was not involved. Grove v. Lyon, 211M68, 300NW373. See Dun. Dig. 4164a.

Bus driver was entitled to assume that driver of a car from other direction would give bus use of its lane and could rely on that assumption until contrary appeared was correct in a case where other car tried to pass to left of car ahead of him. Schmitt v. Emery, 211M547, 2NW (2d)413, 139ALR1242. See Dun. Dig. 4163, 4164.

In action for death in head-on collision on a dark and misty night, negligence and contributory negligence held for jury, though only surviving witness testified that he was on his own side of highway and was blinded by bright lights of decedent's car and that decedent swerved into his path. Malmgren v. Foldesi, 212M354, 3NW(2d) 669. See Dun. Dig. 4163.

It is duty of each of drivers of two meeting vehicles to keep his vehicle on his own lane of pavement. Id.

In action for wrongful death, testimony of only living witness to head-on collision need not be accepted as true where jury could not only find inconsistencies in his testimony, but there were circumstances of physical facts impeaching verity of witness's story. Id. See Dun. Dig. 10344a.

In action for death of truck driver as result of head-on collision while vehicles were on a curve of a cement paved trunk highway, whether defendant driving 40 miles an hour was guilty of negligence as to speed held for jury. Weber v. McCarthy, 214M76, 7NW(2d)681. See Dun. Dig. 4163, 4167e.

2720-186. Same.

In a collision between a bus and a car passing another car in opposing traffic, an instruction that driver of bus did not discover passenger in car in a position of peril until he saw the car turn from behind another car on the other lane of travel was correct. Schmitt v. Emery, 211M547, 2NW(2d)413, 139ALR1242. See Dun. Dig. 4163, 4164.

2720-189. Distance between vehicles.

In action for collision between car suddenly stopping upon traveled portion of highway and car coming from the rear, questions of negligence, contributory negligence and proximate cause held for the jury. Cram v. Eveloff, (C.C.A.8) 127 F. (2d) 486. See Dun. Dig. 4167ee.

ARTICLE VIII.—TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

2720-190. Signals.

Statute requiring driver to make right turn as close as practical to right-hand curb or edge of roadway, is not void for uncertainty. State v. Davidson, 105Pac(2d) (Kan)876.

(b).
Cutting a corner in making a left turn is only prima facie evidence of negligence, and question of contributory negligence for a violation of any highway traffic regulation is a question of fact for the jury and not one of law for the court. Yien Tsiang v. Minneapolis St. Ry. Co., 213M21, 4NW(2d)630. See Dun. Dig. 4167f.

In collision in nighttime between car traveling straight and car with trailer making left turn into wide mouth of acute angle street, negligence and contributory negligence were for jury. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4163.

(c).
Violation of law and negligence were for jury. Odegard v. Connolly, 211M342, 1NW(2d)137. See Dun. Dig. 4167e, 4167f, 4167h.

2720-191. Turning on highways.

In collision in nighttime between car traveling straight and car with trailer making left turn into wide mouth of acute angle street, negligence and contributory negligence were for jury. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4163.

A left turn was not a U turn though angle with intersecting road was very acute. Id. See Dun. Dig. 4164c.

2720-193. Turning on highways.

In collision in nighttime between car traveling straight and car with trailer making left turn into wide mouth of acute angle street, negligence and contributory negligence were for jury. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4163.

(b).
Signal by extending left arm to indicate left turn is not required where car approaching straight ahead is in a depression and could not see arm. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4167h.

(c).
Trial court properly submitted the question of contributory negligence under the emergency rule where truck had entered intersection before "Go" sign turned to "Stop" and then suddenly stopped causing rear end collision by car in which plaintiff was riding. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d)406, 147ALR 945. See Dun. Dig. 4167h.

Where the driver of a motor vehicle enters an intersection with the "Go" signal of an automatic device and signal changes to "Stop" before he has crossed it, he is required to give a signal of intention to stop in the intersection. Id.

It is negligence for a motorist who knows or by the exercise of ordinary care should know that another is following closely behind to fail to warn the driver of the rear car by appropriate signal of his intention to stop. Id.

Where a driver stops at the intersection line pursuant to a "Stop" signal, he is not required to give any signal before he stops. Id.

2720-194. Methods of signalling.

In collision in nighttime between car traveling straight and car with trailer making left turn into wide mouth of acute angle street, negligence and contributory negligence were for jury. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4167h.

Failure to equip a motor vehicle with a device constructed and located so as to give an adequate signal of intention to stop, as required by ordinance, is evidence of negligence. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d)406, 147ALR945. See Dun. Dig. 4162a.

2720-195. Hand signals.

In collision in nighttime between car traveling straight and car with trailer making left turn into wide mouth of acute angle street, negligence and contributory negligence were for jury. Abraham v. Byman, 214M355, 8NW(2d)231. See Dun. Dig. 4167h.

ARTICLE IX.—RIGHT-OF-WAY

2720-196. Right-of-way.

In collision between plaintiff's truck on a much used county road and defendant's truck travelling on a little used township road concealed somewhat by weeds, negligence and contributory negligence held for jury. Lee v. O., 206M487, 289NW63. See Dun. Dig. 4164e.

Conflict in evidence in respect to collision between two automobiles at intersection of two state highways, within limits of a city, made defendant's negligence and plaintiff's decedent's contributory negligence proper jury issues. Ost v. U., 207M500, 292NW207. See Dun. Dig. 4164e.

Physical facts and testimony held to justify conclusion that automobile coming from the right had right of way over defendant's truck coming from the left and that it became apparent to him too late that defendant did not intend to yield, with result that accident could not be avoided. Johnson v. Farrell, 210M351, 298NW256. See Dun. Dig. 4164e.

In collision between truck and automobile at intersection of two unmarked graveled roads, negligence and contributory negligence were for jury. Id.

