

CHAPTER 164

TOWN ROADS

Sec.		Sec.	
164.01	Definitions.	164.10	Expenditure of funds on cartways.
164.02	Town roads.	164.11	Lands dedicated as roads or streets; improvement.
164.03	Expenditures.	164.12	Road on town line.
164.04	Taxation.	164.13	Expenses of certain township line roads.
164.041	Removal of levy limit; road and bridge purposes.	164.14	Road on line between town and adjoining city.
164.05	Town road drainage tax.	164.15	Dedication of land for road.
164.06	Establish or alter by resolution.	164.151	Recreational vehicle lanes.
164.07	Establishment, alteration, or vacation.	164.155	Restoration of certain town roads.
164.08	Cartways.		
164.09	Joint cartways.		

164.01 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.01 **DEFINITIONS.** For the purposes of this chapter the terms defined in section 160.02, shall have the same meaning.

[1959 c 500 art 5 s 1]

164.02 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.02 **TOWN ROADS.** Subdivision 1. **Establishment and supervision.** Town roads shall be established, located, relocated, constructed, reconstructed, improved and maintained, or vacated by the several towns. The town boards shall have supervision over town roads, and they may employ such persons as they deem necessary to carry out their duties. They may appropriate and expend such sums of money from their respective town road and bridge funds as they deem necessary for the establishment, location, relocation, construction, reconstruction, improvement and maintenance, or vacation of such roads.

Subd. 2. **Acquisition.** They may acquire by purchase, gift, or eminent domain proceedings, as provided by law, all necessary right of way for such roads, purchase all necessary road material, purchase or rent machinery, tools, and supplies needed therefor, and may construct buildings, or rent or acquire by purchase, gift, or condemnation grounds and buildings necessary for the storing and housing of the material, machinery, tools, and supplies.

[1959 c 500 art 5 s 2; 1974 c 161 s 9]

164.03 MS 1953 [Repealed, 1957 c 300 s 1]

164.03 **EXPENDITURES.** Subdivision 1. **Appropriation of money to aid county highway or county state-aid highway.** When authorized by a vote of the electors at any annual meeting or at any special meeting called for that purpose, the town board of any town may appropriate money from the town road and bridge fund to aid in the construction, improvement, or maintenance of any county highway or county state-aid highway located within the town.

Subd. 2. **Appropriation of money to county for use on town roads.** When authorized by the electors, and with the consent of the county board, the town board may appropriate money to the county from the town road and bridge fund for the construction, improvement, and maintenance of town roads designated by the town board.

Subd. 3. **Specific uses of money appropriated.** Any money so appropriated shall be paid into the county road and bridge fund and shall be used only for the purposes designated by the town board at the time it made such appropriation.

Subd. 4. **Report.** The town board shall render to the annual town meeting a written report containing:

(1) The amount of road taxes levied and the amount collected during the preceding year and all money paid into the road and bridge fund from all other sources;

(2) A statement of the improvements needed on roads, cartways, and bridges for the ensuing year, with an estimate of their probable expense;

MINNESOTA STATUTES 1978

2607

TOWN ROADS 164.05

(3) A statement of all expenses and damages occasioned by establishing, altering, or vacating roads and of all sums expended for machinery, implements, tools, stone, gravel, and other material during the year, with an estimate of the amount required for ensuing year; and

(4) A statement of the improvements made on roads, cartways, and bridges during the preceding year, with a statement of expenditures therefor.

A copy of the report shall be filed with the county auditor.

[1959 c 500 art 5 s 3]

164.04 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.04 TAXATION. Subdivision 1. **Road taxes; payment.** All real and personal property in each town liable to taxation shall be taxed for road purposes, and all road taxes hereafter levied shall be paid in cash.

Subd. 2. **Fixed at annual town meeting.** The electors of each town shall have power at their annual town meeting to determine the amount of money which shall be raised by taxation for road and bridge purposes. The tax so voted shall be extended, collected, and payment thereof enforced in the same manner and at the same time as is provided by law for the extension, collection, and enforcement of other town taxes.

