

GENERAL STATUTES

OF

MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE
LEGISLATURE BY VIRTUE OF AN ACT
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code for the purchase of stores for the national guard. ('99 c. 355, amended '05 c. 34 § 1)

2486. Other duties—Armory—The naval militia shall perform such other duty as may be required by the governor. The word "armory," as used in the military code, shall be held to include any vessel, anchored, moored or secured to land, or any boat, boathouse or dock, used for the purpose of instruction, drill or defense. ('99 c. 355, amended '05 c. 34 § 1)

2487. Exemptions—The exemptions and privileges granted by law to the officers and enlisted men of the national guard are extended to the members of the naval militia. ('99 c. 355, amended '05 c. 34 § 1)

CHAPTER 13

ROADS

DEFINITIONS—POWERS AND DUTIES OF MUNICIPALITIES

2488. Scope of act—State roads, county roads, and town roads defined—The provisions of this act shall be construed as relating solely to roads, cartways and bridges thereon, not included within the limits of any city, village, or borough, except when highways within villages or cities are specifically specified.

The roads of this state shall for the purposes of this act, be designated and referred to as "state roads," "county roads" and "town roads," and shall be laid out, constructed, improved, repaired and maintained by the authorities hereinafter set forth, as herein provided.

Subdivision (1). The words "state roads" shall be construed to include all roads which have heretofore been designated, or which may hereafter be designated as state roads.

Subdivision (2). The words "county roads" shall be construed to include those established, constructed or improved under the authority of the several county boards, as hereinafter provided, and also all roads lying within the county, established by judicial proceedings.

Subdivision (3). The words "town roads" shall be construed to include those roads and cartways established, constructed and improved under the authority of the several town boards as hereinafter provided. ('13 c. 235 § 1)

Historical—"An act relating to public highways; the powers and duties of counties, towns, villages and cities in relation thereto; the creation of a state highway commission, prescribing its powers and duties, appropriating money therefor, and providing for the payment of state aid for the construction and improvement of roads, and authorizing and directing the levy of taxes for highway purposes," approved April 15, 1913.

For laws repealed, see § 2578.

2489. Subdivision (1). "Road" and "highway" defined—The words "road" or "highway" whenever used in this act shall be construed to include bridges upon or which form a part of the road or highway to be improved or constructed.

Subdivision (2). **Width of road—**All roads established by town or county boards shall be at least four (4) rods wide, and may be six (6) rods wide when all residents of lands adjoining such road shall petition for the same.

Subdivision (3). **Width of bridges and culverts—**All bridges and culverts, and approaches thereto, on any road, hereafter established or improved, shall be at least sixteen (16) feet wide; and when such bridge in its construction or repair shall be raised three feet or more above the level of the bank on either side of any river, stream, gully or ravine, then such bridge and approaches shall be at least eighteen (18) feet wide and provided with substantial railings.

Whenever any steam or electric railroad company shall hereafter construct a bridge over a public highway, the same shall be constructed so as to leave a clear opening for the highway at least twenty-eight feet wide and at least fourteen feet clear space from the surface of the highway to the bottom of the bridge.

Any bridge hereafter constructed on any public highway over the tracks of any steam or electric railroad, shall be at least eighteen feet wide and the approaches thereto shall be at least twenty-four feet wide and the grade of such

approach shall not exceed five feet rise in a hundred feet. The grade of any approach to, or over any culvert shall not exceed or be greater than the equivalent of a five-foot rise in a hundred feet.

Subdivision (4). **Owners defined**—Persons lawfully occupying United States or state lands shall be considered the owners thereof for the purposes of this act. ('13 c. 235 § 2)

69-297, 72+123; 84-314, 318, 87+919.