Physical facts established negligence of defendant at highway crossing as to excessive speed and failure to keep a proper lookout. Ristow v. Von Berg, 211M150, 300 NW444. See Dun. Dig. 4164e.

Contributory negligence of driver of automobile killed at township highway crossing by car coming from his right held for jury. Id.

Facts held to warrant inference that automobile coming from right at intersection and striking truck just to rear of its cab had statutory right-of-way. Olson v. Thake, 211M231, 300NW602. See Dun. Dig. 4164e.

Testimony of plaintiff and a passenger riding with her that plaintiff did not see defendant's car until it reached middle of intersection, that crash occurred in right half of intersection, and that visibility was good, did not compel an inference that plaintiff did not look to the left before entering intersection. Litman v. Walso, 211 M398, 1NW(2d)391. See Dun. Dig. 4164e.

Driver looking to the left before she entered intersection and failing to see defendant because he had not come into view was not required to look again if defendant was traveling fast enough to hit plaintiff's car though not in sight when plaintiff looked. Id.

Defendant bore burden of proof on issue of plaintiff's contributory negligence at an intersection, and it was his task to show that plaintiff failed to look. Litman v. Walso, 211M398, 1NW(2d)391. See Dun. Dig. 4164e.

Where automobile driver approaching an intersection at a lawful rate of speed looked to left when about six feet from intersection but failed to see defendant's car, and after proceeding about three feet into intersection looked again, and saw it about 25 feet from intersection coming at a rate of approximately 35 to 40 miles per hour, such driver could assume, until observation indicated contrary, that defendant would yield right of way, and act of continuing across intersection did not constitute contributory negligence as a matter of law. Mahowald v. Beckrick, 212M78, 2NW(2d)569. See Dun. Dig. 4164e.

One driving into intersection from right and three feet into intersection was entitled to right of way over one coming from the left 25 feet away at a speed of from 35 to 40 miles per hour, and it was latter's duty to yield right of way. Id.

Purpose of a warning is to apprise a party of impending danger of which he is not aware, to enable him to protect himself against it, and where he is fully aware of existence of danger, a warning is unnecessary. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 9017.

(a).

Duty to give right of way to vehicle which has entered intersection must yield to the provision that where vehicles enter an intersection at approximately the same time, the vehicle on the left shall give way to that on the right; and driver approaching intersection, where view to right is obstructed, cannot claim right of way where he enters intersection at same instant that vehicle coming from his right enters it and a collision results. Walkup v. B., (CCA8), 111F(2d)789.

Failure of plaintiff to look second time before entering an intersection in which he had right of way, held an item of evidence for jury to consider in determining whether there was contributory negligence. Norling v. S., 208M143, 293NW250. See Dun. Dig. 4164e.

A driver about to cross intersection at a lawful rate of speed and having right of way is not guilty of contributory negligence as a matter of law, where he looked to his left 10 to 20 feet before reaching intersection and had a view of 165 feet in which he did not see defendant, then proceeded into intersection without looking to his left again and defendant, by unanticipated and excessive speed, came from a point beyond range of visibility when observation was made. Kraus v. S., 208M220, 293NW253. See Dun. Dig. 4164e.

A motorist stopping at and then entering a "thru" street at an intersection and making a left turn is not guilty of contributory negligence as a matter of law in case of collision with a streetcar, where streetcar was not so close at the time he entered as to constitute an immediate hazard and he did not discover that there was danger of collision until it was too late to avoid it. Yien Tsiang v. Minneapolis St. Ry., 213M21, 4NW(2d)630. See Dun. Dig. 4164e.

One starting after stopping at "thru" highway was not guilty of contributory negligence as matter of law because he did not make more than one observation to determine whether it was safe for him to proceed, as due care is not determined by number of times driver looked, nor by how often, or when, or from where. Id.

A motorist entering an intersection first has right of way and may assume, until and unless he becomes aware of the contrary, that driver of approaching vehicle not so close as to constitute an immediate hazard will exercise ordinary care and operate so as to permit him to proceed safely. Id.

A motor vehicle proceeding on left roadway of two-roadway highway, which are separated by a parkway, in middle of which there are street car tracks, is not entitled to right-of-way over a street car where motor vehicle and street car were proceeding in same direction and motor vehicle turned right at intersection and crossed in front of street car. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 4164e.

(c).

Roadway from parking lot on state-owned land across highway from state penitentiary was a "private road or driveway", and one driving out of it to highway did not have right of way. Merritt v. Stuve, 215M44, 9NW(2d) 329. See Dun. Dig. 4164g.

2720-197. Right-of-way at intersections.

Contributing negligence of driver making a left turn from a trunk highway onto an intersecting road does not appear as a matter of law where it is a question of fact whether defendant's car was visible at time turn was commenced or was then so far distant, that it might appear safe to make turn. Dahl v. C., 206M604, 289NW522. See Dun. Dig. 4164.

In a head-on collision just as plaintiff was completing a left turn, defendant coming over a small hill, contributory negligence held for jury. Hayward v. V., 208M 191, 293NW246. See Dun. Dig. 4163.

In action to restrain enforcement of judgment for purpose of contribution purposes, evidence held to sustain finding that when defendant entered intersection and was about to turn left he saw plaintiff's car approaching and swung in front of it in intentional violation of traffic law and in reckless disregard of obvious danger and that neither defendant nor his insurer was entitled to contribution. Kemerer v. State Farm Mut. Auto Ins. Co., 211M249, 300NW793. See Dun. Dig. 1924.

A specific rule for vehicles making a left turn is prescribed by this section, but no specific rule is prescribed for vehicles proceeding on left roadway of a two-roadway highway and turning to right at an intersection to get upon proper roadway. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 4167f.

