

CHAPTER 160

GENERAL PROVISIONS RELATING TO ROADS

160.01 SCOPE OF ACT; DEFINITIONS.

The right to the establishment of a cartway petitioned for under section 163.15, subd. 2, is governed by the provisions of that section, but the proceedings to establish it should be had, except as therein provided, under the general town road law, section 163.13. Special road laws are to be construed in connection with general road laws, and where silent on the subject, general road law governs. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

Constitutional requirement of "just compensation" for private property taken for public use means that the owner must be made whole for what is taken from him. Town highways are easements, or incorporeal hereditaments, or interests in land, and are "private property" which cannot be flooded or "taken" without just compensation. *United States v Wheeler Township*, 66 F(2d) 978.

Use by a single party, no matter how extensive, of a way over the land of another, does not make a public highway, or impose upon the town board a duty to maintain it. OAG July 24, 1945 (377-a-4).

A bridge is a part of a highway. OAG Oct. 15, 1946 (50-B).

160.011 EXPERIMENTAL RESEARCH.

HISTORY. 1947 c. 552 s. 1.

160.02 WIDTH OF ROADS.

Towns may acquire lands necessary for township roads by procedure under provisions of chapter 117. OAG Sept. 5, 1946 (817-N).

160.05 HIGHWAY BRIDGE OVER RAILROAD.

It is the continuing duty of a railroad to maintain a bridge built over its tracks and the approaches thereto, and the fact that for many years the approaches were maintained at public expense or that public officials, by contract or otherwise, attempted to relieve the railroad of the duty did not excuse the company or constitute a defense to an action in damages by one injured by the negligent maintenance of the approach. *Crist v M. St. P. & S. S. M. Ry. Co.*, 162 M 1, 202 NW 57.

160.06 TRUNK HIGHWAYS.

Where a trunk highway and a railroad track intersect, the railroad and warehouse commission may require the construction of an overhead or underground crossing and divide the expense between the railroad company and the highway department; and when a highway is carried over the tracks, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside the bridge and approaches. *State v Northern Pacific*, 176 M 501, 223 NW 915.

A municipality which approves and consents to the plans of the state highway commissioner changing the grade of a street renders itself liable to an abutting owner for damages occasioned by the construction of the highway upon such grade. *Maguire v Village of Crosby*, 178 M 144, 226 NW 398; *Foss v City of Montevideo*, 178 M 430, 227 NW 357.

Article 16 of the Constitution and L. 1921, c. 323, enacted to carry the trunk highway system into effect, do not relieve the railroads from constructing and main-

taining their roadbeds crossing a trunk highway on grade as required by sections 219.08 and 219.09. Engstrom v Duluth, Missabe, 190 M 208, 251 NW 134.

160.07 STATE AID ROADS.

The town laid out the road in 1889 and maintained it until 1916 when by resolution the county commissioners declared it a part of the state road, and this action was duly approved by the state highway commission. The town lost all proprietary rights to material in bridges and culverts. Its naked title in trust for the public was by legislative enactment transferred to the county as new trustee for the public. Roseau County v Town of Hereim, 149 M 292, 183 NW 518.

The legislature has the power to direct the commissioner of highways to advertise for bids on a specification providing for certain materials. It may, for instance, require that specifications for concrete shall read as follows. "A concrete blend of natural cement and plain Portland cement in the approximate ratio of 15 per cent natural to 85 per cent Portland." OAG March 26, 1947 (229-E-2).

160.08 COUNTY ROADS.

See, Roseau County v Town of Hereim, 149 M 292, 183 NW 518.

In the establishment of a judicial highway, each county constructs the portion within its limits. In re Klossner, 156 M 440, 195 NW 284.

Towns and counties are liable in damages to property owners whose property rights are invaded when constructing roads. This is an exception to the rule that a governmental agency is not answerable for damages sustained as the result of acts of its agents in performance of governmental functions. By L. 1939, c. 420, s. 1, the state waived immunity from suit by parties damaged through improvement of state highways. Westerson v State, 207 M 412, 291 NW 900.

While a judicial road between two towns, and separating two counties, is termed a county road, it must be maintained by the towns. OAG March 19, 1945 (379C-6).

If the county discontinues the maintenance of a county road within a town, and so notifies the town board, the care of the road devolves upon the town. OAG July 2, 1945 (377-b-3).