2490. **State roads**—All state roads shall be constructed, improved and maintained by the counties under rules and regulations to be made and promulgated by the highway commission. ('13 c. 235 § 3)

2491. **County roads**—All county roads shall be established, constructed and improved by the several county boards in conformity with the rules and regulations to be made and promulgated by the highway commission; provided, however, that in counties having a population of one hundred fifty thousand (150,000) inhabitants or over and which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction and improvement of roads within its confines, the rules and regulations made by the highway commission need not be complied with. The county board of any county may appropriate from its road and bridge fund to any town in its county, such sums of money as are available and which it deems advisable to aid such towns in the construction and maintenance of roads therein; provided, that in counties having a population of one hundred fifty thousand (150,000) inhabitants or over, such county aid may be expended in accordance with the provisions of chapter 164, Laws 1905, as amended by chapter 208, Laws 1909 [2584-2586]. The town through which any county road may pass shall maintain and keep it in repair under the rules and regulations of the highway commission. Provided, however, that, in counties having a population of one hundred fifty thousand inhabitants (150,000) or over and which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction or improvement of roads within its confines, the several towns thereof shall have no jurisdiction over county roads. ('13 c. 235 § 4)

2492. **Town roads**—All town roads shall be located, constructed, repaired and maintained by town boards, provided that the county boards may aid in the construction, repair and maintenance of such roads.

The town board may appropriate money from the town road and bridge fund to aid in the construction or improvement of any road within the town which has been designated as a state road. Any money so appropriated shall be paid into the county road and bridge fund and shall be used only for the purpose designated by the town board at the time it makes such appropriation. ('13 c. 235 § 5)

2493. **Road beyond boundaries of municipality, etc.**—The council of any village, borough or of any city of the fourth class or the town board of any town, may appropriate and expend such reasonable sums as it may deem proper to assist in the improvement and maintenance of roads lying beyond its boundaries and leading into it, and of bridges thereon, whether they are within or without the county in which it is situated. ('13 c. 235 § 6)

2494. **Contracts**—Subdivision (1). **Bridges**—No contract for the construction or erection of a bridge shall be entered into by any county, town, village or city of the fourth class where the contract price of such bridge exceeds the sum of five hundred dollars (\$500.00); unless plans and specifications for the proposed bridge shall be filed with the county auditor, in case of county contracts, or with the town, village or city clerk respectively, in case a contract is to be entered into by a town, village or city of the fourth class, at least three weeks prior to the time when such bids are to be considered and the contract entered into, nor shall any such contract be let without first advertising for bids or proposals therefor in the newspaper, published in the county, in which the official proceedings of the county board are published. Such advertisement shall be published once a week for three successive weeks preceding the time fixed for receiving bids and letting the contract and shall state the time and place of receiving bids and awarding the contract and shall refer to the fact that plans and specifications are on file in the office hereinbefore specified.

Subdivision (2). **Roads**—No county or town shall contract for the construction or improvement of any road where the contract price exceeds five hundred dollars (\$500.00) unless plans and specifications shall have been made and prepared and filed as provided in subdivision 1 of this section, nor until advertisements for bids shall have been published as therein provided for. ('13 c. 235 § 7)

2495. **Established roads**—Every road established by the public authorities, where no appeal has been taken within the time limited therefor, is hereby declared a public road to all intents and purposes, and all persons who have neglected to appeal within the time prescribed by law, shall be forever debarred from any further redress. ('13 c. 235 § 8)

See § 2601. See, also, 1909 c. 18, legalizing proceedings in laying out roads. 30-533, 16+408.

STATE HIGHWAY COMMISSION—STATE ROADS AND AID

2496. **State highway commission—Appointments, etc.**—On or before January 1, 1914, the governor shall appoint one commissioner to succeed that member of the board of highway commissioners appointed under the provisions of chapter 163, General Laws 1905, whose term of service then expires, and each year thereafter he shall appoint one commissioner until the three commissioners provided by chapter 163, General Laws 1905 and chapter 33, Laws 1911, are appointed, then each shall be appointed for three years, and until his successor has been appointed and qualified, but not more than two members of said commission shall belong to the same political party. Such commissioners shall serve without compensation. The governor shall fill all vacancies and may remove a member for inefficiency, malfeasance or neglect of duty. All appointments to fill vacancies shall be for the balance of the unexpired term of the commissioner whose death, removal or resignation caused the vacancy.

The state highway commission to be constituted and appointed under the provisions of this act shall be deemed a continuation of the state highway commission constituted and appointed under the provisions of chapter 163, Laws 1905, and chapter 33, Laws 1911. All questions shall be determined by a majority vote of such commissioners. ('13 c. 235 § 9)

1905 c. 163 (amended 1909 c. 463) and 1911 c. 33 are not expressly repealed by § 2578, but the effect of this act is to supersede them.
117-490, 136+5, 40 L. R. A. (N. S.) 173.