2720-198. Thru highways.

In passing upon contributory negligence of a motor cyclist approaching a blind intersection jury might consider that plaintiff had right to assume until discovering the contrary that motor vehicles traveling upon intersecting road would heed stop sign. Fickling v. N., 208M 538, 294NW848. See Dun. Dig. 4164e.

Whether truck driver negligently drove his loaded gravel truck into intersection without stopping for stop sign and at a speed of from 30 to 40 miles an hour, held for jury. Id.

Whether plaintiff stopped at sign before entering a through highway and saw no car coming from left for a distance of 225 feet in a thirty mile zone, or was guilty of contributory negligence, held for jury, though she made no further lookout after leaving stop sign. Neubarth v. Fink, 210M55, 297NW171. See Dun. Dig. 4164f.

A "through highway" must be designated as a "through highway" by the erection of stop sign at intersection, and erection of a sign "trunk highway" is not sufficient to require a person to come to a full stop. Op. Atty. Gen. (989a-21), Aug. 4, 1943.

(a).
Statute requires autoist not only to stop for stop sign and yield right of way to vehicles on intersection but also other cars approaching so closely on thru highway as to constitute an immediate hazard. Zickrick v. Strathern, 211M329, 1NW(2d)134. See Dun. Dig. 4164e.
Emergency was properly submitted to jury where defendant ignored stop sign. Id. See Dun. Dig. 4167b.

(b).
Driver entering through highway where stop sign is erected may be found guilty of negligence in failing to yield right of way to an automobile approaching on through highway so closely as to constitute an immediate hazard. Blom v. W., 209M419, 296NW502. See Dun. Dig. 4164(f).
A motorist stopping at and then entering a "thru" street at an intersection and making a left turn is not guilty of contributory negligence as a matter of law in case of collision with a streetcar, where streetcar was not so close at the time he entered as to constitute an immediate hazard and he did not discover that there was danger of collision until it was too late to avoid it. Yien Tsiang v. Minneapolis St. Ry., 213M21, 4NW(2d)630. See Dun. Dig. 4164f.
One starting after stopping at "thru" highway was not guilty of contributory negligence as matter of law because he did not make more than one observation to determine whether it was safe for him to proceed, as due care is not determined by number of times driver looked, nor by how often, or when, or from where. Id.

2720-199. Driver entering highway shall yield right-of-way.
Where defendant drove his car out of a private driveway hidden by box elder trees less than 100 feet in front of plaintiff's rapidly approaching car, defendant was guilty of negligence and plaintiff free of contributory negligence as a matter of law. Behr v. S., 206M378, 288NW 722. See Dun. Dig. 4164f.
Motorist who suddenly drives onto a public highway from a private driveway in violation of plaintiff's right of way and under circumstances showing that a collision would result was guilty of negligence as a matter of law. Boerner v. W., 206M548, 289NW562. See Dun. Dig. 4164f.
Driver of heavy truck was entitled to assume that one approaching highway on a private road would yield right-of-way, at least until a reasonable basis to conclude the contrary appeared, and it was a question for jury to determine whether he was guilty of contributory negligence with respect to defendant who was having trouble to get his truck up steep slope to a level shoulder. Salters v. U., 208M66, 292NW762. See Dun. Dig. 4164f.
Where plaintiff, before entering a trunk highway from a private driveway, saw defendant's car approaching very fast from 550 to 600 feet from where she entered, and crossed highway to her own right side thereof and traveled 50 feet thereon before a collision occurred in her lane of traffic, contributory negligence was for jury. Packar v. Brooks, 211M99, 300NW400. See Dun. Dig. 4164f.
Word "approaching" should be construed to mean "in proximity to" or "within the limit of danger". Id.
Where plaintiff before entering a trunk highway from a private driveway saw defendant's car approaching very fast from 550 to 600 feet from where she entered and crossed highway to her own right side thereof and traveled some 50 feet before collision occurred in her lane of traffic, testimony held to warrant an instruction on sudden emergency in behalf of plaintiff as well as defendant. Id. See Dun. Dig. 7020.
In action for death of motorcycle driver striking a truck emerging from private driveway, in which defendant and a helper were the only eyewitnesses, jury was not bound to accept defendant's estimate of his own speed, but could consider all the surrounding circumstances in determining at what rate of speed his truck was actually traveling, as bearing upon question whether deceased was guilty of contributory negligence. Merritt v. Stuve, 215M44, 9NW(2d)329. See Dun. Dig. 4164g, 4167e.
Where a driveway leading into a parking lot located wholly upon state penitentiary grounds was controlled by prison authorities for its own use and the public having business therewith and such driveway was unsuited for and not used as a public thoroughfare, it did not come within the purview of "street or highway", but it is rather within the definition of "private road or driveway". Id. See Dun. Dig. 4164g.
Where front of defendant's truck was, without warning, suddenly projected into the highway from a private road, obstructing decedent's normal path of travel, and decedent was not aware of the presence of the truck until a second or two prior to the impact, evidence did not establish contributory negligence as a matter of law. Id. See Dun. Dig. 4164g.
It is prima facie negligence to fail to yield right of way to one on public highway. Id. See Dun. Dig. 4164g.
It was the duty of one entering highway from private road or driveway to exercise reasonable care, and he should not have entered the highway unless it was clearly manifest to him that it could be entered with safety to himself and approaching motorcycle rider, and if there was a reasonable chance of a collision with the driver of the motorcycle, it was his duty to wait and permit him to pass. Id. See Dun. Dig. 4164g.
In action for death of motorcycle driver who collided with truck emerging suddenly from a private driveway where view was obstructed by trees and parked cars, submission of the emergency rule to the jury was warranted. Id. See Dun. Dig. 2620, 4164g.
Motorcycle driver approaching a private driveway had a right to assume that one emerging from driveway would exercise reasonable care and yield the right of way. Id. See Dun. Dig. 4164g, 4167b, 7022.