Subd. 3. **Emergencies.** In case of emergency after the town meeting, but not later than October 1 in the same year, the town board may levy a tax on the property in the town for road and bridge purposes, in addition to any tax voted at the annual town meeting for road and bridge purposes, in an amount not to exceed 1.6 2/3 mills on the dollar of the assessed value of the property in the town. Any tax so levied shall forthwith be certified to the county auditor for extension and collection. The town board may thereafter pledge the credit of the town by issuing town orders, not exceeding the amount of the additional tax so levied for road and bridge purposes, in payment for the emergency work done or material used on the roads within the town.
[1959 c 500 art 5 s 4; 1973 c 773 s 1; 1975 c 268 s 1]

164.041 REMOVAL OF LEVY LIMIT; ROAD AND BRIDGE PURPOSES. It is the intent of this legislation to remove all limitations relating specifically to the authority of a town to levy taxes for road and bridge purposes and any act for a single town or for a group of towns relating specifically to a limitation on the authority of a town to levy taxes for road and bridge purposes, however stated in mills, dollars, or a per capita amount is hereby superseded; provided that nothing in Laws 1975, Chapter 268, shall be construed to permit a levy in excess of the limitations imposed by sections 275.10 and 275.50 to 275.59.

[1975 c 268 s 2]

164.05 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.05 TOWN ROAD DRAINAGE TAX. Subdivision 1. **Powers.** In any town wherein the voters shall at the annual town meeting vote as hereinafter provided to authorize the town board so to do, the town board may levy and assess on the real and personal property in the town, other than money and credits taxed under the provisions of chapter 285, a tax not to exceed in amount three and one-third mills on the dollar of the assessed value of such property, which tax so levied shall be known as the town road drainage tax. Such tax shall be additional to all other taxes which the town is or may hereafter be authorized to levy, and the amount of such tax so levied and collected shall be deemed to have been levied and collected for road and bridge purposes within the meaning of any law limiting the amount of taxes which may be levied or voted at the annual town meeting; provided, that in towns having an assessed valuation of not less than \$1,000,000, nor more than \$8,000,000, and which otherwise come under the provisions of sections 368.02 to 368.11 the amount of such tax so levied and collected shall not be deemed to have been levied and collected for road and bridge purposes within the meaning of any law limiting the amount of taxes which may be levied or voted at the annual town meeting.

Subd. 2. **Collection.** Such tax shall be certified to the county auditor, extended and collected and paid over to the town treasurer in the same manner as other town taxes and payment thereof shall be enforced in the same manner and with like penalties and interest as other town taxes. The proceeds of such tax shall constitute the town road drainage fund, which shall be expended by the town board in paying the cost and expenses of draining the public roads within the town.

Subd. 3. **Petition.** When a petition signed by ten or more freeholders and voters of a town shall be presented to the town clerk at least 20 days before the time of holding the annual town meeting, praying that the question of authorizing the town board to levy and assess a town road drainage tax be submitted to the voters of such town, the town clerk shall include in his notice of such annual town meeting a notice that such question will be voted on at such meeting. Such question shall be voted on by ballot and it shall be the duty of the clerk to provide at the expense of the town a suitable number of ballots, which may be printed or written or partly printed and partly written, in substantially the following form:

“Shall the town board be authorized to levy and assess a Town Road Drainage Tax?

(Yes ..) (No ..)”

Subd. 4. **Authorization.** If a majority of the votes cast on the proposition be in the affirmative, the town board shall have authority to levy annually a tax as hereinbefore provided until such time as the electors, at an annual town meeting upon like procedure, shall have voted, by a majority vote of those voting on the question, to withdraw from the town board authority to levy such town road drainage tax. The votes on such question shall be canvassed and the result declared and recorded in the manner provided by law with reference to the election of town officers.