2497. **Chairman, etc.—Secretary to be state engineer—Deputies—Duties—Attorney**—Said highway commission shall elect from its members a chairman and vice chairman, it shall have a common seal, the members thereof shall have power to administer oaths, and it shall be provided with a suitable office at the capitol, where it shall hold regular meetings not less than once in each month. Said commission shall appoint a secretary, who shall be a civil engineer and practical road builder, who shall be known as the state engineer; it may also appoint deputy and assistant engineers and employ such other persons as it may from time to time require, and shall fix their compensation. Said state engineer, his deputies and assistant engineers, shall, each before entering upon the duties of their office, subscribe to, execute and file an oath of office and a bond in the penal sum of three thousand dollars (\$3,000.00) with sufficient sureties, conditioned on the faithful performance of their official duties. The secretary shall keep a record of every vote and official act of said commission, shall file and safely keep all maps and papers belonging to it, shall devote all of his time to the interest of the state as prescribed by said commission, and shall be in charge of the offices of the commission at the capitol. There shall be present at all times in the office of said commission, either the state engineer or one of his deputies. It shall also be the duty of the said state engineer and his deputies and assistants to give advice, assistance and supervision with regard to road and bridge construction throughout the state, as may be required and as the rules and regulations of the commission may prescribe, and to render such other engineering and surveying services as may be required by the governor for any of the state departments, and said state engineer and his deputies and assistants may be required by the commission to attend any public meeting held by the commission or other parties in the interest of road improvement in this state; provided, that the members

of said commission, such state engineer, deputies, assistants, and other persons employed by said commission, shall be allowed necessary expenses, while performing their official duties outside of the state capitol, or outside the town or county in which they reside.

All of the files and records of said commission shall, under reasonable regulations, be kept open for public inspection and certified copies thereof shall be received in evidence in any court of the state.

The attorney general of the state shall be ex-officio attorney for the commission and shall give the commission such legal counsel, advice and services as it may from time to time require. ('13 c. 235 § 10)

2498. Duties of commission—Annual report—Whenever practicable said commission shall investigate and determine the location of road material in the state, ascertain the most approved methods of construction and improvement of roads, investigate the most approved laws in relation to roads in other states and hold public meetings throughout the state when deemed advisable. On or before March 1st of each year it shall make a printed report to the governor, stating among other things deemed by it expedient and of general interest on the subject of road-building, as near as possible, the number of miles of state roads built or improved during the preceding year and their cost; the general character and location of material suitable for road construction; the general character and needs of the roads of the state; and recommend such legislation as it deems advisable. ('13 c. 235 § 11)

See 117-361, 135+975.

2499. Tax levy—State road and bridge fund—For the purpose of state aid in the construction and improvement of public highways, there shall hereafter be levied annually on all taxable property of the state a tax of one mill on each dollar of valuation, to be collected in the same manner as other state taxes, and the money so raised, together with all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to said fund, and all funds accruing to the state road and bridge fund, however provided, shall constitute the general state road and bridge fund. ('13 c. 235 § 12)

2500. Appropriation for expenses—There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated for the fiscal year ending July 31, 1914, one hundred and fifty thousand (\$150,000) dollars, and for the year ending July 31, 1915, the sum of one hundred and fifty thousand (\$150,000) dollars, to pay the expenses of said commission, including the salary and expenses of the state engineer and his deputies and assistants and all other persons employed by the commission; provided, that not more than fifteen thousand (\$15,000) dollars shall be expended in any one year for the expenses of the office of said commission; provided further that all unexpended funds in any year may be carried over to the credit of the commission for subsequent years.

All accounts and expenditures shall be certified by the chairman of said commission, and paid by the state treasurer upon warrants drawn by the state auditor. ('13 c. 235 § 13)

2501. Not to be interested in contracts—The members of the highway commission, the state engineer, his deputy or assistant engineers, shall not be, either directly or indirectly, interested in any contract for constructing or improving any road under this act. ('13 c. 235 § 14)

2502. Apportionment of road and bridge fund—On or before the first Tuesday in March of each year the highway commission shall estimate the probable sum of money that will accrue to the state road fund during that year, and apportion the same among the different counties of the state, as herein provided, and shall immediately send a notice to the state auditor and to the board of county commissioners of each county stating the amount that such county shall be entitled to receive for said year out of said fund. Not less than one nor more than three per cent of the state road and bridge fund available in any year shall be apportioned to any county.