2720-200. Emergency vehicle to have right-of-way.
(a).
In action for death of fireman in collision between fire truck and defendant's car at an intersection, negligence of defendant in driving car with windows closed and radio on and in failure to keep proper lookout and hear siren held for jury. Anderson v. G., 206M367, 288 NW704. See Dun. Dig. 4164e.
In action for death of fireman riding on rear step of fire truck when it was struck at an intersection by defendant's automobile while he was driving with car window closed and radio on, it was error to submit question of emergency to jury in connection with negligence of defendant. Id. See Dun. Dig. 4173.

ARTICLE X.—PEDESTRIANS' RIGHTS AND DUTIES

2720-202. Pedestrians' right and duties.
In action for death, a workman putting out flares was guilty of contributory negligence as a matter of law in attempting after dark to pass across a pavement open for traffic in front of approaching car traveling with lights turned on, at a speed of not to exceed 30 miles an hour. Hoelmer v. S., 207M140, 290NW225. See Dun. Dig. 4171.
In action for wrongful death of pedestrian on highway, negligence and contributory negligence held for jury. Ralston v. T., 207M485, 292NW24. See Dun. Dig. 4171.
Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. Anderson v. J., 208M373, 294NW224. See Dun. Dig. 4167n.
Contributory negligence of one injured while attempting to flag a car after his own car had stalled held for jury. Corridan v. Agranoff, 210M237, 297NW759. See Dun. Dig. 4167n.
Negligence of a motorist driving along an alley and striking a six year old child traveling from behind a garage toward alley held for jury. Allerdyce v. Martin, 210M366, 293NW363. See Dun. Dig. 4166, 6980.
Contributory negligence of six year old child coming from behind a garage toward an alley held for jury. Id. See Dun. Dig. 4166, 7029.
In action for death of a pedestrian who was struck while standing close to edge of shoulder between two cars involved in a collision, evidence held not to show that act of decedent in parking his car across the road with two wheels on the pavement had any effect upon conduct of defendant or management of his car. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 7015.
In action for death of pedestrian struck by defendant's car while standing close to edge of shoulder between two cars involved in a collision, burden of proof was on defendant to show that decedent was guilty of contributory negligence. Id. See Dun. Dig. 7043.
A pedestrian is not guilty of contributory negligence as a matter of law for failure to look for an automobile approaching on wrong side of street, because ordinarily he has no reason to foresee or to anticipate danger from that direction. Aide v. Taylor, 214M212, 7NW(2d)757, 145 ALR530. See Dun. Dig. 4166.

2720-203. Pedestrians to have right-of-way in certain cases.
Contributory negligence of pedestrian crossing street and colliding with rear right side of defendant's car held for jury. Repplinger v. H., 209M134, 296NW23. See Dun. Dig. 4171.
Where driver of motor vehicle and pedestrian about to cross street each saw the other and pedestrian walked into street and stopped as though to wait for car to pass and then suddenly spurted forward, and driver stopped to avoid hitting pedestrian by sharply turning his car to the left but struck her with right fender, negligence and contributory negligence and question of sudden emergency were properly submitted to jury. Schendel v. Klein, 215M73, 9NW(2d)342. See Dun. Dig. 4166.

(a).
At an intersection where there is neither sidewalk or pathway actually in use and no crosswalk marked on pavement or determined by survey or otherwise, there is no "crosswalk." St. George v. L., 209M322, 296NW523. See Dun. Dig. 4171.

2720-204. Pedestrians not crossing at crosswalks; etc.

(a).

Even as to adults, it seems that failure of a pedestrian to yield the right of way does not establish contributory negligence as a matter of law. Deach v. St. Paul City Ry. Co., 215M171, 9NW(2d)735. See Dun. Dig. 4166.

(c).

In action for death of boy five years old struck by streetcar when crossing street, conflicting and contradictory statements of defendants' witnesses with reference to decedent's actions, and the indefinite character of such evidence, made question of his contributory negligence one for the jury. Deach v. St. Paul City Ry. Co., 215M 171, 9NW(2d)735. See Dun. Dig. 4166.

Court properly instructed jury with reference to obligations relating to right of way as between a child pedestrian and a streetcar in the middle of a block. Id. See Dun. Dig. 4166.

(d).

Fact that automobile has right of way does not give driver right to proceed regardless of everything else, but he must observe care. St. George v. L., 209M322, 296NW 523. See Dun. Dig. 4166.

2720-207. Must walk on left side of roadway.

In a case involving contributory negligence of one struck by a car while attempting to flag oncoming cars after his own car was stalled, it was proper for court to give jury statutory definition of a roadway as "that part of a highway improved, designed or ordinarily used for vehicular travel", and to then charge that if plaintiff was not on roadway but on shoulder of highway, then law about pedestrians walking near left side of roadway giving way to oncoming traffic does not apply, and in denying a requested instruction that it was negligent for plaintiff to walk as he did in absence of evidence showing excuse or justification. Corridan v. Agranoff, 210 M237, 297NW759. See Dun. Dig. 4166.

It could not be said that walking south on west shoulder of highway exposed one to obvious danger from cars moving towards him on east lane of highway, and requested instruction that one cannot expose himself to obvious dangers under assumption that others will exercise due care was properly refused. Id.

It is only prima facie negligence for a pedestrian to walk on forbidden side of road. Id.

A pedestrian struck and killed while walking on wrong lane of a divided highway, with rather than against traffic, is prima facie guilty of negligence. Wojtowicz v. Belden, 211M461, 1NW(2d)409. See Dun. Dig. 4166.

