

CHAPTER 163

TOWN ROADS

163.01 POWER OF TOWN BOARD OVER ROADS.

Towns in the improvement and maintenance of public highways are without authority substantially to change or interfere with the operation of duly established drainage systems, and in the instant case, by reason of changes more surface waters were discharged on plaintiff's land and his crop damaged. *Felepe v Towns*, et al, 174 M 317, 219 NW 158.

It is within the discretion of the town board to determine kind of road equipment required. OAG March 12, 1943.

The repair and maintenance of bridges on town roads rests upon the town. OAG June 8, 1945 (642-a-12).

A road established by prescription and dividing two farms may be either a public or a private road, and to establish it as a town road a civil action to enforce public rights may be maintained. If it is a public road, the town must maintain it. OAG July 24, 1945 (377-A-4).

The town board is without authority to sell personal property of the town without a vote of the electors. OAG June 3, 1946 (382-B).

Except as limited by sections 181.40 and 182.09, minors may be employed on town roads and are covered by workmen's compensation act. OAG July 5, 1946 (270-a-4).

163.04 TOWN BONDS FOR PAVING.

A town cannot, for the purpose of improving its roads, borrow to exceed five per cent of its assessed valuation from the state board of investment; and cannot borrow any money from the board for the purpose of purchasing road equipment. OAG July 12, 1945 (928-a-9); OAG Aug. 21, 1945 (928-a-9).

A town under this section may not issue bonds for graveling a road; nor moving telephone poles; nor may it borrow from the state board of investment to purchase motor patrol or road machinery. OAG Aug. 2, 1945 (928-A-9); OAG Feb. 21, 1946 (928-A-9); OAG May 17, 1946 (43-B-5).

Section 163.04 authorizes the issuance of bonds for permanent improvement of existing town roads. OAG March 8, 1946 (43-B-4).

L. 1905, c. 11, and L. 1905, c. 64, as amended by L. 1907, c. 63, have not been repealed and are still in effect except as the same are inconsistent with Minnesota Statutes 1945, sections 475.23 to 475.32. Towns may have an option, according to their objectives, between proceeding under the 1905 acts or under section 163.04. OAG Sept. 16, 1946 (43-B-4).

Issuance of bonds under sections 163.04 and 475.23 is not authorized where the road improvement is not of a permanent nature and does not constitute laying out a new road. OAG Sept. 16, 1946 (43-B-4).

Towns maintained bridges on town roads crossing county ditches, and the town board has supervision over town roads including bridges thereon. OAG March 7, 1947 (642-B-8).

Bonds of a town may not be issued for the purpose of raising money to grade and gravel established roads. But see, L. 1947, c. 296. OAG April 15, 1947 (43-B-4).

163.05 TAXATION FOR ROAD PURPOSES BY TOWNS.

The maximum levy for road and bridge purposes is an amount equal to 20 mills on the assessed valuation of the town. Under section 163.05 a levy of 15 mills may be made, and in cases of emergency the town board may levy up to five mills additional. 1944 OAG 380, Aug. 23, 1943 (519-K).

Moneys from the general road and bridge fund may be used for dragging the roads. Towns are not authorized to make a separate levy for dragging. OAG Feb. 21, 1944 (519-K).

Sections 163.04, 163.05, and 163.06 do not authorize issuance of bonds to remove telephone poles from the right of way. OAG May 17, 1946 (43-B-5).

Section 163.05, being a later enactment, controls over section 275.09, subd. 3, and voters at annual town meeting may levy for road and bridge purposes an amount not to exceed a rate of 15 mills. OAG July 25, 1946 (519-K).

163.06 TOWN DRAGGING FUND AND TAX.

The county auditor may levy a tax of one mill for a town dragging fund. Each town proportion of this fund is expended by the town board and the fund may be used for snow removal. 1944 OAG 380, Aug. 23, 1943 (519-K).

163.07 TOWN BOARD OVERSEER.

Public officers are answerable to private persons for injuries resulting from the negligent performance of their ministerial duties; and where town highway officers in removing a culvert left a ditch open over night, unmarked or guarded, and a traveler was injured, the negligent officers were liable in damages but the town was not. *Tholkes v Decock*, 125 M 507, 147 NW 648.

The fact that a town road and bridge thereon, which it was the duty of the town to maintain, were at the time the road was vacated, in a temporarily impassable condition, does not affect the landowner's right to compensation sustained by reason of the vacation. *Underwood v Town Board*, 217 M 385, 14 NW(2d) 459.

Town board determines kind of equipment to be used for maintenance of town roads, and which overseers must use. OAG March 12, 1943 (381).

163.08 LIGHTING OF HIGHWAYS.

The town board has authority to appropriate money for the purpose of lighting public highways within its territorial jurisdiction when necessary for the safety of travel. OAG May 1, 1947 (396-F).

163.10 ROADS, FERRIES, BRIDGES; IMPROVEMENT BY CERTAIN MUNICIPALITIES; WITHIN OR WITHOUT BOUNDARIES; MANUFACTURE OF CRUSHED ROCK.

Nothing in section 163.10 authorizes a county to maintain a ferry, but the board may grant aid to assist in maintaining it; and where a bridge between two counties is destroyed, the counties may join in constructing a ferry to meet the emergency. OAG May 6, 1943 (370-D).