In all counties of less than 150,000 inhabitants, all county roads are to be constructed by the several county boards, and thereafter maintained by the towns through which they pass. Under section 160.09 the county board may aid the towns in keeping the roads in repair. The county board under section 296.36 may designate county aid roads, and must maintain them. When necessary to repair a bridge on a town road, or a bridge less than ten feet long on a county road, in a town or on a town line, the duty is on the town; and mandamus will lie to compel the town to act; or the county may make the repair and charge one-half of the expense to the town. OAG Aug. 9, 1946 (642-B-3).

It is the duty of the town to maintain county roads, but the county board may appropriate money to the town for road purposes. OAG Aug. 27, 1946 (377-B-3).

A county board may declare a town road a county road, and at their discretion may maintain it; but the town through which the county road passes is charged with the duty of keeping it in repair. OAG Oct. 31, 1946 (377-B-3).

160.09 TOWN ROADS.

The duty of maintaining a cartway rests upon the town board, but a principal user of the cartway may voluntarily or by agreement assume the duty. This, however, does not release the town board of its liability. OAG Nov. 14, 1944 (377b-1).

The town is charged with the duty of keeping town or county roads in repair within the town limits, but the county in its discretion may give voluntary aid. This includes bridges. OAG June 8, 1945 (642-A-12); OAG Aug. 9, 1946 (642-B-3).

160.19 DEDICATION BY USER.

A common-law dedication consists of the landowner's intention to dedicate and acceptance thereof by the public; and intention to dedicate land as a highway may be inferred from such facts as the owner's long acquiescence in the public use of his land as a highway, from his acts in furtherance of such use, from his recognition of a need for the highway, and from his recognition of the validity of the public's claim to the highway after it was used as such. The public's acceptance may be inferred from the fact of common user by the public. *Keiter v Berge*, 219 M 374, 18 NW(2d) 35.

A dedicator of a highway cannot revoke the dedication by an attempted substitution of another highway without the consent of the public. *Keiter v Berge*, 219 M 374, 18 NW(2d) 35.

160.21 ALTERATION OF ROAD.

Highway vacation; right of non-abutting property owner to recover damages. 8 MLR 342.

160.26 DRAINAGE OF ROADS.

Town board engaged in drainage enterprise must follow provisions of the statutes strictly. No authority exists to make donations. OAG Feb. 29, 1944 (377-B-10-C).

A municipality may be liable in damages if on a factual basis the damages to stock stored in merchant's basement were proximately caused by and the result of the flooding of the street by the employee of the city water department. OAG July 17, 1946 (844-B-8).

Town board has power to construct offtake ditch to drain wet roads and to acquire easements over lands on which ditch is laid. OAG June 17, 1947 (377-B-10-c).

160.28 HEDGES AND TREES.

The title of the abutting owner extends to the center of the road and includes trees thereon of which he can be deprived only for a public purpose and by due process of law. *Town of Rost v O'Connor*, 145 M 81, 176 NW 166.

No duty rests on owner of land abutting on a county road to safeguard a user of the road against dangers from defects in trees growing on the right of way. *Zacharias v Nesbitt*, 150 M 369, 185 NW 295.

A court may not control the exercise of the discretion of a town board in determining what hedges and trees should be cut down within the road limits of a town highway. *Powell v Town of Carlos*, 177 M 372, 225 NW 296; *Wagner v Town of Carlos*, 182 M 571, 235 NW 27.

160.29 TUNNELS UNDER ROADS.

A property owner may have a cattle pass under any town road, but at his own expense. OAG Oct. 29, 1945 (377-a-2).

160.30 ROADS ON MINERAL LANDS.

Section 106.30 establishes deadline of cost of construction of a ditch at 130 per cent of the engineer's estimate. After county ditch is ordered established, and time for appeal has expired, the order cannot be amended or reopened. OAG Sept. 27, 1946 (602-E).

160.31 BOARDS TO CONSTRUCT CULVERTS.

If the one culvert giving access to the farm is insufficient to permit the owner to reach all parts thereof, the board in its discretion may provide an additional culvert. OAG May 31, 1946 (377-a-3).

160.34 OBSTRUCTION OF OR DAMAGE TO HIGHWAYS.

Conceding, without deciding, that prior to passage of L. 1899, c. 43, the county commissioners had no authority to set apart a portion of a public highway for a bicycle path for the exclusive use of bicycles, that chapter by implication ratified the act of the commissioners in doing so, as well as by implication authorizing the commissioners thereafter to set apart a portion of the highway for such exclusive use. *State v Bradford*, 78 M 387, 81 NW 202.

A private action may be maintained to redress injuries caused by a public nuisance, where the complaining party has thereby suffered some special damage not common to the general public, but in such cases only. A common nuisance in a public highway or navigable stream of water, which obstructs, interrupts, or prevents the continuance of a lawful business occupation existing and being conducted at the time of and before the creation of the nuisance, may be proceeded against by private action by the person who is thus interfered with in his vested rights. *Viebahn v Board*, 96 M 276, 104 NW 1089.

