

MINNESOTA STATUTES 1953 ANNOTATIONS

160.61 ROADS, GENERAL PROVISIONS

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160.61 INTEMPERATE DRIVERS

In an action to recover damages for the wrongful death of plaintiff's decedent, which occurred when an automobile driven by decedent collided with a grain box on defendant's approaching truck on a tarvia-paved trunk highway at night, the casual relationship between defendant truck driver's violation of section 169.61 in failing to dim the truck headlights when meeting decedent's car, and the collision, presented a jury issue. *Olson v Olson*, 236 M 363, 55 NW(2d) 706.

160.65 ADDITIONAL TRUNK HIGHWAYS

HISTORY. 1923 c 358 s 1; 1929 c 86 s 1; 1933 c 440 s 1; 1943 c 324 s 1; 1943 c 399 s 1; 1945 c 249 s 1; 1949 c 663 s 2; 1951 c 448 s 2; 1953 c 177 s 1; 1953 c 300 s 2, 3.

The legislature may change the statutory layout of a trunk highway and such change would have the effect of vacating the order of the commissioner of highways designating a temporary trunk highway. OAG March 26, 1947 (229-D-7).

The power to determine the exact location of the proposed Route 218 "near Pinecreek" is vested in the state highway commissioner. He is prohibited from deviating from the proposed terminal but if he considers all the circumstances and peculiar surroundings and decides upon a location that will best accommodate the public, he in no way violates the true meaning of the word "near." OAG Nov. 7, 1949 (229-D-15).

Trunk highway routes cannot be extended beyond the termini set by the Constitution or statute creating them. Additional trunk highways can only be added by the legislature, proceeding in accordance with Article XVI, Section 1, of the Constitution. OAG Nov. 30, 1953 (229-D-17).

160.685 Obsolete.

160.81 REGISTERED PROFESSIONAL ENGINEERS; EMPLOYMENT AS CONSULTANTS

HISTORY. 1951 c 498 s 1.

CHAPTER 161

DEPARTMENT OF HIGHWAYS

161.02 COMMISSIONER OF HIGHWAYS

HISTORY. 1905 c 163 s 1, 2; 1911 c 33; 1913 c 235 s 9; 1917 c 119 s 6; 1919 c 67 s 1; 1921 c 323 s 12; 1937 c 262 s 1-3; 1949 c 739 s 2; 1951 c 713 s 15.

161.03 POWERS OF COMMISSIONER OF HIGHWAYS

HISTORY. 1921 c 323 s 13; 1923 c 439; 1925 c 341; 1927 c 227 s 3; 1929 c 355 s 1; 1931 c 44 s 1; 1933 c 440 s 3, 5; 1935 c 42 s 1; 1935 c 63 s 1, 2; 1935 c 304; Ex1936 c 17 s 1; 1937 c 30 s 1; 1937 c 131 s 1; 1937 c 262 s 4, 5; 1937 c 490 s 1; 1939 c 277; 1939 c 313; 1939 c 400; 1941 c 175; 1941 c 345 s 1-5; 1941 c 369; 1941 c 456 s 1-4; 1943 c 3 s 1; 1943 c 90 s 1; 1943 c 315 s 1, 2; 1943 c 623 s 1; 1945 c 60 s 1; 1945 c 61 s 1; 1945 c 77 s 1; 1945 c 89 s 1; 1945 c 253 s 1, 2; 1945 c 422 s 1; 1945 c 516 s 1; 1947 c 105 s 1; 1947 c 582 s 1; 1949 c 395 s 1; 1951 c 50 s 1; 1951 c 179 s 1; 1951 c 264 s 1-3; 1951 c 554 s 1, 2.

Claims against the state. 32 MLR 539.

Applicability of the federal statute of limitations when the liability is measured by the state law. 35 MLR 590.

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DEPARTMENT OF HIGHWAYS 161.03

Federal Tort Claims Act; impleader of the United States as a third party defendant. 35 MLR 593.

A right of action against a municipality is a matter of legislative favor and may be withheld, granted absolutely, or granted on condition. In the use of its highways, streets, and sidewalks a municipal corporation as a general rule is not liable for injuries to persons or property resulting from its adoption of an improper plan of a highway, street, or sidewalk construction when the defects in the plan are due to mere error in the exercise of bona fide judgment, subject to the following: (a) liability for damage resulting from a defect in the original plan for which there was no reasonable necessity and which is so obviously dangerous that no reasonably prudent man would approve its adoption; or (b) a liability for damages resulting from a defect in the original plan where such defect is embodied in the construction work and is permitted to remain after the municipality, while still in control of its streets and sidewalks, has reasonable notice that it is a source of danger; or (c) a liability for damages resulting from its negligence in the execution of the plan where the construction is under the control and supervision of the city; or (d) a liability for damages resulting from negligence in the maintenance and repair of the highway, street, or sidewalk after the construction work has been completed. *St. Paul v Faricy*, 228 M 264, 37 NW(2d) 427.

