

Highways; Roads

CHAPTER 160

GENERAL PROVISIONS RELATING TO ROADS

160.01 SCOPE OF ACT; DEFINITIONS.

HISTORY. R.L. 1905 s. 1154; 1913 c. 235 ss. 1, 2; G.S. 1913 ss. 2488, 2489; 1921 c. 323 ss. 1, 2, 7; G.S. 1923 ss. 2542, 2543, 2548; M.S. 1927 s. 2542, 2543, 2548.

The saving proviso in the public highway act of 1921 saved the right to complete an issue of bonds authorized before the repeal in aid of construction of roads, proceeding for which had been commenced before the repeal. *Mushel v Board of County Commissioners*, 152 M 266, 188 NW 555.

In a proceeding under Laws 1921 for laying out and altering public highways running into two counties, the order of confirmation should not cast upon the town organization through which the highways passed the obligation of opening them for public travel, nor relieve the counties therefrom. In re proceeding for a road running into the counties of Fillmore and Houston. 154 M 246, 191 NW 598.

The provisions of Laws 1921, Chapter 323, indicate that the commissioner of highways and not the court is the agency to determine what land is necessary for the right of way for trunk highways. *State ex rel v Voll*, 155 M 72, 192 NW 188.

Under Laws 1921, Chapter 323, the county board appoints the county highway engineers, except in counties having a population in excess of 225,000, in which event the duties required of highway engineers are cast upon the county surveyors. This provision is constitutional and is not special legislation. *Malmberg v County of Hennepin*, 156 M 389, 194 NW 765.

Under Laws 1921, Chapter 323, the powers given to the district court are not a delegation of legislative powers to the judiciary, and the law is constitutional. In re highway of Fillmore and Houston Counties, 158 M 302, 197 NW 741.

The general purpose of Article 16 of the constitution was to provide for a uniform highway system under one supervision, and the legislature had authority to vest in the commissioner of highways the organization and general supervision of the state trunk highway within as well as without the cities and villages through which it extends. Neither an individual nor a municipality may encroach upon the commissioner's authority to regulate the traffic. *Automatic Signals Co. v Babcock*, 166 M 416, 208 NW 132.

When a permanent trunk highway is located, the abandoned road does not operate as a vacation and abandonment of the old road. The old road will revert to the control of the county or town board, as the case may be. The amount of traffic on a highway is an element to be considered as bearing upon loss of time and inconvenience to one whose land is divided by such highway. *State ex rel v Lambert*, 171 M 369, 214 NW 653.

Minnesota Constitution Article 16 adopted in 1920 provides that trunk highways shall not extend within the limits of cities of the first class. *Chase v Babcock*, 175 M 103, 220 NW 408.

The commissioner of administration and finance is given power to disapprove, and thereby render to no effect, contracts for construction of trunk highways executed by the commissioner of highways. *State ex rel v Babcock*, 175 M 583, 222 NW 285.

A village which approved the plans of the construction of the state highway commissioner for a trunk highway upon a village street, is liable for the damage caused abutting property by any change in grade. *McGuire v Crosby*, 178 M 144, 226 NW 398; *Foss v Montevideo*, 178 M 430, 227 NW 357.

Based upon the limitation upon the use of trunk highway fund contained in Minnesota Constitution, Article 16, Section 2, the legislature may not appropriate money out of that fund to pay damages to person injured through negligence of the highway department or its employees. *Horton v Babcock*, 181 M 409, 232 NW 718.

The state is not permitted to reimburse a county out of the trunk highway fund for the amount expended for right of way for a new road built by the county and later taken over by the state as a trunk highway. *State ex rel v Babcock*, 180 M 132, 242 NW 474.

When the state institutes a condemnation for a right of way and omits to include a tract of land which it uses and damages as a part of the general project, the owner upon a proper showing may have such land included in the condemnation proceeding and may have an assessment of damages. *State ex rel v Stanley*, 188 M 390, 247 NW 509.

The maintenance of a trunk highway is cast upon the commissioner of highways. A railroad company which constructs an overhead bridge in accordance with the statutes, with a center pier, which is approved by the highway commissioner, does not have the duty of caring for a reflector placed upon said pier to warn a traveler on the highway. *Murphy v G. N. Ry. Co.* 189 M 109, 248 NW 715.

The constitution, Article 16, and Laws 1921, Chapter 323, do not relieve railroads from the burden of constructing and maintaining their roadbeds and approaches crossing a trunk highway on grade; and it was for the jury to determine whether defendant's violation of those statutes proximately caused the plaintiff to lose control of his truck. *Engstrom v Duluth Ry.* 190 M 208, 251 NW 134.

The defendant village was not responsible for the condition of the trunk highway because the general highway act relieves villages of responsibility for maintenance after they have been taken over by the state and have become part of the trunk highway system. *Lundstrom v Giacomo*, 194 M 624, 261 NW 465.

The supervision and control by the highway commissioner over the highway in question was not limited to the traveled portion only but extended to the entire right of way, including the particular excavation into which the plaintiff fell. The abutting owner using the tunnel is not liable. *Otten v Big Lake Ice Co.* 198 M 356, 270 NW 133.

The attempted purchase of the land was void and beyond the statutory power of the highway commissioner because the commissioner had not fixed by written order the limits of the right of way, and there was no formal action by the commissioner for the property in question so to be acquired or used. *State ex rel v Werder*, 200 M 148, 273 NW 714.

The fact that a town road and a bridge thereon, which it was the duty of the town to repair by virtue of sections 160.01, 163.01 and 163.07, were at the time the road was vacated temporarily impossible because the bridge was in disrepair, does not affect the landowner's right to compensation sustained by reason of the vacation. *Underwood v Jorgenson*, 217 M 385, 14 NW(2d) 459.

Holding relative to the duty of the state regarding the various classes of roads. *U. S. v Wheeler*, 66 F(2d) 983.

There being no provision by which one town can compel another to maintain its half of a town line road, application for relief must be made to the county board. OAG June 27, 1930.

Under the circumstances, the county had the duty of opening the road but it fell to the towns through which the road passed to maintain them. OAG March 27, 1931.

A petitioner for whose benefit a cartway is established cannot prevent the public from using it. The cartway is a public and not a private way. OAG June 10, 1931.

The authority of the town board over common roads includes bridge culverts. OAG June 13, 1933.

That part of the salary of the county highway engineer or his assistant can be paid out of the county aid fund in direct proportion to the services rendered in the

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construction and maintenance of county aid roads. 1934 OAG 247, June 28, 1933 (122b-6).

The construction of a cartway to remain in abeyance pending an appeal by a person aggrieved as to the amount of damage assessed. 1934 OAG 450, Aug. 13, 1934 (377b-10d).

The duty to construct and repair bridges or town roads rests primarily with the township rather than the county. Laws 1929, Chapter 179, authorizes the county board to appropriate from its road and bridge fund to any town or village in said county such sums of money as are available for the maintenance of roads or bridges therein. 1938 OAG 264, June 3, 1938 (377b-10h).

A real estate development company platted a tract of land accessible to a lake and created lagoons and canals and bridged the same. Many years later, when the bridges began to need repair, the attorney general held that the roads were town roads and it was the duty of the town board to repair and maintain the bridges. A public officer charged with this duty is not liable as an individual, unless guilty of wilful wrong. 1940 OAG 128, April 2, 1940, (642a-12).

While a person benefited by a cartway may contract to maintain it, the duty to maintain remains basically in the town board. OAG Nov. 14, 1944 (377b-1).