Any funds in excess of one-half of one per cent of the total funds available for allotment in any one year, allotted to any county in any year, which, for

a period of two years after such allotment shall remain unused and unexpended by such county, or for work done in such county, shall revert to the unapportioned funds in the state road and bridge fund and be thereafter and during the next succeeding year, apportioned the same as other funds added to such state road and bridge fund, by taxation or otherwise, are apportioned. ('13 c. 235 § 15)

2503. Allotment—How used and expended—Twenty per cent of the allotment so made to any county shall be used only for maintenance of state roads and bridges thereon.

It shall be the duty of the county commissioners of each county in which state roads have heretofore or may hereafter be constructed or improved, to provide for the proper maintenance of the same in accordance with the rules and regulations to be prescribed by the highway commission.

The cost of such maintenance shall be paid by the state from the proportion of allotment to each county for maintenance purposes above specified, to an amount not exceeding the proportion so made available for maintenance purposes. Such payment shall be made upon reports to the highway commission by the county auditor, to be approved by the highway commission, in substantially the same manner as is herein provided for the payment of the state's part of the cost of the construction and improvement of state roads.

Not to exceed twenty-five per cent of the apportionment from the state road and bridge fund of any county, remaining after the amount for maintenance has been deducted, may, when deemed advisable by the county board, be expended on county roads under such rules and regulations as may be prescribed by the state highway commission; to be paid in substantially the same manner as is herein provided for the payment of other state aid for the construction and improvement of state roads; provided that only such proportion of the cost of the construction, improvement or repair of any county road shall be paid from such county's allotment as is herein provided with reference to the payment for the construction or improvement of a state road.

The amount which shall be paid by the state out of the allotment of the road and bridge fund, to any county as state aid, in the construction or improvement of any road or bridge in any county in any year, shall be as follows:

In counties where the assessed value of the property for taxation purposes is less than five million (\$5,000,000) dollars, 80 per cent; in counties with a taxable valuation of five million dollars (\$5,000,000) and less than ten million dollars (\$10,000,000), 70 per cent; in counties with a taxable valuation of ten million dollars (\$10,000,000) and not exceeding fifteen million dollars (\$15,000,000), 60 per cent; in all other counties, 50 per cent. In determining the taxable valuation hereinbefore provided for, the assessed valuation of moneys and credits provided for in chapter 285, General Laws 1911 [2316-2328], shall be excluded. The proportion of cost of constructing any road or bridge above specified, shall be paid by the state only in case the funds in the allotment to any given county, over and above the amount set aside for maintenance, as herein provided, shall be sufficient therefor. ('13 c. 235 § 16)

2504. Rules and regulations for construction, etc.—As soon as the highway commission shall have ascertained the location of the available road material throughout the state, and the best methods of road and bridge construction, as far as the same may be practicable, it shall prepare and adopt such rules and regulations for the construction, maintenance and improvement of state roads as shall be most suitable to the requirements of, and bring the most practicable results to, the several parts of the state.

Such rules and regulations shall be printed and copies shall be forwarded to the county auditor of each county in the state for general distribution. Such rules and regulations may be amended from time to time, but such amendments must be printed and distributed not later than April 1st of each year. ('13 c. 235 § 17)

2505. **Designation of state roads—Surveys, etc.**—Any county board may, with the consent of the highway commission, designate any established road, or specified portion thereof, in its county, not within the corporate limits of any borough, village or city, as a state road, and construct or improve the same in accordance with the regulations of the state highway commission relative to state roads.

When any county board has designated any road as a state road as herein provided, the county auditor shall transmit a copy of the resolution to the state highway commission, together with a description of the road so designated. It shall be the duty of the commission to thereupon determine whether sufficient funds will be available from the state road and bridge fund for the improvement of said road as a state road and also determine the desirability of such designation with reference to the relation of such road to other state roads, or its relation to other roads and traffic conditions in such county, and if it determines such question in the affirmative, then and in such case, the highway commission may, by its order in writing, to be filed with the county auditor, consent to the designation of such road as a state road.