[1959 c 500 art 5 s 5; 1973 c 773 s 1]

164.06 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.06 ESTABLISH OR ALTER BY RESOLUTION. In addition to the methods herein provided, the town board, when thereunto duly authorized by a vote of the electors at any annual meeting, or at any special meeting called for that purpose, may establish or alter a town road by resolution, and may acquire such right of way as may be necessary for such road by gift, purchase or eminent domain proceedings as provided in chapter 117 and acts amendatory thereto.

[1959 c 500 art 5 s 6]

164.07 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.07 ESTABLISHMENT, ALTERATION, OR VACATION. Subdivision 1. **Petition.** Any town board may alter or vacate a town road or establish a new road in its town upon a petition of not less than eight voters of the town, who own real estate, or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of the road proposed to be established, altered, or vacated; provided, that in any town not having eight voters who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, within three miles of any proposed road, the town board of such town may alter or vacate a town road, or establish a new road in the town upon a petition signed by a less number of voters of such town, who own real estate or occupy real estate under the homestead or preemption laws or under contract with the state, in such town. Such petition shall contain a description of the road, and what part thereof is to be altered or vacated, and, if a new road, the names of the owners of the land, if known, over which such road is to pass, its point of beginning, general course, and termination.

Subd. 2. **Hearing.** The petition shall be filed with the town clerk, who shall forthwith present it to the town board. The town board within 30 days thereafter shall make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet an act upon the petition. The petitioners shall cause personal service of such order to be made upon each occupant of such land at least ten days before such meeting and cause ten days' posted notice thereof to be given.

Subd. 3. **Examination of proposed road.** At the time and place designated, the town board shall meet and, on proof by affidavit of the giving of such notice, it shall examine the road proposed to be established, altered, or vacated, hear all parties interested, and determine whether it will grant or refuse the petition. If it be refused, the fact shall be noted on the back thereof.

Subd. 3a. **Drainage facilities.** On consideration of a petition for vacation of a road, the town board shall determine whether the lateral ditches of said road are essential for surface drainage of adjacent lands, or for drainage of public highways, in

the area. If the board finds that preservation of such drainage facilities is for the general health and welfare of the public, then the board may cause the road to be vacated with a provision that the town shall retain the right of access for the purpose of maintaining such drainage facilities. An owner of land adjacent to the vacated portion of the road shall not interfere with the functioning of such drainage facilities.

Subd. 4. Survey. If the petition be granted, the town board, if it deem it necessary, shall cause a survey to be made. When the center of such road does not follow a section line, or some subdivisional line of a section, the surveyor shall note the distance to the point on any course at which such course will intersect a section line, and the distance of such point of intersection from the most convenient section, quarter-section, or meander corner, as established by the government survey; and the notes of such intersections, and a description of the road so established, altered, or vacated shall be incorporated in an order to be signed by the town board.

Subd. 5. Damages. The damages sustained by reason of establishing, altering, or vacating any road may be ascertained by the agreement of the owners and the town board; and unless such agreement is made, or the owners release in writing all claims to damages, the same shall be assessed and awarded before such road is opened, worked, or used. Every agreement and release shall be filed with the town clerk and be final as to the matters therein contained. The town board shall assess the damages of each claimant with whom it cannot agree, or who is unknown, specifying the amount awarded to each and briefly describing each parcel of land. In ascertaining the damages which will be sustained by any owner the town board shall determine the money value of the benefits which the establishment, alteration, or vacation, as the case may be, will confer, and deduct the benefits, if any, from the damages, if any, and award the difference, if any as damages.

Subd. 6. Filing of award; notification. The award of damages shall be filed with the town clerk. Within seven days after filing the town clerk shall notify, in writing, each known owner and occupant of each tract of the filing of the award of damages. The notification shall set forth the date of the award, the amount of the award of damages and any terms or conditions of the award.