Where a judicial road is on the line between two towns located in separate counties on the county line, the road is a "county road" and must be maintained by the two towns. OAG March 19, 1945 (379c-6).

160.02 WIDTH OF ROADS.

HISTORY. 1873 c. 5 s. 47; 1877 c. 50 s. 1; G.S. 1878 c. 13 s. 47; 1879 c. 51 s. 2; 1883 c. 119 s. 1; G.S. 1878 Vol. 2, (1888 Supp.) c. 13 s. 47a; G.S. 1894 ss. 1832, 1833; 1899 c. 160; R.L. 1905 s. 1194; 1913 c. 235 s. 2; G.S. 1913 s. 2489; 1921 c. 323 s. 3; 1923 c. 439 s. 1; G.S. 1923 s. 2544; 1927 c. 227 s. 1; M.S. 1927 s. 2544.

Land taken for a public cartway is taken for a public purpose and the claim that there was no public necessity for the cartway does not go to the jurisdiction of the town board but presents a question for that board to determine. *Powell v Town Board*, 175 M 395, 221 NW 527.

Establishment of highways is primarily a legislative function exercised with respect to local roads by county and town boards and under section 162.20 by commissioners appointed by the district court. The function of the court is limited to confirmation or rejection of the commissioners' report. To "lay out" means to designate its width as well as other dimensions. In re petition for judicial highway, 213 M 314, 6 NW(2d) 626.

The power of eminent domain extends to every kind of property within the jurisdiction of the state, including rights of access to and egress from a public highway. An easement is extinguished by a taking by eminent domain of the servient tenement. *Burnquist v Cook*, 220 M —, 19 NW(2d) 394.

A county line judicial road covers the entire width even if only part of the width is constructed. OAG June 21, 1933.

Width of town roads. OAG Feb. 29, 1944 (377b-10-d).

See as to distinction between widening an established road and the acquisition of a new easement. OAG Oct. 5, 1944 (377b-10-j).

160.03 WIDTH OF BRIDGES AND CULVERTS.

HISTORY. 1891 c. 20 s. 1; G.S. 1894 s. 1851; R.L. 1905 s. 1195; 1913 c. 235 s. 2; G.S. 1913 s. 2489; 1919 c. 263 s. 1; 1921 c. 323 s. 4; G.S. 1923 s. 2545; M.S. 1927 s. 2545; 1939 c. 314; M. Supp. s. 2545; 1943 c. 82 s. 1.

160.04 RAILROAD BRIDGE OVER HIGHWAY.

HISTORY. 1921 c. 323 s. 5; G.S. 1923 s. 2546; M.S. 1927 s. 2546; 1939 c. 393; M. Supp. s. 2546.

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160.05 GENERAL PROVISIONS RELATING TO ROADS

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Insufficient width of roadway between piers under defendant's overhead bridge was not the proximate cause of intestate's death. *Lind v G.N. Ry.* 171 M 486, 214 NW 763; *Lundstrom v Giacomo*, 194 M 624, 261 NW 465.

Under this section, and at common law, a railroad company must provide an overhead or underground crossing when necessary for public travel upon a highway. But having constructed the bridge and the center pier, and reflector having been approved by the highway commissioner, the duty of caring for the reflector is from there on the duty of the highway commissioner. *Murphy v G. N. Ry.* 189 M 109, 248 NW 715.

160.05 HIGHWAY BRIDGE OVER RAILROAD.

HISTORY. 1921 c. 323 s. 6; G.S. 1923 s. 2547; M.S. 1927 s. 2547; 1939 c. 392; M. Supp. s. 2547.

A bridge constructed and maintained by the defendant railroad on a highway crossing its track, had steep grades and sharp curves but no wheel or rail guard. The evidence justified the jury in finding the defendant negligent and that such negligence contributed to the plaintiff's injuries. *Comstock v G. N. Ry.* 157 M 345, 196 NW 177.

160.06 TRUNK HIGHWAYS.

HISTORY. 1921 c. 323 s. 8; G.S. 1923 s. 2549; M.S. 1927 s. 2549.

Commissioner of highways is charged with the organization and general supervision of the state trunk highway as well within as without the cities and villages through which it extends. A private party may not place signals without a permit to do so from the commissioner, and the ordinances of cities and villages must not conflict with the state law. *Automatic Signal Co. v Babcock*, 166 M 416, 208 NW 132.

Insufficient width of roadway between piers of defendant's overhead bridge was not the proximate cause of intestate's death. *Lind v G. N. Ry.* 171 M 486, 214 NW 763.

A village which approves the plan of construction by the state highway commissioner makes itself liable for damage caused abutting property by such change. *McGuire v Village of Crosby*, 178 M 144, 229 NW 398.

The state's ownership of an easement for highway purposes is sufficient title to support an application for an injunction against the defendant to enjoin the removal of rock from an embankment. *State v Nelson*, 189 M 87, 214 NW 751.

The determination of the question whether a precautionary device on the highway is necessary and the type best suited for that purpose rests with the commissioner of highways, and an abutting landowner has no right to construct or maintain such device without official approval. *Otten v Big Lake Ice Co.* 198 M 356, 270 NW 133.

Village council may not grant a privilege to an individual to install a gasoline curb pump on the state trunk highway, and the village would be liable for any injuries caused by such obstruction. OAG Jan. 8, 1935 (396g-9).

Prior to the time when the main street of the city of Anoka was taken over by the state as a trunk highway, the Anoka-Cayuna Range Ry. Co. used the center of such street. The street is now solely under the care of the state highway commissioner, and any renewal or additional rights granted to the railway company must be by the commissioner. If an accident should occur, the city would be relieved of liability if the accident occurs on that part of the street taken over by the state. 1936 OAG 60, July 7, 1936 (396c-17).

160.07 STATE AID ROADS.

HISTORY. 1913 c. 235 s. 3; G.S. 1913 s. 2490; 1917 c. 119 s. 4; 1921 c. 323 s. 9; G.S. 1923 s. 2550; M.S. 1927 s. 2550.

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When the county board improves a state aid road within a city of the fourth class, there is no liability on the part of the city for any part of the cost of such improvement. 1938 OAG 263, Aug. 8, 1938 (377b-8).

160.08 COUNTY ROADS.

HISTORY. 1913 c. 235 s. 4; G.S. 1913 s. 2491; 1915 c. 116 s. 1; 1921 c. 323 s. 10; G.S. 1923 s. 2551; M.S. 1927 s. 2551.

The county board established a county road in 1908 and thereafter the township did some grading but never completed it. The burden of constructing such county road falls upon the county and not upon the township. 1934 OAG 215, Sept. 28, 1934 (384a-1).

The Houston county board having granted a petition for the establishment of a county road, the burden of constructing such road falls upon the county. The expense of maintaining the road falls upon the township through which it passes, but the county in its discretion may appropriate money from its road and bridge fund to any town to aid in the maintenance of roads therein. The county in acquiring land may proceed under the provisions of section 162.21. 1940 OAG 131, Nov. 2, 1940 (377b-3).

Where employees of the county while burning weeds burned property of the telephone company, the county is liable for such damage. OAG June 30, 1939, 125a-29.

The county may, in its discretion, pay premiums on an insurance policy for the protection of its driver while operating county highway equipment. OAG March 17, 1937, 125a-61.

The county is not liable for injuries to a truck driver on account of defects in a county bridge. OAG Nov. 14, 1934, 107b-6.

The negligence of county officers in failing to keep their roads in repair is not chargeable to the county. OAG Sept. 2, 1944 (844c-5).