Whenever it shall be made to appear to the highway commission that the board of county commissioners of any county have refused to grant an application to it made by at least ten freeholders resident of such county, to designate any established road or part thereof as a state road, the highway commission may consider such application de novo, and if in its opinion sufficient funds will be available for the improvement of such road, and its designation and improvement as a state road is desirable because of the relation of such road to other state roads or traffic conditions in such county, the highway commission may by its written order designate such road or part thereof, as a state road without a prior designation thereof by the county board or its concurrence in such designation. A copy of such order shall be filed with the county auditor.

The council of any village or city of the fourth class, may, with the consent of the highway commission, and the county board of the county in which such village or city is situated, designate any street or road within its corporate limits, not less than sixty (60) feet in width, as a state road when the street or road so designated will constitute a direct connecting link with the parts of a state road leading to and out of any such village or city. The county board of such county shall signify its consent by resolution and in and by such resolution shall designate the amount which may be paid out of the allotment made to such county, as state aid in the construction or improvement of any such street. No greater amount than is so designated by the county board shall be paid as state aid for the construction or improvement of such street. The consent of the highway commission to the designation of any such street or road within the corporate limits of any village or city of the fourth class shall be obtained by such village or city in substantially the manner and upon consideration of the same conditions as is herein provided for the granting of its consent to the designation of highways by county boards as state roads. Any street or road within any village or city of the fourth class, so designated, may be improved as other state roads and state aid paid therefor as hereinafter provided. The village or city clerk, as the case may be, shall make substantially the same report as is herein required to be made by a county auditor with reference to state roads designated by the county board, and payment of the state's share of the cost of construction and improvement thereof shall be made in substantially the same manner and upon substantially the same conditions precedent as is herein provided for the payment of state aid to counties; provided, however, that the payment to be made by the state shall be made from the allotment to the county in which such village or city is situate; and provided further, that no more than one-half of the cost of constructing or improving any state road within the corporate limits of any village or city, nor in any event, to exceed fifteen hundred dollars (\$1,500) per mile, shall be paid as state aid therefor from the state road and bridge fund.

Any roads which may have been at any time designated as state roads may, by joint action of the county board and the highway commission, be abandoned or changed as such.

Said state engineer shall make or cause to be made all necessary surveys, establish grades and prepare plans and specifications for all state roads, except roads in counties which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction and improvement of roads within its confines, and shall cause to be superintended all work done on such designated state roads. Such work may be done under contract or by day labor, as the county board and highway commission may direct, and a report thereof shall be made by the superintendent thereof in duplicate as may be required by the highway commission, one copy of which shall be delivered to the county auditor and one to the state engineer. ('13 c. 235 § 18)

117-361, 135+975.

2506. Designation of road on county line as state road—Whenever the county boards of adjoining counties make application to the state highway commission for the designation of an established road running on or near the boundary line between two counties, as a state road, said commission shall investigate the desirability of such designation, and if it shall decide that it is desirable so to do, shall so designate such road and determine and fix the part of the cost of the improvement thereof to be paid by each county. ('13 c. 235 § 19)

2507. Assistant engineers—Duties—The highway commission shall appoint as many assistant engineers throughout the state as they may deem necessary for the purpose of superintending all work done on state roads. Such assistant engineers shall devote their entire time to their official duties; may be assigned to one or more counties as deemed advisable, and shall act under the instructions of the state engineer and the rules and regulations of the highway commission. It shall be the duty of said assistant engineers to make all necessary surveys, estimates and specifications for work to be done on state roads and for that purpose they shall have the co-operation and assistance of the state engineer or any of his deputies or assistants. It shall also be the duty of said assistant engineers upon the request of any board of county commissioners or any board of town supervisors, within their respective towns and counties, to advise and consult with such county or town boards in the construction or improvement of county or town roads; to make plans and specifications when so required; to exercise supervision over such construction or improvement, and lend every possible assistance to the local road authorities in bettering the public highways. All persons appointed by the highway commission shall be appointed solely on their merits and qualifications. ('13 c. 235 § 20)

2508. Procedure of county board in constructing or improving state roads—Whenever the county board of any county shall determine to build or improve any state road for which aid is to be claimed, they shall proceed as follows:

If the estimated cost of such work does not exceed five hundred dollars (\$500.00) the said board shall cause surveys, when necessary, to be made therefor by an assistant engineer, and shall thereupon receive bids for all or part of said work and let the contract to the lowest responsible bidder, or may cause the same to be done by day labor under the supervision of said engineer. In case the estimated cost exceeds five hundred dollars (\$500.00), the said county shall cause surveys, plans and specifications therefor to be made by an assistant engineer and submit the same to the highway commission for approval, and when such plans and specifications are approved, the said county board shall proceed to do said work by contract or day labor. The work shall be done under the supervision of an assistant engineer, who shall in all matters pertaining to such work act under the rules and regulations of the highway commission and the instructions of the state engineer.