Violation of statute requiring pedestrians to walk on left side of a roadway, giving way to oncoming traffic, is only prima facie evidence of negligence. Nicholas v. Minnesota Milk Co., 212M333, 4NW(2d)84. See Dun. Dig. 4162a, 4171.

If pedestrian was on wrong side of roadway, and conditions underfoot due to a recent considerable fall of snow did not justify his being there as a matter of due care, his position of peril was the result of his own negligence, and he was not entitled to the benefit of the emergency rule. Id. See Dun. Dig. 4171, 7020.

ARTICLE XI.—STREET CARS AND SAFETY ZONES

2720-208. Passing street cars.

In collision between automobile passing behind a street car pulling out of a wye with street car backing into wye, contributory negligence of plaintiff was for jury. Solberg v. Minneapolis St. Ry. Co., 214M274, 7NW (2d)926. See Dun. Dig. 4167i.

ARTICLE XII.—SPECIAL STOPS REQUIRED

2720-212. Railroad and warehouse commission to mark dangerous crossings.

Absent unusual circumstances, failure of railway employes to anticipate that automobile would enter crossing without stopping is not evidence of negligence. Engberg v. G., 207M194, 290NW579. See Dun. Dig. 8183.

2720-215. Designation of thru highways.

County Board may designate through highways. Op. Atty. Gen. (989a-21), July 19, 1943.

A "through highway" must be designated as a "through highway" by the erection of stop sign at intersection, and erection of a sign "trunk highway" is not sufficient to require a person to come to a full stop. Op. Atty. Gen. (989a-21), Aug. 4, 1943.

2720-216. Shall stop before reaching sidewalks.

Requirement that a driver emerging from an alley stop carries with it implied duty on his part of using his senses of sight and hearing to ascertain that way is clear before entering highway, and this applies to a minor riding a bicycle. Nowrey v. S., 296NW(Ia)822.

Requirement that a driver emerging from an alley stop before crossing sidewalk was designed for benefit of traffic of every kind, and not merely pedestrians on sidewalks. Id.

ARTICLE XIII.—STOPPING, STANDING AND PARKING

2720-217. Stopping, standing and parking.

In action for injuries caused by collision between car suddenly stopping on the traveled portion of the highway and an on-coming car behind it, requested instruction that defendant's stopping his automobile as close to the right hand side of the paved highway as practicable did not violate statute providing that all vehicles if not in motion shall be placed with their right sides as near the right hand side of the highway as practicable was properly refused, where defendant could conveniently and safely have driven his car off the paved highway onto the right shoulder, so that it was practicable for him to have done so. Cram v. Eveloff, (C.C.A.8), 127 F. (2d) 486. See Dun. Dig. 4167dd.

Regardless of statute pertaining to use of flares by one stopping truck on paved portion of highway, truck driver was required to use ordinary care commensurate with risks involved. Anderson v. J., 208M373, 294NW224. See Dun. Dig. 4171a.

Whether a volunteer was guilty of contributory negligence in standing in front of a service truck on wrong side of highway with headlights on but without flares, attempting to warn approaching drivers with a flashlight, held for jury. Duff v. Bemidji Motor Service Co., 210M456, 299NW196. See Dun. Dig. 7025.

In action for death of a motorist crushed while fixing tail light, physical facts held not to overcome evidence that car was parked on shoulder. Latourelle v. Horan, 212M520, 4NW(2d)343. See Dun. Dig. 4167n, 4171a.

In action for death of a pedestrian who was struck while standing close to edge of shoulder between two cars involved in a collision, evidence held not to show that act of decedent in parking his car across the road with two wheels on the pavement had any effect upon conduct of defendant or management of his car. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 7005.

Power of county board to pass ordinance prohibiting parking of motor vehicles along highways during winter months so as to interfere with the plowing of roads. Op. Atty. Gen. (989a-16), Sept. 28, 1943.

(b).

Where defendant's truck came into almost simultaneous collision with two passenger cars, both traveling in a direction opposite to that of defendant, and defendant's one claim on the trial was that two passenger cars approached him abreast of each other, that one or both of them was negligently on his side of the road and that in an effort to avoid a collision he drove so far to the right as to get his right front wheel onto the shoulder, question as to what the law would have been if the truck was disabled in lane and oncoming car due to a former accident was not involved. Grove v. Lyon, 211M 68, 300NW373. See Dun. Dig. 4164a.

Where fuse burned out on a dark night and motorist brought car to immediate halt and killed engine and was struck from behind, whether she was guilty of negligence with respect to getting car off to pavement held for jury. Cowperthwait v. Tadsen, 212M49, 2NW(2d)429. See Dun. Dig. 4167dd.

2720-218. Police officials may move cars.

Disposition by municipal authority of vehicles abandoned upon street, highway, or city owned property. Op. Atty. Gen. (632d-1), Sept. 17, 1942.

2720-220. Parking on roadway.

It does not appear that fee of five cents, to be charged for parking regulated by meters, so much exceeds cost of installation, maintenance and regulation of meters as to result in a tax and condemn whole project as for revenue rather than regulation. Hendricks v. C., 207M151, 290NW428. See Dun. Dig. 4171a.

Commissioner's power to establish or refuse to establish angle-parking zone is a constitutional delegation of power by legislature. Op. Atty. Gen., (989a-16), Sept. 26, 1939.

Angle-parking on state truck highways in cities is permissible only with consent of Highway Commissioner, regardless of charter provision giving city control over city streets. Id.

Local bodies may regulate angle or parallel parking on streets and roadways other than state trunk highways without approval of state highway commissioner. Op. Atty. Gen. (989-a-16), Nov. 29, 1940.

ARTICLE XIV.—MISCELLANEOUS RULES

2720-230. Passing school busses.

(a).

This subdivision and a rule made under it do not apply within business or residential district of any city, town, or village. Op. Atty. Gen., (989a-21), Oct. 6, 1939.