Where the commissioner of highways is empowered under section 161.03, subdivision 7 to close such portions of a highway under construction as may be necessary to prevent any or all traffic from passing over such highway, it does not appear that there was such a closing of the highway by the commissioner as to prevent defendant from driving his automobile on the new construction on the date of the accident involved. *Froden v Ranzenberger*, 229 M 366, 41 NW(2d) 807.

A bill passed by a majority of both houses of the legislature, although vetoed by the governor, was effective as a consent of the state to subject itself to suit, although such a bill was not effective as a law. *Jefferson Lake Sulphur Co. v State*, 213 La. 1, 34 So(2d) 331.

A fine collected as the result of a violation of section 169.11, criminal negligence in operation of a vehicle resulting in death must, under authority of section 161.03, be paid to the state treasurer when the arrest is made by a member of the state highway patrol. OAG Sept. 2, 1949 (199-B-4).

The fines and costs which are payable to the city of West St. Paul under its city charter should be paid into the city's general fund and not to the municipal court fund. OAG Dec. 6, 1951 (199-B-4).

There can be no refundment of the fine after the money has been paid to the clerk of the court. The person who paid the fine must apply to the legislature for refundment. OAG Nov. 13, 1951 (199-B-7).

Under the statutes, and under Rule 13.1 promulgated by the director of civil service, eight hours of work constitute a normal work day and 40 hours a minimum work week for state employees under the classified service. Supplemented by the rule that whenever necessary, essential services shall be rendered on Saturday mornings, and overtime so worked shall be compensated for by time off or cash payment. The statutes and rules apply to employees of the highway department other than the state highway patrol. Whether or not the state highway patrol shall work a 40-hour week is a matter for the determination of the state highway commissioner. OAG Aug. 2, 1948 (229-A-7).

Plans and specifications for improvement of trunk highways within a municipality must have the approval of the municipality. OAG Feb. 8, 1952 (229-D-15).

Maps, plans and specifications for improvement of trunk highways within a municipality must be detailed and specific, and where they are incorporated by reference to a change of grade or improvement of the streets they do not need to be published by city ordinance. OAG Feb. 8, 1952 (277-B-4).

The call for bids, including all specifications contained therein, the proposal of a bidder, and the acceptance of the proposal constitute the terms and conditions of the contract; and when a bidder submits a proposal, it is an acceptance by him of all the

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specifications as a part of the contract which he proposes to perform. In the instant case one of the specifications in the call for bids reads: "If neither the written words nor the numerals in the unit price bid correspond and harmonize with the extension of that particular item, the written words in the unit price bid shall govern." The lowest bid in the instant case is governed by the unit specifications, even though the price was listed in error. If accepted by the commissioner of highways and approved by the commissioner of administration it is in accordance with the bid. The error being sufficiently small in amount so that the bidder is willing to accept the situation, the acceptance and approval by the state agency render the contract valid. If the error was sufficiently large to make it unconscionable by the state to hold the bidder to his bid, the state agency may not accept or approve the bid. OAG June 1, 1949 (229-E-2).

It is desirable to effect a change in the city of Austin so that Oakland and Winona Avenues constitute a trunk highway of two one-way streets. Trunk highways are main arteries of travel and each must afford facilities for travel in both directions. The trunk highway running through the city of Austin follows Oakland Avenue. The highway commission may not designate Winona Avenue as a trunk highway one-way street running in a direction opposite to its parallel street, Oakland Avenue. There is, however, no restraint upon the department of highways in establishing a trunk highway within a municipality, and the commissioner has power to establish both Winona and Oakland Avenues as trunk highways. Before the commissioner can commence to construct, reconstruct, or change the grade of such trunk highways the governing body of the city of Austin must approve the plans and specifications for such improvement or change of grade. OAG Feb. 28, 1952 (229-D-15).

The highway patrol is not authorized to execute criminal awards except on state trunk highways and on public highways connecting and traversing the same when in continued pursuit from trunk highways of offenders thereon. OAG April 23, 1953 (229-K-1).

The general enforcement of drivers license suspension and revocation orders are beyond the scope of the statutory authority conferred upon the highway patrol. But, this opinion does not affect the authority of the highway patrol to apprehend and arrest upon the trunk highways a driver operating a motor vehicle after the suspension or revocation of his driver's license. OAG Feb. 27, 1951 (291-F).