The provisions of this section shall not apply to any county which now has or which may hereafter have a population of one hundred fifty thousand (150,000) inhabitants and over and a county superintendent of highways or other county officer to superintend the construction or improvement of roads within its confines. ('13 c. 235 § 21)

2509. State aid, how paid—After any county board shall have completed any work on a state road for which state aid is claimed, the auditor of such county shall make a statement to the highway commission, showing the location, nature and cost of such work, and shall also submit a detailed report from the assistant engineer in charge showing all such details concerning the same as may be required by the highway commission. On receipt thereof the said highway commission shall proceed to examine such reports and if it finds the same satisfactory and that the work has been done in substantial compliance with the plans and specifications therefor, and the contract therefor, if any, the secretary of the highway commission shall certify the same to the state auditor who shall issue a warrant for the state's share thereof as shown by said report, payable to the treasurer of such county, but in no case shall said warrant with all other warrants exceed the amounts allotted to such county, and it shall be the duty of the assistant engineer to report such work in duplicate to the county auditor with details and cost within thirty days after completion thereof, one copy of which shall be sent to the highway commission with the auditor's report.

The detailed report of the assistant engineer mentioned herein shall contain, among other matters, a statement showing the municipal subdivision performing the work or expending the money on such highway, and if more than one such municipal subdivision has performed work or expended money on such highway, then the names of such municipal subdivisions and the portion of the work performed or money expended by each. The county auditor, upon receipt of the money from the state highway commission provided for in this section, shall pay or credit the same to the municipal subdivision entitled thereto, and if more than one such municipal subdivision has performed work and expended money upon such highway as shown by the assistant engineer's report, then to each of such municipal subdivisions in the proportion shown by such assistant engineer's report. ('13 c. 235 § 22)

2510. Good roads day—The third Tuesday of June in each year is hereby designated as "Good Roads Day" and the governor shall annually, on or before the first day of June, by public proclamation, request the people of the state to contribute labor, material or money toward the improvement of public highways in their respective communities, upon that day. ('13 c. 235 § 23)

ROADS ESTABLISHED BY JUDICIAL PROCEEDINGS

2511. Highway in two or more counties, etc.—Petition—Commissioners—Whenever a petition praying for the location, alteration or vacation of any highway running into or through two or more counties, or on or partly on the line dividing two or more counties, in any judicial district in this state, signed by twenty legal voters and taxpayers resident in said counties, shall be presented to a judge of the district court in said district, or whenever a petition praying for the location, alteration or vacation of any highway running into or through two or more counties, on or partly on the line dividing two or more counties in two or more judicial districts in this state, signed by twenty legal voters and taxpayers, resident in said counties, shall be presented to a judge of the district court of one of said districts, the said judge is hereby authorized to appoint three commissioners whose duty it shall be to meet at such times and places as may be necessary and to immediately proceed to lay out, alter or vacate such road as directed by the judge in accordance with the prayer of the petition; provided, that no road shall be ordered by the judge to extend more than six miles outside of the judicial district in which the application is made, and such road shall be extended beyond the district only for the purpose of commencing or ending at some village or public road.

Provided, however, that in cases where said road, if a new road, or if an old road, the part thereof to be altered or vacated runs through or into two or more counties situated in two or more judicial districts, the judge to whom the petition was presented shall appoint commissioners from each of the counties affected by said road, not exceeding five in all, and direct them to lay out, alter, or vacate said road accordingly; and it shall be the duty of said commissioners to meet at such times and places as may be necessary and to proceed to lay out, alter or vacate said road in like manner as provided herein in other cases. ('13 c. 235 § 24)