Subd. 7. Appeal. Within 40 days after the filing of the award of damages any owner or occupant may appeal from the award by filing a notice of appeal with the clerk of the district court of the county where the lands lie. The notice of appeal shall be accompanied by a bond of not less than \$250, with sufficient surety approved by the judge or the county auditor conditioned to pay all costs arising from the appeal in case the award is sustained. A copy of the notice shall be mailed by registered or certified mail to the town clerk or any member of the town board. The notice of appeal shall specify the award or failure to award appealed from, the land to which it relates, the nature and amount of the claim of appellant, and the grounds of the appeal.

Subd. 8. Trial. The appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than 20 days after the appeal is perfected. It shall be tried in the same manner as an appeal in eminent domain proceedings under chapter 117. The prevailing party shall recover costs and disbursements as in other civil cases and judgment shall be entered upon the verdict.

Subd. 9. Payment. If no appeal is taken within the appeal period, the award shall be considered the same as a judgment. The provisions of section 365.41 and section 365.42 shall apply as to payment of all awards and judgments; and such award or judgment shall draw interest at the rate of six percent per annum to date of payment. The duty of the town board to pay the award or final judgment shall be held and construed to be just compensation or the securing of just compensation within the meaning of the constitution.

Subd. 10. Appeal not to delay prosecution of improvement. After the award of damages has been filed, the board may proceed to open, construct, alter, or change the highway. An appeal from the award of damages shall not delay the prosecution of the proposed improvement, and the town board may proceed as if no appeal had been taken.

Subd. 11. Order. The order establishing, altering or vacating any road shall be recorded by the town clerk, and a copy thereof certified as true and correct by the town clerk shall be forthwith filed for record with the county recorder or registrar of titles of the county within which the land and premises are located. The certified copy of the order shall be first presented to the county auditor who shall enter the same in his transfer records and note upon the certified copy over his official signature, the

words "entered in the transfer record." The order or a certified copy shall be received in all courts as competent evidence of the facts therein contained and be prima facie evidence of the regularity of the proceedings prior to the making thereof, except upon the hearing of an appeal.

Subd. 12. **Refusal to establish.** The determination of a town board refusing to establish, alter or vacate any road shall be final, unless appealed from, for one year from the filing of its order; and no petition for establishing, altering, or vacating such road shall be acted upon within that time. In case its determination granting a petition is appealed from and reversed, it shall not within one year from date of such determination entertain a petition having the same or a similar object.

[1959 c 500 art 5 s 7; 1967 c 723 s 1; 1973 c 24 s 1; 1976 c 181 s 2]

164.08 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.08 CARTWAYS. Subdivision 1. **May be established in certain instances.** The town board by resolution may establish a cartway two rods wide and not more than one-half mile in length upon petition presented to the town board signed by at least five voters, freeholders of the town, requesting the cartway on a section line to serve a tract or tracts of land consisting of at least 150 acres of which at least 100 acres are tillable. If the petition is granted the proceedings of the town board shall be in accordance with section 164.07.

Subd. 2. **Shall be established in certain instances.** Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over the lands of others, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road. In an unorganized territory, the board of county commissioners of the county in which the tract is located shall act as the town board. The proceedings of the town board shall be in accordance with section 164.07. The amount of damages, if any, shall be paid by the petitioner to the town before such cartway is opened.

[1959 c 500 art 5 s 8; 1978 c 551 s 1]

164.09 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.09 JOINT CARTWAYS. Subdivision 1. **Joint resolution.** The town boards of adjoining towns by joint resolution may establish a cartway commencing in one such town and terminating in another such town when the cartway will provide access to a tract or tracts of land of not less than five acres which have no access to a public road except over the lands of others.

Subd. 2. **Agreements.** The town boards, in behalf of their respective towns, may enter into agreements with each other providing for the equitable division of the costs and responsibilities to be borne by each for the right of way, construction, and maintenance of the cartway. The agreement may also provide for the letting of a joint construction contract covering all or part of the work to be performed on the cartway.