Where a bridge, a part of a regular highway crossing the Mississippi river which divides two counties, was destroyed it is within the power of the county boards under L. 1943, c. 530, to construct and operate a ferry until a bridge may be constructed. 1944 OAG 176, May 10, 1943 (370-D).

A city of the fourth class may empower or assist the township in improving a town road outside the city limits. OAG Aug. 20, 1946 (59-A-22).

163.13 ESTABLISHMENT, ALTERATION, OR VACATION BY TOWN BOARDS.

The right to the establishment of a cartway petitioned for under section 163.15 is governed by the provisions of that section, but the proceedings to establish it

should be had, except as therein provided, under the general road law, section 163.13. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

When the town board established a new road and vacated an old one, the rights of the public in the old road ceased and the owner of the fee over which the old vacated road passed came into being again, and he could take possession even though the new road had not as yet been completed. 1942 OAG 145, Sept. 1, 1942 (377-A-15).

A town road, legally established in 1877, continues to be a valid road as originally established. OAG Sept. 12, 1946.

Where the petition for vacation of a town road two miles in length is petitioned for, the town board is without authority to vacate it in part. OAG May 2, 1947 (377-A-15).

Hillside Park is an addition to the city of St. Cloud, but outside the city limits and in the town of St. Cloud. Alleys laid out by said plat are not town roads. The alleys cannot be vacated under the provisions of sections 163.13 or 163.19. In order to vacate the alleys it will be necessary to proceed under section 505.14. OAG June 3, 1947 (396-F-3).

163.14 DEDICATION OF LAND FOR ROAD.

Title to a town road, including a bridge thereon, even if not used, may not, subsequent to the enactment of L. 1899, c. 65, be lost by adverse possession of an adverse party. OAG Oct. 15, 1946 (50-B).

Validity of reservation of public utility rights in dedication of land as public street. 25 MLR 238.

163.15 CARTWAYS.

Several persons owning tracts, which in the aggregate exceeds five acres, may petition for a cartway. *Watson v Town of South Side*, 185 M 111, 239 NW 913.

Mandamus does not lie to compel a town board to expend town funds to improve a cartway, because section 163.15, subdivision 3, vests town boards with discretionary power with respect to such expenditures. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

The right to the establishment of a cartway petitioned for under section 163.15 is governed by the provisions of that section, but the proceedings to establish it should, except as therein provided, be under the general town road law, section 163.13. Mandamus lies to compel a town to establish a cartway under section 163.15, where the proper petition is filed therefor by the owner of a five-acre tract having no access to his land and the route being a proper one. Town boards have, however, discretionary power as to expenditure of money in the repair of cartways. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

There is nothing illegal about a contract being made between a landowner and the town board, by which the owner assumes the upkeep, but the town board is not thereby relieved of its statutory obligation to maintain the road. 1944 OAG 188, Nov. 14, 1944 (377-B-1).

The fact that the petitioner for the cartway has procured an easement so he can reach the public road, does not exclude him from the benefits of this section; nor does the fact that the owner of the land taken for a cartway has granted an easement to the principal user of the proposed cartway affect the amount of damage recoverable for the taking. OAG July 24, 1945 (377-a-4).

Where it is clear to the town board that the public interest requires a road to cross private property, and if statutory conditions are met, they may establish a cartway, and the expense and damages may be paid out of town funds. OAG July 24, 1945 (377-a-4).

When land is condemned by towns for road or cartway, the fact that one of the petitioners had a prescriptive right across the land does not relieve him from nor reduce the amount of his assessed damages. OAG July 24, 1945 (377-A-4).

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Under the provisions of sections 366.01 and 366.10 the town board may employ legal aid in relation to the laying out of a town road or cartway. OAG Oct. 16, 1945 (434-A-1).

If a petition to establish a cartway conforms to the specifications of section 163.15, subd. 2, the petitioner is entitled to an order from the town board creating the petition. If the cartway crosses a stream of water, the board need not necessarily build a bridge over the stream. The stream may be fordable. If the public interest, as distinguished from the private interest of the landowner, requires that a bridge be built, the town board has authority to construct such bridge, the necessary funds being obtainable. OAG March 25, 1947 (377-B-1).

163.17 ROADS ON TOWN LINE.

Where they have common lines, towns though in different counties may establish a town road. OAG June 15, 1943 (377-B-10).

Commissioner of highways lacks power to compel townships between which is established a town road to acquire corner and remove embankment thereon as a prerequisite to form a junction with a trunk highway. OAG Dec. 18, 1944 (329-I-4).

When a portion of a town line road has been allotted, the town to which the allotment pertains assumes the duty of maintenance in perpetuity. OAG May 24, 1945 (379-C-8-B).

Statutes relating to the establishment of town roads (160.15, 160.16, 163.15, and 163.17) are applicable to the establishment of cartways. OAG April 15, 1947 (377-B-1).

163.18 DEFINITIONS.

Two towns acting under authority of section 163.18 may establish a cartway on a town line which is also a county line. OAG July 22, 1947 (379-C-8-b).

163.19 TOWN BOARDS TO ALTER, VACATE, AND ABANDON ROADS.

A petition asking vacation of a portion of a town road is sufficient if signed by all of the owners and occupants of all the land on both sides of the portion proposed to be vacated. OAG Oct. 25, 1946 (377-a-15).