160.09 TOWN ROADS.

HISTORY. 1913 c. 235 s. 5; G.S. 1913 s. 2492; 1921 c. 323 s. 11; G.S. 1923 s. 2552; M.S. 1927 s. 2552.

The town board, having authorized the work to be done and in grading over the railroad crossing at the expenses of the railroad company, was acting within the scope of its authority. The town was liable under the Workmen's Compensation Act and must pay the compensation warranted to an employee engaged in the grading. *Gabler v Town of Bertha*, 169 M 413, 211 NW 477.

The roads of this state are "trunk highways," "state aid," "county roads," and "town roads," and under the provisions of the highway act the duty to repair a bridge located on a township road where said bridge is over ten feet in width rests upon the town rather than the county. 1938 OAG 264, June 3, 1938 (377b-10h).

Where artificially constructed lagoons or canals are authorized, that part within the town roads are within the jurisdiction of the town board. 1940 OAG 128, April 2, 1940 (642a-12).

The county road having been constructed, the expense of maintaining it falls upon the township through which it passes. 1940 OAG 131, Nov. 2, 1940 (377b).

Where a town board replaces a culvert 14 feet wide by a cement culvert 48 inches in diameter, the members of the board are not personally liable for damages to surrounding property caused by insufficient drainage, but the town may be liable. OAG July 19, 1930.

Where a county board has proposed and designated a county aid road and the voters of the town voted the amount required by them, the county must proceed with the project. OAG May 11, 1931.

Side road in an abandoned village is a town or county road and the town may move the fence thereon. OAG April 28, 1933. Towns may not maintain or light private lanes. OAG Sept. 1, 1944 (434a-6).

Town boards regulate town roads, and as an incident to such maintenance may erect detour barriers to point to a temporary route. OAG Aug. 4, 1944 (379c-13).

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160.10 TOWN CLERKS TO REPORT MILES OF HIGHWAY.

HISTORY. 1931 c. 131 s. 1; M. Supp. s. 2552-1.

160.11 COUNTY AUDITOR TO REPORT TO COMMISSIONER OF HIGHWAYS.

HISTORY. 1931 c. 131 s. 2; M. Supp. s. 2552-2.

160.12 TRUNK HIGHWAYS SINKING FUND.

HISTORY. 1921 c. 323 s. 15; 1923 c. 439 s. 3½; G.S. 1923 s. 2556; M.S. 1927 s. 2556.

160.13 TEMPORARY LOANS TO TRUNK HIGHWAY FUND BY STATE TREASURER.

HISTORY. 1923 c. 339 s. 1; G.S. 1923 s. 2559-1, M.S. 1927 s. 2559.1.

160.14 DUTIES OF COMMISSIONER OF HIGHWAYS.

HISTORY. 1923 c. 339 s. 2; G.S. 1923 s. 2559-2; M.S. 1927 s. 2559-2.

160.15 SECTION LINE ROADS.

HISTORY. 1921 c. 323 s. 46; G.S. 1923 s. 2586; M.S. 1927 s. 2586.

The county board has power to establish roads in unorganized or dissolved towns and where the road is along section lines the organization will be in accordance with the provisions of section 160.15. In the event such roads are not established along section lines, the procedure is in accordance with section 162.21. 1936 OAG 242, Dec. 20, 1935 (377b-10d).

The fact that the road when laid out was not maintained exactly on the section line did not prevent constructing of road and without the payment of damages to abutting owners. OAG July 15, 1938 (377b-10d).

160.16 APPEAL.

HISTORY. 1873 c. 5 ss. 62, 63; 1876 c. 27 s. 1; G.S. 1878 c. 13 ss. 62, 63; 1881 c. 23 s. 1; 1881 c. 26 s. 1; 1889 c. 175 ss. 6 to 8; G.S. 1894 ss. 1817 to 1819, 1860, 1861; 1897 c. 199 ss. 14, 15; R.L. 1905 ss. 1187 to 1190, 1193; 1913 c. 235 ss. 61 to 64; G.S. 1913 ss. 2548 to 2551; 1921 c. 323 s. 48; G.S. 1923 s. 2588; M.S. 1927 s. 2588.

Where a notice of appeal from an order laying out a town road is handed to the town clerk outside his home office without stating the purpose and without asking that it be filed, and he in fact does not file it nor place it among the official papers in his office, the notice is not filed within the meaning of the statute. Klein v Town of Turtle Lake, 154 M 521, 192 NW 121.

An order dismissing an appeal to the district court for jurisdictional defects from an order establishing a cartway in township highway proceedings, is appealable; such appeal being dismissing, and there being no determination of the merits of the controversy, there is no basis for motion for new trial, and when such motion is made no appeal lies from the order denying it. Appeal of Mary Seward, 156 M 229, 194 NW 378.

When proceedings are initiated to acquire land for a county road and the road is established and damages awarded pursuant to section 162.21, and no appeal is taken, the public has acquired a right to the land and the landowner can no longer be denied the compensation warranted. This even though the land is not physically appropriated or the road constructed or opened for travel. McFarland v Erskine, 165 M 303, 206 NW 447.

The question whether a public highway should be vacated is legislative, and the determination of the local governing body cannot be disturbed unless its act is shown to be arbitrary, oppressive or fraudulent. Rolf v Town of Hancock, 167 M 187, 208 NW 757.

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The evidence justified the trial court in reversing the order of the town board in refusing to establish a cartway. Town boards are required to afford egress by cartway to a public road where practicable, and when sought under provisions of the statute. *Wasson v Towns of South Side*, 185 M 111, 239 NW 913.

The amount of damages to the farm as a whole caused by laying out a cartway is determined as of the time of the trial and not as of the time when the town board made its award. *Bruns v Town of Nicollet*, 186 M 259, 243 NW 74.

It may have been error to permit plaintiff to show amount of taxes paid, but as the point was not assigned as ground for new trial it cannot be raised on appeal. *Underwood v Town of Empire*, 217 M 386, 14 NW(2d) 459.

Pending determination of an appeal, a town board should not proceed with construction of a cartway. 1934 OAG 450, Aug. 13, 1934 (377b-10d).

Upon dissolution of a township pursuant to provisions of the statute, such dissolved township has the same status as a township which has never been organized. 1936 OAG 242, Dec. 20, 1935 (377b-10d).

Where a road has been established and the landowner affected has appealed to the district court from the award of damages only, the legislature has put county boards in one class and town roads in another, and described different matters of procedure. The county board may proceed with the construction of the road in spite of the appeal, but the town board must issue and deposit with the town clerk orders equal to the damages assessed for each individual, otherwise construction of road or cartway is stayed. 1936 OAG 246, Oct. 9, 1935 (377b-10a).

160.17 ESTABLISHED ROADS.

HISTORY. 1873 c. 5 s. 64; G.S. 1878 c. 13 s. 64; G.S. 1894 s. 1862; R.L. 1905 s. 1199; 1913 c. 235 s. 8; G.S. 1913 s. 2495; 1921 c. 323 s. 49; G.S. 1923 s. 2589; M.S. 1927 s. 2589.

Twenty-five years ago an owner petitioned the town board for a cartway over the lands of another and subsequently the petitioner acquired the lands over which the cartway was built. Inasmuch as this cartway is a public road, it will be necessary that it be vacated by the town board in accordance with the statutes before the owner of the land may obstruct it in any way. 1936 OAG 225, June 7, 1935 (379c-1).

160.18 TRAILS AND PORTAGES DEDICATED BY PUBLIC USER.

HISTORY. 1923 c. 115 s. 1; G.S. 1923 s. 2585-2; M.S. 1927 s. 2585-2.