In an action for personal injuries suffered by falling in a stormshed entry to defendant's building, exclusion of Minneapolis building ordinance, section 2901, forbidding obstructions in the street, was proper, because the shed's position had no causal connection with the injury to plaintiff. *Hahn v Diamond Iron Works*, 221 M 33, 20 NW(2d) 704.

Sections 160.34, 219.383, and 616.01, are in pari materia and should be construed together; and there can be no violation of section 160.34 and section 616.01 by stopping a train across a public highway unless the stop exceeds ten minutes, in violation of section 219.383; and where the ten minutes is exceeded all three statutes are violated. *Mlenek v Fleming*, 224 M —, 27 NW(2d) 800.

The use of a public street for the moving of buildings is an extraordinary use for the sole benefit of the owner, and not an ordinary use for the benefit of the public, and notwithstanding a city charter confers upon the council the right to regulate the subject, and it has exercised the right by an ordinance requiring electrical power companies at their own expense to remove or displace wires lawfully in the street when a licensed house mover permitted to move a house requests them to do so, such ordinance is invalid, as such free displacement of wires is a taking of the private property of the owners of the electricity carrying wires for the private use of another. *Edison v Blomquist*, 185 F. 615.

Interference with easements of light, air, and view; billboards on highways. 17 MLR 332.

160.37 REMOVAL OF SNOW.

The words "state rural highways" in subdivision 2 means county aid roads, and does not include town roads or cartways or state trunk highways. Under subdivision 3, the only limitation is that the county secure the actual cost of the use of the equipment. 1942 OAG 144, May 29, 1941 (377-A-11).

Towns may not furnish funds to purchase an interest, nor may they contribute in any way to the purchase of county equipment; but they may contract with the county for its use. OAG March 14, 1945 (377a-11).

160.39 CONTRACTS FOR ROADS.

Must advertise for bids where the cost of road improvement exceeds \$500. OAG Sept. 18, 1946 (707-a-7).

Towns may not enter into contract for improvement of town roads where the amount exceeds \$500 except by competitive bidding, and the contractor furnishes a bond as required by section 574.26. OAG Dec. 9, 1946 (707-a-14).

Under the provisions of L. 1947, c. 138, in counties of less than 75,000 inhabitants, there is no limitation on the power of the county board to enter into a contract for work or labor, or for the purchase of furniture and fixtures, or repair of roads, bridges, and buildings, the estimated cost of which does not exceed \$1,000;

MINNESOTA STATUTES 1947 ANNOTATIONS

399

GENERAL PROVISIONS RELATING TO ROADS 160.72

but as to counties having more than 75,000 inhabitants, or as to other municipalities, the old law is still in force. There is no implication of repeal except as L. 1947, c. 138, applies to certain counties. OAG June 18, 1947 (707-a-7).

160.41 TRUNK HIGHWAY IN CITIES AND VILLAGES; CONSTRUCTION, MAINTENANCE.

The provisions of the state highway act give to the commissioner of highways regulation and general supervision of the state trunk highway as well within as without the limits of cities and villages through which it extends; and a private party may not place a stop and go signal in or upon a trunk highway without a permit from the commissioner. *Automatic Signal Co. v Babcock*, 166 M 416, 208 NW 132.

When a village enters into a contract with the commissioner of highways for improvement of a village street, no bond is required, and sections 434.01, 434.14, and 434.17 are not applicable. OAG Aug. 15, 1946 (396-C-17).

Local improvements made under agreement with commissioner of highways may be paid out of any available funds and not by assessment of property benefited. OAG Aug. 29, 1946 (396-C-17).

Improvements made pursuant to contract with the commissioner of highways are to be paid out of funds available therefor, and not by assessing benefits. OAG Oct. 1, 1946 (396-C-17).

160.43 DESIGNATION OF STATE AID ROADS; REVOCATION.

County at its discretion may improve state aid roads within the limits of any city or village, and once they have assumed the improvement, all construction and maintenance devolves upon the county. OAG Aug. 13, 1940 (125-A-45).

160.65 ADDITIONAL TRUNK HIGHWAYS.

The legislature may enact an amendment which changes the route of a trunk highway, and the enactment of the amendment would in effect vacate the order of the commissioner of highways designating a temporary trunk highway. OAG March 26, 1947 (229-D-17).

160.72 EVERGREEN MEMORIAL DRIVE.

HISTORY. 1947 c. 419 ss. 1, 2, 3.