In the construction of federal aid roads the commissioner acts as agent for the county. After completion of the contract and financial settlement, the county has no authority to pay an additional sum to the contractor. Should such a payment be made it would be a gratuity. OAG April 6, 1950 (377-B-2).

In bids and contracts for the erection of a bridge on a state aid road, the commissioner of highways, acting as the agent for the county, has authority to accept or reject all bids. OAG Feb. 17, 1953 (707-A-10).

The highway patrol officer who makes an arrest determines whether he is making the arrest for a violation of a state law or a local ordinance. If the arrest and complaint are for a violation of a state law, the fine is to be remitted to the state treasurer; if the arrest and complaint are for violation of a local ordinance, the fine is remitted to the local treasurer. OAG Aug. 19, 1953 (989-A-6).

A fine paid for violation of a state law for an arrest not made by the highway patrol should be paid into the county treasury. OAG Sept. 15, 1953 (989-A-6).

The following agencies of state government are authorized under the Constitution and the statutes to make arrests for traffic law violations: (1) the commissioner of highways is authorized, under section 161.03, subdivision 21, to employ and designate patrolmen, supervisors, assistant supervisors, and sergeants, who will constitute the highway patrol and are authorized to make arrests on trunk highways; (2) the superintendent and members of the state bureau of criminal apprehension, under section 626.33; (3) game refuge patrolmen and game wardens have only certain powers of arrest, as found in section 629.37; (4) officers of the bureau of criminal apprehension have only such powers of arrest as concern their particular office and as listed in section 629.37; (5) any private person under section 629.37, may arrest anyone who violates the traffic or any other law in his presence. Under section 169.14,

subdivision 2, the lawful speed limits where no speed limits exist are: (1) 30 miles per hour in any municipality; (2) 60 miles per hour in other locations during the daytime; (3) 50 miles per hour in such other locations during the nighttime. Speed must be reduced when approaching and in crossing a street intersection, railway crossing, going around a curve, approaching a hillcrest, traveling along a narrow or winding road, and when special hazards exist with respect to pedestrians, traffic, weather, or other highway conditions. Any speed in excess of the statutory limitations is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful. OAG Oct. 3, 1953 (989-A-24).

Fines collected by a town for violations of a town ordinance regulating traffic should be paid into the town treasury unless the apprehension or arrest of the violator was made by a state highway patrolman, in which case section 161.03 would apply and moneys collected would be paid into the state treasury whether the apprehension or arrest was under local ordinance or state law. OAG July 7, 1950 (989-B-4).

161.033 AGREEMENTS, TRANSFER OF ROAD MATERIALS

HISTORY. 1951 c 75 s 1.

161.034 TRUNK HIGHWAYS ACROSS BODIES OF WATER

HISTORY. 1953 c 405 s 1, 2.

161.06 Repealed, 1947 c 391 s 4.

161.061 RELINQUISHMENT OF HIGHWAY EASEMENTS

HISTORY. 1947 c 391 s 1-3; 1949 c 89 s 1.

Public lands acquired for highway use may not be quitclaimed or relinquished under the provisions of section 161.061. OAG Jan. 17, 1949 (229-G-1).

Section 161.061 prescribes the exclusive and only method for conveying lands no longer used for trunk highway purposes. The only other alternate course of procedure is for persons interested to obtain the enactment by the legislature of a law authorizing the conveyance of land on terms prescribed in the bill. OAG July 7, 1953 (229-I-1).

CHAPTER 162

COUNTY ROADS

162.01 COUNTY BOARD, POWERS

HISTORY. 1921 c 323 s 24; 1923 c 439 s 4; 1929 c 179 s 1; 1941 c 29 s 1; 1945 c 591 s 1; 1947 c 115 s 1; 1947 c 434 s 1-3; 1949 c 402 s 1; 1951 c 120 s 1; 1951 c 523 s 1; 1951 c 548 s 1, 2; 1951 c 589 s 2; 1953 c 444 s 1, 2; 1953 c 707 s 1.

NOTE: Subdivision 6 repealed, 1951 c 120 s 1; subdivision 7 is obsolete; subdivision 8 is superseded by last sentence of subdivision 5.

In an action against a county and its commissioners as individuals to recover for injuries sustained by reason of the claimed negligence of an employee in the maintenance of a county aid road, demurrers to the complaint were properly sustained. In the maintenance of public highways the duties of the county commissioners are purely public ones owing to the state, and failure to perform such duties will not give rise to a cause of action in favor of an individual unless such duties be ministerial only. A public officer is not responsible for the torts of his subordinates employed by him in the discharge of his official duties. Respondent superior does not apply. *Hitchcock v County of Sherburne*, 227 M 132, 34 NW (2d) 342.