160.19 DEDICATION BY USER.

HISTORY. 1873 c. 5 s. 47; 1877 c. 50 s. 1; 1879 c. 51 s. 1; G.S. 1878 c. 13 s. 47; G.S. 1894 s. 1832; R.L. 1905 s. 1197; 1913 c. 235 s. 76; G.S. 1913 s. 2563; 1921 c. 323 s. 50; G.S. 1923 s. 2590; M.S. 1927 s. 2590.

The evidence sustained the findings that a road by prescription had been established on the boundary line between the farms of the parties to this action by their joint use thereof during a period of 50 years. The road became appurtenant to each farm and every part thereof. *Sorkil v Strom*, 156 M 155, 194 NW 333.

To constitute a common law dedication of a roadway there must be a surrender by the owner to public use and an acceptance by the public. This may be expressed or implied as a fact from the circumstances. *Jungles v Schramel*, 158 M 93, 197 NW 99.

To keep it in repair and working on a road for six years together with user in order to establish dedication to the public, must be done under the authority and at the expense of government functioning through a proper agency. *Whitely v Strickler*, 159 M 145, 198 NW 420; *Town of Wells v Sullivan*, 125 M 353, 147 NW 244.

The road in question had existed for more than 50 years and was, therefore, a public road by common law dedication. There had been no abandonment of the

road and no adverse acquisition by adverse possession. *Carpenter v Gantzer*, 164 M 105, 205 NW 550; *Hopkins v Dahl*, 183 M 393, 236 NW 706.

Common law dedication of a roadway is established by proof of long continued public use under such circumstances that the knowledge or consent of the owners may be presumed. *Mettalek v Rasmussen*, 184 M 260, 238 NW 478.

A stipulation of facts that public use of a certain alleyway had been open and continuous for more than 15 years afforded the trier of fact ample basis for concluding that the owner's acquiescence to the public use had been proved and that therefor the intention to dedicate the alley to the public had been established. *Dickinson v Ruble*, 211 M 373, 1 NW(2d) 373.

Short of the six-year period fixed by statute, neither the public nor the defendant would have any right to use the 1.8 acres being a narrow worthless strip along the right of way, but sufficient to block the owners of the land in question from a four rod road. *Friede v Pool*, 217 M 338, 14 NW(2d) 454.

For 15 years a cartway one rod wide was established. After it had been kept in repair and worked for more than six years, a petition was filed asking for a cartway two rods wide over the route of the original cartway. Board voted to establish such cartway, but never filed its order. Legal cartway is one rod wide. The two rod cartway was not established by user, nor by work upon it, nor by a completed dedication, 1934 OAG 214, Sept 28, 1934 (379c-1).

This section applies to streets in incorporated municipalities and while it does not require that all streets be four rods in width, it will apply in any case in which the street is actually open, used and kept in repair for six continuous years to this width, regardless of any plat which may have been made. 1934 OAG 489, Dec. 5, 1934 (396c-4).

For 15 years a town road had been in constant use between the town of Grass Lake in Kanabec county and the town of Royalton in Pine county, said road being on the boundary line between said counties. The road having been used and kept in repair and worked for six years continuously as a public highway, even though such road was not established pursuant to the provision of section 162.20, it may be considered a legally established highway by user under section 160.19. 1938 OAG 267, Feb. 17, 1938 (377b-10d).

A road constructed and maintained by a town within the limits of a village became established by user irrespective of the right of the town to construct and maintain the road. OAG March 22, 1932.

A town to acquire title of a right of way must do so in the manner provided by statute and not by outright purchase and deed. OAG April 14, 1932.

When a road is established by user or common law dedication, its width in absence of a statute is measured by the user. OAG Aug. 26, 1935 (377a-4).

A stipulation of facts that the public use of a certain alleyway had been open and continuous for more than 15 years afforded the trier of fact ample basis for concluding that the owner's acquiescence in the public use had been proved, and that therefor the intention to dedicate the alleyway was established. *Dickinson v Ruble*, 211 M 373, 1 NW(2) 373.

160.20 USE OF RAILROAD RIGHT OF WAY.

HISTORY. 1891 c. 21 s. 1; G.S. 1894 s. 1880; R.L. 1905 s. 1198; 1913 c. 235 s. 77; G.S. 1913 s. 2564; 1921 c. 323 s. 51; G.S. 1923 s. 2591; M.S. 1927 s. 2591.

160.21 ALTERATION OF ROAD.

HISTORY. 1903 c. 96; R.L. 1905 s. 1170; 1913 c. 235 s. 78; G.S. 1913 s. 2565; 1921 c. 323 s. 52; G.S. 1923 s. 2592; M.S. 1927 s. 2592.

The petition was for the alteration of an existing county road by laying out between two given points a new road thereby straightening and shortening the existing road established in 1854. The county board had jurisdiction, although part of the new road was contained in one town. The order establishing the alteration ipso facto vacates the old road after the lapse of two years. *Nelson v County Board*, 154 M 358, 191 NW 913.

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The present rule did not become a part of our law until the passage of Laws 1903, Chapter 96. This road was changed and shortened in 1889. Consequently, there was no vacation of the abandoned portion. *Whitely v Strickler*, 159 M 145, 198 NW 420.

When a permanent trunk highway is located by the highway commissioner, the old road along the general location is not thereby vacated but reverts to the control of the county or town board, as the case may be. *State ex rel v Lambert*, 171 M 369, 214 NW 653.

It was held that the plan for the improvement of a state aid road contemplated in condemnation proceedings under section 160.44 did not alter the general course of the state aid road, and therefor the court acquired jurisdiction under such suit. *County of Otter Tail v Nelson*, 187 M 277, 245 NW 427.

In changing a highway the board may retain a portion of the old road which the petition asked to have changed and may use reasonable discretion in varying the proposed route. OAG Feb. 6, 1930.

It was largely a matter of discretion of the town board as to whether it should improve a town road. If the town has funds and the road needs improvement, the court may order such alteration. 1936 OAG 249, April 27, 1936 (377b-10h).

The right of the public to use the old course of the road, between the two termini of the new part, ceases with the expiration of two years from the date of the order granting the petition for the new road. At the end of the two-year period the rights of the landowner of the fee come into being again. 1942 OAG 145, Sept. 1, 1942 (377A-15).

160.22 REMOVAL OF FENCES.

HISTORY. 1873 c. 5 s. 41; G.S. 1878 c. 13 s. 41; G.S. 1894 s. 1823; R.L. 1905 s. 1186; 1913 c. 235 s. 70; G.S. 1913 s. 2557; 1917 c. 119 s. 23; 1919 c. 307 s. 1; 1921 c. 323 s. 54; G.S. 1923 s. 2594; M.S. 1927 s. 2594.

160.23 WARNING SIGNS BY CONTRACTORS.

HISTORY. 1921 c. 323 s. 57; 1923 c. 499 s. 12; G.S. 1923 s. 2597; M.S. 1927 s. 2597.

160.24 SIDE ROADS.

HISTORY. 1874 c. 58 s. 1; G.S. 1878 c. 13 s. 94; G.S. 1894 s. 1915; R.L. 1905 s. 1242; 1913 c. 235 s. 82; G.S. 1913 s. 2569; 1921 c. 323 s. 58; G.S. 1923 s. 2598; M.S. 1927 s. 2598.

160.25 DETOURS.

HISTORY. 1921 c. 323 s. 59; G.S. 1923 s. 2599; M.S. 1927 s. 2599.