ARTICLE XV.—EQUIPMENT

2720-233. Certain vehicles forbidden on highway.

In collision at intersection where plaintiff's motor was disabled and he was pushing car by hand, if it was error to read to jury statutes relating to slow driving and driving of unsafe vehicles on highway, such statutes were not those of controlling propositions of law and attention should have been called thereto promptly and before motion for new trial in order to require reversal upon appeal. Greene v. Mathlowetz, 212M171, 3NW(2d) 97. See Dun. Dig. 9797, 9798.

2720-234. Vehicle lights.

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of

which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. Smith v. C., 209M268, 296NW132. See Dun. Dig. 4167q.

2720-235. Head-lights.

In action for death in head-on collision on a dark and misty night, negligence and contributory negligence held for jury, though only surviving witness testified that he was on his own side of highway and was blinded by bright lights of decedent's car and that decedent swerved into his path. Malmgren v. Foldesi, 212M354, 3NW(2d) 669. See Dun. Dig. 4163.

2720-239. Lights for parked vehicles.

Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. Anderson v. J., 208M373, 294NW224. See Dun. Dig. 4171a.

Jury cannot be said to have misapplied standard of care in absolving decedent from charge of contributory negligence where he parked off traveled part of highway and attempted to make repairs of lights which had suddenly gone out, being crushed by following car while attempting to fix tail light. Latourelle v. Horan, 212M 520, 4NW(2d)343. See Dun. Dig. 4167n, 4171, 4171a.

2720-241. Horse drawn vehicles must have lights.

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. Smith v. C., 209M268, 296NW132. See Dun. Dig. 4167c.

2720-246. Must be equipped with lights after January 1, 1938.

(a).

Requirement that lights be of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead is applicable to objects on a highway the size of two deer. Hutzler v. McDonnell, 239Wis568, 2NW (2d)207. See Dun. Dig. 4167c.

2720-255. Brakes.

One driving a car with brakes defective at high speed, and driving into a lane between parked cars following a collision at a speed of 50 miles an hour, and striking a pedestrian standing close to edge of left shoulder between two cars involved in a collision was guilty of negligence which was proximate cause of death of pedestrian as a matter of law. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 4167c.

A motorist who by driving at high speed with defective brakes contributed to the predicament with which he was confronted was not entitled to have his case considered under the sudden emergency rule. Id. See Dun. Dig. 6972a.

2720-257. Horns.

It is for jury to determine whether or not it is contributory negligence to drive a motor cycle without sounding horn at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. Fickling v. N., 208M538, 294NW848. See Dun. Dig. 4164e.

Purpose of a warning is to apprise a party of impending danger of which he is not aware, to enable him to protect himself against it, and where he is fully aware of existence of danger, a warning is unnecessary. O'Neill v. Minneapolis St. Ry. Co., 213M514, 7NW(2d)665. See Dun. Dig. 4167c.

2720-264. Certain vehicles to have at least three lights.

Whether negligence of motorist in not avoiding collision with a pedestrian who was standing in front of a service truck parked on wrong side of highway with headlights on but without flares was an intervening and sole cause of death of pedestrian, who was using a flashlight to warn approaching drivers, held for jury. Duff v. Bemidji Motor Service Co., 210M456, 299NW196. See Dun. Dig. 4171a.

Failure of service truck driver, attending a stalled truck, to set out flares while on wrong side of highway with headlights on was negligence and proximate cause of death of a farmer living near-by who stood in front of service car with a flashlight to warn drivers. Id.

Whether a motorist was guilty of negligence in colliding with a service truck on wrong side of highway with headlights on but without flares held for jury. Id.

Whether a volunteer was guilty of contributory negligence in standing in front of a service truck on wrong side of highway with headlights on but without flares, attempting to warn approaching drivers with a flashlight, held for jury. Id. See Dun. Dig. 7025.

(b).

If reading this statute to jury in a case involving negligence of a driver of service car getting ready to pull a car out of a ditch was error, it was not prejudicial. Olson v. Neubauer, 211M218, 300NW613. See Dun. Dig. 4167c.

Jurors are well within their function if they hold that each of distant flares is to be placed on shoulder next to lane of approaching traffic. Id.

In action for injuries to minor guest against driver of car in which he was riding and owner of service car evidence held to sustain finding that driver of service car as to direction of traffic and warning lights and driver of other car were both guilty of negligence. Id. See Dun. Dig. 4167m.

ARTICLE XVI.—SIZE, WEIGHT AND LOAD

2720-269. Size, weight and load.

It is a misdemeanor to violate road restriction as to weight of vehicles on a county road, but such restriction must be adopted by county board by a written resolution, and matter of posting roads cannot be left to discretion of county engineer, either as to weight limit or as to roads to be posted. Op. Atty. Gen. (229a-8), Apr. 22, 1942.

2720-272. Height and length of vehicle and load.—(a) No vehicle unladen or with load shall exceed a height of 12 feet six inches.

(b) No vehicle unladen or with load shall exceed a length of 40 feet extreme overall dimensions, inclusive of front and rear bumpers, except that the governing body or any city or village is hereby authorized by ordinance to provide for the maximum length of any motor vehicle, or combination of motor vehicles, or the number of vehicles that may be fastened together, and which may be operated upon the streets or highways of said city, and provided, however, that such ordinance shall not prescribe a length less than that permitted by state law. Any such motor vehicle operated in compliance with such ordinance on the streets or highways of such city shall not be deemed to be in violation of this act. A truck tractor and semi-trailer shall be regarded as a combination of vehicles for the purpose of determining lawful length.