2512. Notice of presentation of petition—Three weeks published and posted notice of the presentation of such petition shall be given in each of the counties affected, at least thirty days in advance thereof. Such notice shall contain a copy of the petition, the name of the judge to whom it will be presented, and the time and place of presentation; and proof of such notice shall be filed with the clerk before the hearing. Such notice shall also be served, in the same manner as the service of the summons in a civil action, upon each county and organized town in which, or along the boundary of which, such proposed road is sought to be established, and proof of the service of such notice on such counties and towns shall be filed with the clerk of said court before the hearing. ('13 c. 235 § 25)

2513. Surveyor, etc.—The commissioners shall appoint a surveyor, an axman and two chainmen, to survey such road, if so directed by the court. The surveyor shall receive four dollars and the axman and chainmen shall each receive two dollars per day for their services, and in addition thereto eight cents for each mile of necessary travel in performance of their duties. The surveyor shall make plats of the location of such road, in which the county lines and all stakes, trees, monuments and distances shall appear, and file one of such plats for record with the register of deeds of each county in or through which said road is located. The surveyor shall receive two dollars for each plat so filed. ('13 c. 235 § 26)

2514. Damages—Determination and payment—Said commissioners shall appraise and fix the damages to be paid to each landowner by reason of the establishment, alteration or vacation of such road over and across his lands, unless such right of way be voluntarily released to the county in which such land is situated; and in their report they shall set forth each appraisal made by them, and all releases of the right of way. Such damages, when finally determined, and all expenses incurred in the establishment, alteration or vacation, including compensation for right of way, shall be paid by the counties through, into or between which such road passes, each county paying its just proportion, as determined by the court. The county shall provide for and pay such damages as in the case of a county road. Said commissioners shall receive for their services three dollars each per day and eight cents for each mile of necessary travel. ('13 c. 235 § 27)

2515. Commissioners' report—Hearing—Confirmation—Said commissioners shall report their proceedings at the term of the district court, held in the county where such proceedings were begun, next after the completion of their duties, and any person aggrieved by its action may then appear and be heard upon such report; and the court upon such hearing, may consider the propriety of establishing, altering or vacating such road, and may confirm or reject such report. The confirmation shall be final and the order of confirmation, if a road be thereby established or altered, shall direct the time and manner of opening the same for public use. The clerk of court shall within thirty days after filing of the same, transmit a certified copy of the order to the auditor of each county through or into which such road passes; upon receipt of such order the county board shall proceed in accordance with its terms to open so much of the road as lies within its county for public use. ('13 c. 235 § 28)

26-445, 4+1107; 84-308, 87+921.

2516. Trial by jury for damages—Any person aggrieved by such appraisal may demand a jury trial to determine the amount of damages to which he is entitled for the right of way for such road over his land. Such demand shall

be in writing, signed by the person making it, his agent or attorney, and filed with the clerk of the district court with whom the report is filed, within thirty days after the entry of the order of confirmation. A failure to file such demand shall be deemed a consent to the appraisal made. A trial so demanded shall be had at the next term held in the county in which the land is situated, unless continued for cause. If the land is situated in a county other than that in which the report is filed, the clerk with whom such report and demand are filed shall certify a copy of said demand, and of so much of the report as applies thereto, to the clerk of the trial county who shall file the same. The county board or county attorney of the county in which land so taken is situate may in like manner and with like effect demand a jury trial to determine the damages to be paid in any one or all of the cases within such county, and the like proceedings shall thereupon be had. ('13 c. 235 § 29)

26-445, 4+1107; 81-443, 84+301.

2517. Powers of county boards—Subdivision (1). General supervision—County boards shall have general supervision of county roads, including those within their respective counties established by judicial authority, with power to appropriate and expend such sums of money from the county road and bridge fund as they may deem advisable for opening, vacating, resurveying or improving the same in towns and villages of such county, or for the building or repairing of bridges upon any public road in any town or village, borough or city of the fourth class in the county, or for purchasing necessary road material, machinery, tools and supplies, provided, that before any such sums shall be appropriated and expended by such county board on any road or bridge within the limits of any village, borough or city of the fourth class in such county, such expenditures upon such road or bridge shall be first authorized by the council of such village, borough or city of the fourth class.

Subdivision (2). Roads in adjoining county—The board may appropriate and expend money for the construction and maintenance of roads in an adjoining county, when it deems it for the best interests of the public; but the amounts so appropriated shall not exceed twenty thousand dollars in any one year.