A detour, when designated and marked as such, becomes during the time it is being used a temporary trunk highway, and as such the commissioner of highways may erect any and all signs which are necessary for the control of traffic. This includes "stop" signs. 1936 OAG 234, Nov. 21, 1935 (229a-10).

160.26 DRAINAGE OF ROADS.

HISTORY. 1874 c. 57 ss. 1 to 8; G.S. 1878 c. 13 ss. 101 to 104, 106 to 108; G.S. 1894 ss. 1907 to 1910, 1912 to 1914; R.L. 1905 ss. 1214 to 1220; 1913 c. 235 s. 59; G.S. 1913 s. 2546; 1915 c. 116 ss. 11, 12; 1917 c. 259 ss. 2 to 4; 1919 c. 200 ss. 1, 2; 1921 c. 323 s. 60; 1923 c. 439 ss. 9, 10; G.S. 1923 s. 2600; M.S. 1927 s. 2600.

The commissioner of highways, and not the court, has the agency to determine what land is necessary for the right of way of trunk highway. The only instance in which the court and not the commissioner is to determine whether a public use is involved is when it is sought to drain land for the improvement or benefit of trunk highway. *State ex rel v Voll*, 155 M 72, 192 NW 188.

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Towns in the improvement and maintenance of public highways are without authority sufficient to change or interfere with the operation of duly established drainage systems. *Felepe v Towns*, 174 M 317, 219 NW 158.

Decision as to how much or what portion of the property is necessary to be taken, or subjected to an easement for drainage purposes, is a question for the commissioner when laying out a highway. An appeal may be taken. *State ex rel v Werder*, 200 M 148, 273 NW 714.

In condemnation of flowage rights by the United States affecting township roads, the township is entitled to compensation for its right to maintain roads at natural level of lake notwithstanding levels had theretofore not been maintained at higher levels. The township was entitled to compensation for increased burden of maintaining roads at increased lake levels pursuant to treaties and statutes. *U. S. v Wheeler*, 66 F(2d) 977.

Proceedings for the establishment of ditches must be in accordance with statute. Under the statute it must be proven that such ditch will accomplish a public purpose. 1936 OAG 25, Dec. 13, 1935 (602e).

Town road drainage ditches may be maintained over lands of private owners. OAG Dec. 3, 1936, (377b-10c).

160.27 SEEDING ALONG HIGHWAY.

HISTORY. 1879 c. 97 s. 1; G.S. 1878 Vol. 2, (1888 Supp.) c. 13 s. 65a; G.S. 1894 s. 1865; 1895 c. 59; R.L. 1905 s. 1201; 1913 c. 235 s. 71; G.S. 1913 s. 2558; 1919 c. 307 s. 2; 1921 c. 323 s. 68; G.S. 1923 s. 2608; M.S. 1927 s. 2608.

In estimating damage due to alteration of the road, it must be remembered that the statute gives the owner the privilege of seeding to grass any road up to one rod from the center, provided it can be done without interference with the travel on the road. *Nelson v County Board*, 154 M 362, 191 NW 913.

In order to recover damages based upon an obstruction, the injury to the plaintiff must be based upon something other than circumstances wherein the general public is affected but cannot sue. *Erspamer v Oliver Iron Mining Co.* 179 M 475, 229 NW 583.

160.28 HEDGES AND TREES.

HISTORY. 1913 c. 235 s. 73; G.S. 1913 s. 2560; 1915 c. 116 s. 19; 1917 c. 119 s. 24; 1919 c. 307 s. 3; 1921 c. 323 s. 69; G.S. 1923 s. 2609; M.S. 1927 s. 2609; 1929 c. 329; 1931 c. 153; Ex. 1933 c. 19; M. Supp. s. 2609.

A member of the town board directed a workman to remove brush growing along the sides of a town road, and the board ratified the unauthorized employment by auditing, allowing and paying the bill of the workmen. The industrial commission was justified in finding that the relation between employer and employee existed. *Reed v Town of Monticello*, 164 M 358, 205 NW 258.

The power given to the town board to determine upon necessity of cutting down hedges and trees within the limits of a highway, is discretionary; and if once its fair judgment is exercised, there is no remedy. Its discretion cannot be controlled by mandamus. Mandamus will lie to set the discretion of the court in motion, but the court may only act where the action of the board was arbitrary or capricious. *Powell v Town of Carlos*, 177 M 372, 225 NW 296; *Wagner v Town of Carlos*, 182 M 571, 235 NW 27.

Determination of the question as to what precautionary device is necessary on the highway must rest with the commissioner of highways; and an abutting landowner has no right to construct or maintain such safety device without official approval. The supervision by the highway commissioner is not limited to the traveled portion only, but extends to the entire right of way. *Otten v Big Lake Ice Co.* 198 M 356, 270 NW 133.

Telephone companies and other public service corporations authorized to use public roads in constructing their lines, may trim and cut trees up to the property line, provided the work is done in such manner as not to injure the trees. The rights

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of the abutting landowner must also be preserved. 1940 OAG 137, April 4, 1939, (98a-28).

Laws 1941, Chapter 246, relating to removal of weeds at expense of abutting property owners is a valid exercise of police power. 1942 OAG 146, Nov. 12, 1941 (322-G).

160.29 TUNNELS UNDER ROADS.

HISTORY. 1903 c. 146; R.L. 1905 s. 1207; 1911 c. 359 s. 1; 1913 c. 235 s. 74; G.S. 1913 s. 2561; 1921 c. 323 s. 70; G.S. 1923 s. 2610; M.S. 1927 s. 2610; 1931 c. 147 s. 1; M. Supp. s. 2610.

Rulings of the attorney general relative to cattle passes under highway. OAG May 28, 1929; July 2, 1935 (377b-10d); June 8, 1937 (377a-2).

Where the bridges or culverts in question are not on public roads, if the landowners desire additional construction or repair, they must pay the expense unless the town or county were awarded damages by viewers for the construction of private bridges. If such an award is made, the municipalities will have to expend the moneys collected therefor. 1938 OAG 153, July 30, 1937 (125a-41).

It is within the discretion of the county board to distribute to the various towns in the county the remainder of the money left after complying with the condition of Laws 1937, Chapter 366, Section 1. 1938 OAG 262, Dec. 27, 1937 (377b-10h).

The county board accepted a plat of land subject, however, to the condition that the original owners should construct all roads and drainage on the plat. A township road runs by one side of the plat, so that the plat now extends to the center of the township road. The terms of the dedication would not affect the duty of the town as far as the boundary town road is concerned. The town is required to install one substantial culvert for each abutting owner where, by reason of grading, such culvert is rendered necessary for suitable approach upon such highway from a driveway from the abutting lands. 1940 OAG 132, Oct. 14, 1939(377a-3).

160.30 ROADS ON MINERAL LANDS.

HISTORY. 1903 c. 302; R.L. 1905 s. 1208; 1913 c. 235 s. 75; G.S. 1913 s. 2562; 1917 c. 119 s. 25; 1921 c. 323 s. 71; G.S. 1923 s. 2611; M.S. 1927 s. 2611.

160.31 BOARDS TO CONSTRUCT CULVERTS.

HISTORY. 1913 c. 235 s. 80; G.S. 1913 s. 2567; 1915 c. 116 s. 15; 1921 c. 323 s. 72; G.S. 1923 s. 2612; M.S. 1927 s. 2612.

Under the facts stated in the opinion the duty of installing culverts or bridges is upon the town board for town roads, and upon the county board for county roads. 1938 OAG 260, Aug. 24, 1937 (148a-8).