(c) No combination of vehicles coupled together unladen or with load shall consist of more than two units and no such combination of vehicles shall exceed a total length of 45 feet, provided that this limitation shall not apply to the transportation of telegraph poles, telephone poles, electric light and power poles or piling, and subject to the following further exceptions: Said length limitations shall not apply to vehicles when transporting pipe, or other objects by a public utility when required for emergency or repair of public service facilities or when operated under special permits as provided in this act, but in respect to night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps and marker lamps on both sides and upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

(d) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper. (As amended Mar. 30, 1943, c. 226, §1.)

2720-274. Weight of trailers.—(a) Any trailer exceeding a gross weight of 6,000 pounds shall be equipped with brakes adequate to stop and hold such trailer, and which are so constructed that they will so operate whenever such trailer becomes detached from the towing vehicle.

(b) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed 15 feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(c) When one vehicle is towing another and the connection consists of a chain, rope, or cable, there

shall be displayed upon such connection a white flag or cloth not less than 12 inches square.

(d) Every trailer or semi-trailer shall be hitched to the motor vehicles furnishing the tractive power for it by a device approved by the commissioner as safe. (As amended Mar. 30, 1943, c. 226, §2.)

2720-275. Limit of weight upon vehicles.

(a) No vehicle or combination of vehicles equipped with pneumatic tires shall be operated upon the highways of this State:

1. Where the gross weight on any wheel exceeds 9,000 pounds;

2. Where the gross weight on any single axle exceeds 18,000 pounds;

3. Where the total gross weight on any two axles spaced less than 10 feet apart exceeds 30,000 pounds;

4. Where the total gross weight on any two or more consecutive axles of any vehicle or combination of vehicles exceeds the product of 700 multiplied by the sum of 40 plus the distance in feet between the first and last axles of the group of axles under consideration.

A single axle as used in this section is defined as including all wheels whose centers may be included within two parallel transverse vertical planes 40 inches apart.

(b) A vehicle or combination of vehicles not equipped with pneumatic tires shall be governed by the provisions of paragraph (a) of this section, except that the gross weight limitations shall be reduced by 40 per cent.

(c) The provisions of this section shall not apply to vehicles operated exclusively in any city or village, or continguous cities or villages in this State. (As amended Mar. 30, 1943, c. 226, §3.)

2720-278. Special permits for moving vehicles.—

(a) The commissioner with respect to highways under his jurisdiction and local authorities with respect to highways under their jurisdiction may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this act or otherwise not in conformity with the provisions of this act upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which said party is responsible.

(b) The application for any such permit shall specifically describe the vehicle or vehicles and loads to be moved and the particular highways for which permit to so use is requested, and the period of time for which such permit is requested.

(c) The commissioner or local authority is authorized to issue or withhold such permit at his discretion; or, if such permit is issued, to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms or conditions of such special permit. (As amended Mar. 30, 1943, c. 226, §4.)

ARTICLE XVII.—PENALTIES

2720-281. Penalties.

Violation of §2720-212 is a misdemeanor to be considered in determining whether train crew is guilty of any negligence in assuming that automobile will stop at crossing. Engberg v. G., 207M194, 290NW579. See Dun. Dig. 8183.

ARTICLE XVIII.—PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL CASES

2720-282. Who may be guilty of offenses.

Violations of Uniform Traffic Act are crimes, including aiding and abetting. Op. Atty. Gen. (605B), Mar. 3, 1941.

2720-284. Procedure upon arrest.

A village justice of the peace has no jurisdiction over offenses committed outside village except where there is no magistrate within the town where the offense was committed, and in such instance accused may be brought before any magistrate within the county in which the offense is alleged to have been committed. Op. Atty. Gen., (989a-8), Nov. 27, 1939.

Inmates of a National Youth Administration Camp while driving government trucks are not employees the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

ARTICLE XIX.—EFFECT OF AND SHORT TITLE OF ACT

2720-291. Effect and interpretation of law.

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. *Smith v. C., 209M268, 296NW132.* See Dun. Dig. 4167q.

A pedestrian struck and killed while walking on wrong lane of a divided highway, with rather than against traffic, is prima facie guilty of negligence. Wojtowicz v. Belden, 211M461, 1NW(2d)409. See Dun. Dig. 4166.

In absence of opposing evidence, a prima facie case prevails as matter of law. Id. See Dun. Dig. 3226.

One driving a car with brakes defective at high speed, and driving into a lane between parked cars following a collision at a speed of 50 miles an hour, and striking a pedestrian standing close to edge of left shoulder between two cars involved in a collision was guilty of negligence which was proximate cause of death of pedestrian as a matter of law. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 4162a.

In action by automobile guest against host, wherein it appeared that defendant during the entire day had persistently driven at speed which statute makes prima facie unreasonable, imprudent unlawful, and negligent, question of contributory negligence, including plaintiff's assumption of the hazards of driving at the speed indicated by the evidence, were for the jury. Hubenette v. Ostby, 213M349, 6NW(2d)637. See Dun. Dig. 7026a, 7041b.

(b).

It is for jury to determine whether or not it is contributory negligence to drive a motorcycle at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. Fickling v. N., 208M538, 294NW848. See Dun. Dig. 4164e.

Whether it was negligence as to a guest to drive in nighttime at speed of 30 to 35 miles per hour more than 3½ miles over a paved highway on which there were patches of ice which were difficult to see because of occasional snow flurries, and car skidded on ice patch and hit telephone pole, held for jury. Schultz v. R., 209M462, 296NW532. See Dun. Dig. 4167e.

Entering intersection against yellow-under-green signal was prima facie evidence of negligence. Litman v. Walso, 211M398, 1NW(2d)391. See Dun. Dig. 4164e.

Jury cannot be said to have misapplied standard of care in absolving decedent from charge of contributory negligence where he parked off traveled part of highway and attempted to make repairs of lights which had suddenly gone out, being crushed by following car while attempting to fix tail light. Latourelle v. Horan, 212M 520, 4NW(2d)343. See Dun. Dig. 4167n, 4171, 4171a.