Subd. 3. **Procedure.** After entering into the agreement the town boards shall proceed in accordance with the agreement to construct and maintain the joint cartway.

[1959 c 500 art 5 s 9]

164.10 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.10 EXPENDITURE OF FUNDS ON CARTWAYS. Any town board may expend town road and bridge funds upon a legally established cartway the same as on town roads if, in the judgment of the board the public interests require it; provided, that where any town board has refused to allocate funds for the upkeep of a cartway, then, upon the petition of ten taxpayers of the town, the town board shall present for the approval of the voters, after due notice, at the annual town meeting the petition for allocation of funds, and at the town meeting the electors of the town shall allow or reject the petition. If the majority of those voting approve the petition for allocation of funds, the town board shall expend road and bridge funds on the cartway.

[1959 c 500 art 5 s 10]

164.11 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.11 LANDS DEDICATED AS ROADS OR STREETS; IMPROVEMENT. Land dedicated to public use as a street, road or cartway, if not less than 30 feet in width, shall be deemed a legal cartway and subject to improvement by the town board

as in the case of cartways two or more rods in width.

[1959 c 500 art 5 s 11]

164.12 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.12 ROAD ON TOWN LINE. Subdivision 1. **Proposal to establish.** When adjoining towns propose to establish, alter, or vacate a road on or along the line between such towns they shall proceed as hereinafter provided.

Subd. 2. **Division of responsibilities.** The town boards shall divide the length of the road proposed to be established, altered, or vacated into two parts. When it is proposed to establish or alter a road, the division shall be made so as to divide as nearly equal as possible the cost of right of way, construction, and maintenance of the entire road. If the proposal is to vacate a road, the division shall be made so as to divide as nearly equal as possible any damages that may be occasioned thereby.

Subd. 3. **Agreement.** After the division the boards shall enter into an agreement specifying which part shall be vacated, or opened, constructed, and maintained by each. Thereafter, each board shall proceed in the manner and subject to the same review as provided in section 164.06 or section 164.07.

Subd. 4. **Joint contract.** When a town line road is established or altered as provided herein, the boards may jointly let a contract covering all or part of the work to be performed on the road. If a joint contract is not let each town board shall open and construct its portion thereof as expeditiously as possible.

Subd. 5. **Division of responsibilities if portion of road taken over by state or county.** If a portion of a town line road is taken over by the state as a trunk highway, or by a county as a county state-aid highway or county highway, the town boards concerned shall divide the portions of the town line road not taken over by the state or county, so that the cost of construction, reconstruction, and maintenance thereof will be apportioned as nearly equal as possible. After such division the boards shall enter into an agreement specifying which part shall be constructed and maintained by each.

Subd. 6. **Failure to agree.** When the town boards cannot agree upon a division as provided in subdivision 2 or subdivision 5, or upon the petition of either town board when a division previously agreed upon has proved to be inequitable, the county board, or where the road is on a county line the county boards of the counties concerned, shall determine the proper division of responsibility. In making such division the county board or boards shall follow the procedure provided for in subdivision 2 or subdivision 5. Where deemed necessary the services of the county engineer may be used.

[1959 c 500 art 5 s 12]

164.13 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.13 EXPENSES OF CERTAIN TOWNSHIP LINE ROADS. Subdivision 1. **Bridges.** In all cases where a road other than a county road, a county state-aid highway or trunk highway is on the line between two towns, whether the towns are in the same county or not, it shall be the duty of the towns to bear jointly and in equal shares the expense of constructing and maintaining any bridge on the road as made necessary by the construction of a drainage ditch or by reason of the changing, widening or alteration of any drainage ditch, or by reason of the altering or changing of any watercourse.

Subd. 2. **Ditches.** In any proceeding for the establishment and construction of any drainage ditch or the changing, widening or alteration of any such ditch, or the altering of any watercourse, as specified in this section, each of the towns charged by the provisions of this section with the obligation of constructing and maintaining any bridge because of any such improvements, shall be awarded and paid one-half of the total damages awarded for the construction of the bridge by reason of the obligation to construct and maintain the bridge.