160.32 ACQUISITION OF LANDS CONTAINING ROAD BUILDING MATERIALS.

HISTORY. 1885 c. 273 s. 1; G.S. 1878 Vol. 2, (1888 Supp.) c. 13 s. 75a; G.S. 1894 s. 1881; R.L. 1905 s. 1213; 1913 c. 235 s. 81; G.S. 1913 s. 2568; 1917 c. 119 s. 26; 1921 c. 323 s. 73; G.S. 1923 s. 2613; M.S. 1927 s. 2613; 1941 c. 77; 1945 c. 59 s. 1.

Eminent domain is a sovereign right granted only by express statute. In this case the county desires to alter a certain county road, resulting in the road running behind the school house instead of in front of it. The county has authority to proceed to acquire the right of way for altering the existing roads by condemnation proceedings, this road being a state aid road. 1934 OAG 481, Aug. 8, 1933 (817n).

The county shall not purchase any one tract of land for gravel purposes exceeding 20 acres in area, at any one time. If the county needs more than 20 acres for its immediate use or at some time reasonably near, it may purchase more than one gravel pit not exceeding 20 acres. It is not necessary to advertise for bids. 1938 OAG 153, July 30, 1937 (125a-41).

The tract of land forfeited to the state for the nonpayment of taxes, and being sold under the provisions of the statutes, may be purchased by the county board "for the gravel it contains for road-building and maintenance." 1938 OAG 407, March 24, 1938 (425c-10).

The county board may not purchase or condemn property for a gravel pit if the land be outside of the county boundaries. OAG Feb. 25, 1939 (817h).

160.33 SPECIAL RAILROAD RATES FOR ROAD MATERIALS.

HISTORY. 1921 c. 323 s. 74; G.S. 1923 s. 2614; M.S. 1927 s. 2614.

Long-and-short-haul statute; zones and rate fixing; application to this section. *Hallett v Foley Bros.* 191 M 340, 254 NW 435.

160.34 OBSTRUCTION OF OR DAMAGE TO HIGHWAYS.

HISTORY. 1913 c. 235 s. 89; G.S. 1913 s. 2576; 1915 c. 116 s. 17; 1921 c. 323 s. 75; 1923 c. 439 s. 11; G.S. 1923 s. 2615; M.S. 1927 s. 2615.

The commissioner of highways has supervision and control of the state trunk highway as well within as without the limits of the cities and villages through which it extends, and a private party may not place "stop and go" signs upon the trunk highway without a permit to do so from the commissioner. *Automatic Signal Co. v Babcock*, 166 M 416, 208 NW 132.

A defendant by building a driveway from the street across the sidewalk and into his lot, wrongfully obstructed the sidewalk. Such obstruction constituted a nuisance and was subject to abatement by injunction. *Marshall v Cook*, 169 M 248, 211 NW 328.

Where a party owns the fee on both sides of the road, he may use the highway in such manner as convenience and necessity may require, unless such use unreasonably interferes with public travel thereon. The presence of a properly constructed and maintained logging road across the highway is not incompatible with the travel on the highway. *Kinghurst v International Lbr.* 174 M 305, 205 NW 172.

In an action to recover damages occasioned by plaintiff's tripping on a doormat on a sidewalk in front of defendant's property, it was proper to receive in evidence ordinances of the city of St. Paul making it unlawful to obstruct or encumber sidewalk in any manner as described. *McCartney v O'Neil*, 181 M 555, 233 NW 465.

Plaintiffs in an automobile on a level road collided with an unguarded concrete mixer placed crosswise of the road to guard a newly constructed culvert. There were no lights, or warning signs. The evidence is sufficient to sustain findings that the defendant was negligent. *Wicker v. North States Const. Co.* 183 M 79, 235 NW 630.

In an action by the state to enjoin the defendants from removing rock from an embankment along a state trunk highway, the state's ownership of an easement for highway purposes is a sufficient title to support the action. *State v Nick Nelson*, 189 M 87, 248 NW 751.

Where the driver of an automobile collides with an obstruction upon a highway because atmospheric or other conditions interfere with his ability to see it in time to avoid the collision, the presence of the obstruction upon the highway is a material element or substantial factor in the happening of a resulting collision with it and consequently a proximate cause of any resulting injury. *Flaherty v Great Northern*, 218 M 488, 16 NW(2d) 553.

Where a township piled brush in large quantities upon the right of way and thereby snow accumulated and blocked a driveway to a farm house, the township may be compelled to move the brush and snow. OAG Jan. 24, 1934.

A private drainage system emptying into a ditch along a town road must not obstruct public highway or ditch. OAG Aug. 13, 1938 (602h).

"State rural highways" in establishing the duty of county boards to remove snow, means county aid roads, and does not refer to town cartways or roads, nor to state trunk highways. Town may contract with the county for snow removal,

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but has no authority to contribute to removal machinery. 1942 OAG 144, May 29, 1941 (377A-11); OAG March 14, 1945 (377a-11).

160.35 MOVING BUILDINGS OVER ROADS.

HISTORY. 1921 c. 323 s. 76; G.S. 1923 s. 2616; M.S. 1927 s. 2616.

Those engaged in transmitting high voltage electricity are required to exercise a degree of care to guard against injury commensurate with danger to be apprehended, but are not insurers against injury. Where defendant maintained an un-insulated power line across a spur track at a height of 25½ feet, the power company would not be liable for injury to an employee who climbed to the top of a roadbuilding machine and came in contact with the power line. *Buntin v Eastern Power Co.* 178 M 604, 228 NW 334.

Where the village ordinance required a substantial sum in excess of the deposit required by the state, and in order to move a building the plaintiff paid the larger sum under protest, the village was guilty of an exaction and the plaintiff may recover the over-charge as for money had and received. *Moore v Village of Gilbert*, 207 M 75, 289 NW 837.

160.36 CERTAIN VILLAGES MAY OIL STATE HIGHWAYS.

HISTORY. 1921 c. 75 s. 1; G.S. 1923 s. 2616-1; M.S. 1927 s. 2616-1.

160.37 REMOVAL OF SNOW.

HISTORY. 1913 c. 235 s. 90; G.S. 1913 s. 2577; 1921 c. 323 s. 77; G.S. 1923 s. 2617; M.S. 1927 s. 2617; 1941 c. 276.

If a township cuts and piles brush on the right of way and snow accumulates in a private driveway because of said piled brush, it is the duty of the town board, so far as funds are available, to remove all brush from the right of way and the snow from the driveway. 1934 OAG 484, Jan. 24, 1934 (377a-5).

The county commissioners cannot make levy against any township for removal of snow from township roads, but the township may enter into a contract with the county for snow removal. OAG July 14, 1939 (377a-11).

160.38 MARKING OF TRAILS BY ASSOCIATIONS.

HISTORY. 1921 c. 323 s. 78; G.S. 1923 s. 2618; M.S. 1927 s. 2618.

160.39 CONTRACTS FOR ROADS.

HISTORY. 1921 c. 323 s. 55; G.S. 1923 s. 2595 sbd. 2; M.S. 1927 s. 2595 sbd. 2.

In construing a road construction contract where the definition of the material had been divided into three classes, the court was amply justified in finding that where the ground was so infested with boulders that it was impracticable to plow it, the whole mass so filled with boulders could be classed as "loose rock." *Foley v County of St. Louis*, 158 M 320, 197 NW 763.

The evidence justified the court in finding that the representation on the survey map, together with representations made by the county engineers, induced respondent to make the bid and enter into the contract. The survey map and the representations were untrue. This occurred through actual mistake of the facts, and warranted granting a rescission of the contract. *Stanton v Morris Construction Co.* 159 M 380, 199 NW 104.