Cutting a corner in making a left turn is only prima facie evidence of negligence, and question of contributory negligence for a violation of any highway traffic regulation is a question of fact for the jury and not one of law for the court. Yien Tsiang v. Minneapolis St. Ry. Co., 213 M21, 4NW(2d)630. See Dun. Dig. 4167f.

Defendant having proved only a violation of a statute connected as cause with injury, and no more, shifted to plaintiff the burden of the evidence, as distinguished from the burden of proof, and burden was then on plaintiff to at least counterbalance the prima facie case made by showing the violation. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 4162a.

If evidence of violation of traffic code stands unopposed by evidence tending to show a reasonable ground for such violation, the court should direct a verdict against the violator. Id.

The statute before 1939 made certain misconduct negligence, which according to circumstances may or may not have been such at common law, and since the 1939 amendment, Laws 1939, c. 430, such statutory misconduct is prima facie evidence of negligence only, but the prima facie provision is still a rule against the violator, not in his favor. Id.

With traffic laws as they were before amendment of Laws 1937, c. 464, in 1939, a contributing violation made a conclusive case against the violator. Id.

Statute making a violation of traffic laws prima facie evidence of negligence only instead of conclusive evidence thereof does not prevent court from passing upon compelling force of evidence in an appropriate case. Id.

A boy 20 years of age approaching a grade railroad crossing in a dense fog at 30 miles per hour was guilty of contributory negligence as a matter of law. Id. See Dun. Dig. 4167e.

CHAPTER 13A

Vessels Navigating Lakes and Rivers

MOTOR BOATS

2740-1. Definition.

Inspection by state boiler inspectors is required in case of motor boat used exclusively for towing row boats which are occupied by a pilot and persons fishing or outing on inland lakes. Op. Atty. Gen. (34g-2), Apr. 24, 1942.

CHAPTER 14

Education

2741. Public schools—Tuition free—Age of pupils. [Repealed.]

Repealed. Laws 1941, c. 169 except as provided therein. Reenacted as 3156-12(1).

Where voters of school district voted to exclude children of orphan home from school, and school board acted thereon, board was proper party defendant in action in mandamus to compel admission of children to school. State v. School Board of Consol. School Dist. No. 3, 206 M63, 287NW625. See Dun. Dig. 8660.

Word "resides" is used in broad sense of being an inhabitant as distinguished from more restricted sense of domicile, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein. Id. See Dun. Dig. 8660.

School board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to enforce rights of children to free education. Id. See Dun. Dig. 8698.

British refugee children have privilege of attending public schools free of tuition in district where they are residing. Op. Atty. Gen. (180-G), July 24, 1940.

2742. School districts. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(1).

2743. Formation of districts. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(5).

2744. Petition. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(6).

2745. Notice of hearing. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(7).

2746. Proceedings on hearing. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(8).

2747. Appeal from order. [Repealed.]

Repealed. Laws 1941, c. 169 except as provided in repealing act.

Reenacted as 3156-3(32).

2748. Changing boundaries of school districts. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided in repealing act.

Reenacted as 3156-3(9); 3156-3(10); 3156-3(11); 3156-3(12).

Land detached from one district and added to another is not subject to any levy for general expenses in old district from that time on, but is subject to such levy as is necessary to retire principal and interest of outstanding bonds, and conversely should be exempt from levy for debt or bonds of new district existing prior to change, but is liable for levy for general expenses and maintenance. Op. Atty. Gen., (166c-5), Nov. 14, 1939.

Bonds are an obligation upon all of land which was in school district at time bonds were issued, and land detached from one district and attached to another is not subject to tax to meet bonds issued by district to which attached before it became a part of such district. Op. Atty. Gen., (166d-5), Jan. 11, 1940.

The fact that Duluth school district is coterminous with city limits, and fact that Duluth is a special district and has many special laws governing the same, would not invalidate proceedings to set off territory from city of Duluth to the Proctor school district, but county commissioners in acting on a petition could consider all of special laws in considering effect on welfare of that district, granting of petition resting in discretion and best judgment of county board. Op. Atty. Gen. (166c-9), May 31, 1940.

Lands under water, highways and tax forfeited lands are not to be excluded in computing four sections of land. Op. Atty. Gen. (166c-2), July 8, 1940.

It is impossible for any territory to become a part of school district for Minneapolis without being annexed to that city for all purposes. Op. Atty. Gen. (59a-42), Oct. 10, 1940.

County board has no authority to change boundaries of 2 adjoining school districts without application or petition from freeholders or individual landowners affected, since they are mutual obligation of school boards of two districts and without vote of people. Op. Atty. Gen. (166d-8), Feb. 18, 1941.

2748-1. Platted territory annexed to and included in corporate limits; etc. [Repealed.]

Repealed. Laws 1941, c. 169 except as provided in repealing act.

2750. Districts in two or more counties. [Repealed.]

Repealed. Laws 1941, c. 169, except as provided therein.

Reenacted as 3156-3(14).

2753. Dissolution of school districts. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(28).

Last sentence. Reenacted as 3156-4(42) in part.

2754. Procedure for consolidation of school district. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(18); 3156-3(19).

2755. Certain districts to receive aid as consolidated districts. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(24) in part and 3156-9(7) subd. 1 in part.

2756. Petition for formation; etc. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(20); 3156-3(21).

2757. Liability of common school district. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21); 3156-3(22); 3156-3(23).

2758. Consolidation of districts having an area of one square mile; etc. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21) in part and 3156-3(23) in part.

2759. Consolidation with unorganized districts. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21) in part.

2760. Certificate of officers. [Repealed.]

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(23) in part.