[1959 c 500 art 5 s 13]

164.14 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.14 ROAD ON LINE BETWEEN TOWN AND ADJOINING CITY. Subdivision 1. **Proposal to establish.** When a town and an adjoining city propose to estab-

lish, alter, or vacate a road on or along the line between the town and the adjoining city, they may proceed as hereinafter provided.

Subd. 2. **Agreements.** The town board and the governing body of the adjoining city may enter into agreements providing for the equitable division of the costs and responsibilities to be borne by each for the establishment, alteration, or vacation of the road. If the agreement provides for the establishment or alteration of such a road, the agreement may also provide for the letting of a joint construction contract covering all or part of the work to be performed on the road. The agreement may also provide for a division of the costs of subsequent improvement and maintenance of the road.

Subd. 3. **Joint resolution.** After entering into the agreement the town board and the governing body of the city, by joint resolution shall establish, alter, or vacate the road in accordance with the agreement. The town board shall proceed in the manner and subject to the same review as provided in section 164.06 or section 164.07, and the city shall proceed in the manner provided by law for the establishment, alteration, or vacation, as the case may be, of city streets.

[1959 c 500 art 5 s 14; 1973 c 123 art 5 s 7]

164.15 MS 1957 [Repealed, 1959 c 500 art 6 s 13]

164.15 DEDICATION OF LAND FOR ROAD. Subdivision 1. **Application.** One or more owners may dedicate land for a road or cartway by making application therefor in writing to the town board, describing the land, the purpose of its dedication, and filing the application with the clerk. The clerk shall present the same to the town board which, within ten days after the filing, may pass a resolution declaring the land described to be a public road or cartway. When so declared the land shall be deemed duly dedicated for the purpose expressed in the application and no damages shall be assessed or allowed therefor.

Subd. 2. **Bridge over lake.** Any person owning land to exceed 40 acres constituting part of an island within any meandered lake may at his own expense erect a bridge across such portion of the lake as may separate his land from the nearest town road on shore, provided the structure shall not interfere with the use of that part of the lake for the passage of such water craft as would otherwise pass that point. Before proceeding with the construction of the bridge, proper plans and specifications therefor shall be prepared and submitted to and approved by the town board of the town in which the bridge is to be constructed. If public waters are involved, the plans shall first be approved by the commissioner of natural resources. Upon the completion of the bridge in accordance with the plans and specifications, the town board shall approve the same and endorse its approval upon the plans and specifications therefor; and thereupon the same shall be filed in the office of the clerk of the town in which the bridge is located and the bridge shall thereupon become a part of the town road and open to the use of the public as such.

[1959 c 500 art 5 s 15; 1969 c 1129 art 3 s 1]

164.151 RECREATIONAL VEHICLE LANES. In addition to any other authority granted by law, any town board may establish recreational vehicle lanes on the outer rods of townroads which are deemed dedicated to a width of four rods pursuant to section 160.05, subdivision 1.

[1973 c 620 s 6]

164.155 RESTORATION OF CERTAIN TOWN ROADS. Subdivision 1. **Liability of political subdivisions.** Any political subdivision transporting or causing to be transported any sand, gravel or other road building materials over a town road shall restore that road or reimburse the town for restoration of that road to as good condition as it was prior to that transportation.

Subd. 2. **Contracts by political subdivisions.** Whenever a political subdivision and a private contractor enter a contract that contemplates the transporting of road building materials by that contractor or a subcontractor over a town road, the politi-

MINNESOTA STATUTES 1978

2613

TOWN ROADS 164.155

cal subdivision shall require, as a term of that contract, that the contractor assume the liability of the political subdivision under subdivision 1.

[1978 c 474 s 1]

164.16-164.33 MS 1957 [Repealed, 1959 c 500 art 6 s 13]