Where the contract price for building a bridge exceeded \$500.00 and the plans and specifications were not on file with the town clerk, and no bond was filed, no recovery could be had upon the contract. In this instance there can be no recovery for the reasonable value of the labor and material furnished because there was no evidence that the town received any benefit, the bridge having collapsed before it was finished. *Lundin v Town of Butternut Valley*, 172 M 259, 214 NW 888.

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An emergency will not warrant a county in dispensing with the statutory requirement of three weeks publication. OAG June 19, 1931.

Where there is one conduit made up of two separate culverts, the county may not enter into two contracts and thus avoid the necessity of advertising: OAG June 4, 1932.

If the work is done by day labor and the cost and material does not exceed \$500.00, the county need not advertise for bids. OAG May 7, 1937 (125a-17).

160.40 FINAL PAYMENT ON CONTRACTS.

HISTORY. 1913 c. 235 s. 86; G.S. 1913 s. 2573; 1915 c. 116 s. 16; 1921 c. 323 s. 56; G.S. 1923 s. 2596; M.S. 1927 s. 2596.

The determination of the industrial commission that the petitioner's husband was an employe of the town of Otisco, and that the petitioner was entitled to compensation for his death under the workmen's compensation law, has ample support in evidence. *Dahnert v Town of Otisco*, 196 M 478, 265 NW 291.

160.41 TRUNK HIGHWAY IN CITIES AND VILLAGES; CONSTRUCTION MAINTENANCE.

HISTORY. 1921 c. 323 s. 16; G.S. 1923 s. 2557; M.S. 1927 s. 2557; 1933 c. 440 s. 4; 1939 s. 225; M. Supp. s. 2557.

A village which approves the plans by the state highway commissioner of a trunk highway upon a village street and authorizes a change of grade, is liable for damage caused abutting property by such change. *McGuire v Village of Crosby*, 178 M 144, 226 NW 398; *Foss v City of Montevideo*, 178 M 430, 227 NW 357.

Where the city of Minneapolis maintains a bridge with a 17-foot driveway, and on each side thereof a side wall seven feet above the floor of the bridge, and on the outer edge a three and a half foot iron railing, the city has provided safety for ordinary use of the bridge, and in this instance there was an extraordinary and unanticipated emergency, and the city is not liable. *Tracy v City of Minneapolis*, 185 M 380, 241 NW 390.

The village may construct curbing and gutters for trunk highway and pay for the same with certificates of indebtedness, but if it issues bonds there must be a vote by the electors. OAG Aug. 29, 1935 (476a-4).

A village which does not itself create a dangerous condition, is not liable for any injury resulting from failure to properly maintain a trunk highway. OAG Jan. 27, 1936 (844b-6).

The city may pay for its share of improvement of trunk highway out of any available funds. OAG Feb. 5, 1937 (59a-22).

The city, having entered into a contract with the highway department for construction of a street, may pay for this work by a warrant without any additional resolutions. OAG Oct. 23, 1937 (63b-19).

Procedure outlined for cooperation between a city and the state for improvement of a road or street forming part of a trunk highway. 1942 OAG No. 181, July 15, 1941 (396C-17).

Governmental responsibility for torts. 26 MLR 319.

160.42 STATE ROAD AND BRIDGE FUND; APPORTIONMENT.

HISTORY. 1921 c. 323 s. 18; G.S. 1923 s. 2559; M.S. 1927 s. 2559; 1929 c. 22; 1933 c. 142; M. Supp. s. 2559; 1941 c. 161.

Where Rice county had a large accumulated credit originally allotted but not used for construction purposes, it is wholly within the discretion of the county commissioners, with the approval of the commissioner of highways, as to what portion of the state aid may be used for maintenance. In this case the entire amount may be transferred from the construction to the maintenance fund, provided the county board so resolved and their action is approved by the commissioner. 1934 OAG 480, May 6, 1933 (229j-4).

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The county board may draw against the one mill tax allotment on account of maintenance expense on county aid roads, and they should report the expenditure in the same manner as if expended on state aid roads. In doing so they should follow the procedure outlined in section 160.47. 1934 OAG 218, June 29, 1933 (380b-8).

The county board has a right to use up 60 per cent of the one mill road tax for county aid roads, together with all of the gasoline tax. There is no provision which compels them to draw first from the gasoline tax fund. 1934 OAG 218, June 29, 1933 (380b-8).

Gasoline tax funds are to be used on county aid roads. The use of the gasoline tax funds lies entirely within the discretion of the county commissioners. 1934 OAG 793, April 4, 1934 (334d).

The road and bridge fund may not be used by the county to purchase a garage in which to store the county trucks. OAG June 5, 1939 (125a-40).

Where a county has no suitable space available and is unable to rent suitable space for protection of its road machinery, a reasonable amount of the gasoline tax money may be used to construct a shelter. OAG June 12, 1939 (107b-16).

Governmental responsibility for torts. 26 MLR 494.

160.43 DESIGNATION OF STATE AID ROADS; REVOCATION.

HISTORY. 1913 c. 235 s. 18; G.S. 1913 s. 2505; 1915 c. 116 s. 5; 1917 c. 119 s. 3; 1919 c. 263 s. 3; 1921 c. 323 s. 19; G.S. 1923 s. 2560; M.S. 1927 s. 2560.

The county board had jurisdiction covering the alteration of an existing county road to be laid out between two given points, thereby strengthening and shortening the course of the old road and this, although part of the new road, was only in one town. *Nelson v County Board*, 154 M 358, 191 NW 913.

Laws 1929, Chapter 365, which authorizes a county within the specified class to expend funds on roads within a city of the fourth class lying outside the county, is constitutional. *Tousley v Heffelfinger*, 182 M 447, 234 NW 673.

The evidence does not show the road involved in this proceeding to have been designated a state aid road under section 160.43 so as to be immune to town board action under section 163.13. *Peterson v Board of Supervisors*, 199 M 455, 272 NW 391.

Where a city paves a state aid street running through it, the county may reimburse the city out of its special state aid funds. OAG April 16, 1931.

Where there is an alteration of a state aid road over vacated portions, such portions return to their original status as a county aid road, unless there is a declaration otherwise by the county board. OAG Feb. 14, 1933.

The county board may designate state aid parkways within the limits of cities of the fourth class. OAG March 5, 1935 (379c-11).

The county rather than the state must pay for improvement of state aid roads running through cities of the fourth class, unless there be an agreement to the contrary. OAG Aug. 8, 1938 (377b-8).

Governmental responsibility for torts. 26 MLR 494.

160.432 STREETS IN CERTAIN CITIES OF THIRD CLASS DESIGNATED AS AID ROADS.

HISTORY. 1945 c. 218.

160.44 COUNTY BOARDS MAY ACQUIRE AN EASEMENT IN CERTAIN CASES.

HISTORY. 1925 c. 155; M. Supp. s. 2560-1.

The plan for the improvement of a certain state aid road contemplated in condemnation proceedings under this section did not alter the general course of the state aid road, and therefore the court acquired jurisdiction. *County of Otter Tail v Nelson*, 187 M 277, 245 NW 427.

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Where an abutting landowner grants an easement, the board may pay for same by building a driveway. OAG May 29, 1939 (377b-2).

160.45 DESIGNATION OF ROAD ON COUNTY LINE AS STATE AID ROAD.

HISTORY. 1913 c. 235 s. 19; G.S. 1913 s. 2506; 1917 c. 119 s. 14; 1921 c. 323 s. 20; G.S. 1923 s. 2561; M.S. 1927 s. 2561; 1929 c. 216; M. Supp. s. 2561.

160.46 MAINTENANCE OF STATE AID ROADS.

HISTORY. 1921 c. 323 s. 21; G.S. 1923 s. 2562; M.S. 1927 s. 2562; 1943 c. 91 s. 1. Unless there is an agreement otherwise, the county and not the city, must pay for improvement of state aid road running through a city of the fourth class. 1938 OAG 263, Aug. 8, 1938 (377b-8).

Maintenance of bridges. OAG May 23, 1944 (642a-9).

160.47 PROCEDURE FOR CONSTRUCTING OR IMPROVING STATE AID ROADS.

HISTORY. 1921 c. 323 s. 22; G.S. 1923 s. 2563; M.S. 1927 s. 2563.

Where the surety obtains an equitable assignment of the principal's rights and completes the principal's obligations, the sureties right of subrogation attaches to the entire earnings of the principal. The subrogation takes effect as of the date of the suretyship. *Barrett Bros. v County of St. Louis*, 165 M 158, 206 NW 49.

When the county board draws a portion of their one-mill tax construction allotment, on county aid roads they should follow the procedure outlined in section 160.47 before they would be eligible to draw their money in accordance with the provisions of section 160.48. 1934 OAG 219, June 29, 1933 (380b-8).

In order to obtain state aid, it is not necessary to have a county engineer who is registered in this state and a graduate of an accredited university. 1934 OAG 246 March 4, 1933 (104a).

This section does not apply where the county board does the work by day labor, hiring the necessary workmen at a stipulated rate per hour. If, however, the materials purchased are in excess of \$500.00, or if the contracts for construction are in excess of \$500.00, the work may not be done under the guise of day labor without first advertising for bids. OAG Sept. 29, 1937. (707a-1).

160.48 STATE AID FOR ROADS.

HISTORY. 1921 c. 323 s. 23; G.S. 1923 s. 2564; M.S. 1927 s. 2564; 1931 c. 356; M. Supp. s. 2564.

160.49 COUNTY BOARD TO DESIGNATE STATE AID PARKWAYS.

HISTORY. Ex 1934 s. 61 s. 1; 1939 c. 357; M. Supp. s. 2564-20; 1945 c. 426.

The advisability of the establishment of state aid parkways is within the discretion of the commissioner of highways and commissioner of conservation. What constitutes a "public recreational center" is a question of fact. OAG Oct. 29, 1934 (330a-5).

The county may designate and establish state aid parkways within the limits of cities of the fourth class. OAG March 5, 1935 (379c-11).

160.50 CONSTRUCTED UNDER STATE AID ROAD LAWS.

HISTORY. Ex. 1934 c. 61 s. 2; M. Supp. s. 2564-21.

160.51 TERM "STATE AID ROAD" TO APPLY TO STATE AID PARKWAY.

HISTORY. Ex. 1934 c. 61 s. 3; M. Supp. s. 2564-22.

160.52 PORTAGE.

HISTORY. 1933 c. 424 s. 1; M. Supp. s. 2585-3.

160.53 PETITION TO ESTABLISH PORTAGE.

HISTORY. 1933 c. 424 s.-2; M. Supp. s. 2585-4.

160.54 HEARING ON PETITION.

HISTORY. 1933 c. 424 s. 3; M. Supp. s. 2585-5.

160.55 SURVEY TO BE MADE.

HISTORY. 1933 c. 424 s. 4; M. Supp. s. 2585-6.

160.56 DAMAGES.

HISTORY. 1933 c. 424 s. 5; M. Supp. s. 2585-7.

160.57 BOARDS SHALL ESTABLISH PORTAGE.

HISTORY. 1933 c. 424 s. 6; M. Supp. s. 2585-8.

160.58 DAMAGE TO BE PAID BY COUNTY.

HISTORY. 1933 c. 424 s. 7; M. Supp. s. 2585-9.

160.59 APPEAL TO DISTRICT COURT.

HISTORY. 1933 c. 424 s. 8; M. Supp. s. 2585-10.

160.60 MAY BE ALTERED OR VACATED.

HISTORY. 1933 c. 424 s. 9; M. Supp. s. 2585-11.

160.61 INTEMPERATE DRIVERS.

HISTORY. 1913 c. 235 s. 66; G.S. 1913 s. 2553; G.S. 1923 s. 2622; M.S. 1927 s. 2622.

160.62 LEAVING HORSES UNFASTENED.

HISTORY. 1913 c. 235 s. 67; G.S. 1913 s. 2554; G.S. 1923 s. 2623; M.S. 1927 s. 2623.

160.63 TRACTION ENGINE; WHISTLE.

HISTORY. 1913 c. 235 s. 68; G.S. 1913 s. 2555; G.S. 1923 s. 2624; M.S. 1927 s. 2624.

160.64 NO CITY OF SECOND CLASS TO USE FUNDS FOR ROADS OUTSIDE OF STATE; NOT LIABLE FOR FAILURE TO MAINTAIN SAME; BRIDGES EXEMPT.

HISTORY. 1921 c. 106 ss. 1 to 3; G.S. 1923 ss. 2637 to 2639; M.S. 1927 ss. 2637 to 2639.

After the county seat of Mille Lacs county was changed from Princeton to Milaca, the legislature extended this section, adding a new route. As the new route did not begin, terminate or pass through Milaca, the proposed route is not within the provisions of the state constitution, Article 16, Section 1, and the state highway commissioner cannot be compelled to select public highways in accordance with this section. *State ex rel v Babcock*, 161 M 80, 200 NW 843.

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160.65 ADDITIONAL TRUNK HIGHWAYS.

HISTORY. 1923 s. 358 s. 1; 1923 s. 427 s. 1; G.S. 1923 s. 2661, 2662-1; M.S. 1927 ss. 2661, 2662-1; 1929 c. 86; 1933 c. 440 s. 1; M. Supp. s. 2662-2½; 1943 c. 324; 1943 c. 399 s. 1; 1945 c. 249 s. 1.

160.66 FUNDS AVAILABLE FOR ADDITIONAL TRUNK HIGHWAYS.

HISTORY. 1933 c. 440 s. 2; M. Supp. s. 2662-2½a; 1943 c. 324 s. 2; 1943 c. 399 s. 2; 1945 c. 249 s. 2.

160.67 LOCATION OF ADDITIONAL TRUNK HIGHWAYS; DEVIATIONS; POWER OF COMMISSIONER OF HIGHWAYS.

HISTORY. 1933 c. 440 s. 3; M. Supp. s. 2622-2½b; 1943 c. 324 s. 3; 1943 c. 399 s. 3; 1945 s. 249 s. 3.

160.68 LAWS RELATING TO TRUNK HIGHWAY SYSTEM TO APPLY.

HISTORY. 1923 c. 358 s. 2; 1923 c. 427 s. 2; G.S. 1923 ss. 2662, 2662-2; M.S. 1927 ss. 2662, 2662-2.

160.685 CONSTRUCTION TO BEGIN ON ROUTE 212.

HISTORY. 1943 c. 324 s. 4.

160.69 "CAPITAL HIGHWAY".

HISTORY. 1927 c. 235; M.S. 1927 s. 2662-3; 1931 c. 126 s. 1; M. Supp. s. 2662-3.

160.70 "COLVILL MEMORIAL HIGHWAY".

HISTORY. 1933 c. 353; M. Supp. s. 2662-4.

160.71 "FLOYD B. OLSON MEMORIAL HIGHWAY".

HISTORY. 1937 c. 458; M. Supp. s. 2662-5.