Subdivision (3). Bridges in villages, boroughs and cities of the fourth class—Whenever the council of any village, borough or city of the fourth class shall determine that it is necessary to build or improve any bridge or bridges including approaches thereto and any dam or retaining works connected therewith, upon or forming a part of streets or highways either wholly or partly within its limits, the county board shall appropriate such money as may be necessary therefor from the county road and bridge fund, not exceeding during any year the amount of taxes paid into the county road and bridge fund during the preceding year, on property within the corporate limits of said village or city. Such appropriation shall be made upon the petition of the council. The council shall determine the plans and specifications, shall let all necessary contracts, shall have charge of construction, and upon its request warrants in payment thereof shall be issued by the chairman of the board and county auditor from time to time as the construction work proceeds. Any unpaid balance may be paid or advanced by the village or city. On petition of the council the appropriations of the county board during not to exceed two successive years may be made to apply on the construction of the same items and to repay any money advanced by the village or city in the construction thereof. Provided, that this subdivision shall not limit the authority of the county board to appropriate and expend money on such bridges under the provisions of subdivision 1 of this section.

Subdivision (4). County road and bridge fund—The county board shall provide and set apart a fund for the construction and maintenance of roads and bridges in such county, to be known as the "County Road and Bridge Fund," upon which shall be drawn all warrants for the construction and maintenance of state and county roads and bridges in such county, as determined by such boards or as required by the provisions of this act.

Subdivision (5). County may issue bonds, when—When authorized by the voters as hereinafter provided, the county board of any county is authorized

to issue bonds for the purpose of macadamizing any established county road or roads therein, or surfacing the same with any hard material, or in any other way making a permanent improvement thereon, when the expense of so doing exceeds the amount of any appropriation the county board is authorized to make therefor.

Whenever fifty or more voters of the county who are also freeholders, petition for such improvement, and file such petition with the county auditor, he shall lay the same before the county board at its next regular, special or adjourned meeting.

It shall be the duty of the county commissioners to consider such petition and if they find it contains the requisite number of signatures, they shall request an estimate of the cost of such improvement to be made by the engineer of the highway commission.

If such estimate is furnished more than six months prior to the time of holding the next general election, the county board may, if it deems it desirable, order the holding of a special election in the county for the purpose of voting on the question of making such improvement and issuing bonds therefor. No special election shall be ordered when a general election will be held within six months after the estimate of the state engineer is filed with the county auditor. If a special election is ordered the county auditor shall cause ballots to be prepared, setting forth a statement of the proposed improvement and description of the road or roads to be improved, with the words "yes" and "no" thereafter, with appropriate spaces for voting.

Persons voting in favor of the proposition shall put a cross (X) after the word "yes" and those opposed after the word "no." If not submitted at a special election, the auditor shall cause the same to be submitted at the next general election. In either event the votes on such question shall be returned and canvassed as is provided by law with reference to other questions submitted to the voters. If a special election shall be ordered the same shall be held substantially in the manner provided by law for the holding of general elections and the auditor shall cause published notice thereof to be given in the official paper of the county for three successive weeks prior thereto, giving a description of the road or roads to be improved and a statement of the improvement proposed and the estimated cost thereof. If a majority of the voters voting at the election vote in favor of the improvement, then the county board shall issue the bonds of the county as hereinafter provided and cause the improvement to be made.

The bonds so issued shall bear interest, evidenced by coupons, at a rate not exceeding six per cent per annum, payable annually; such bonds may be made payable in equal installments, the first of which shall become due and payable not less than five years after the date thereof and the last of which installments shall become due and payable not more than twenty years after the date thereof. Said bonds shall not be sold for less than par and accrued interest and the proceeds thereof shall be used by the county only for making the improvements specified in the proposition as submitted to the voters; such bonds shall not be valid until registered by the county auditor, and his certificate of registration endorsed thereon. The county auditor shall thereafter levy a sufficient tax to pay the interest and principal of said bonds as the same shall accrue, which tax shall be collected as other taxes are collected; provided, however, that no such bonds shall be issued by any county when the issuance of the same would make the entire indebtedness of the county exceed fifteen per cent of the assessed valuation of the taxable real property of the county; provided, that in computing the indebtedness of any county, any indebtedness created by the issue of bonds of such county for the construction of drainage ditches the cost of which is assessed against the benefited property, shall not be included. ('13 c. 235 § 30)

Under prior laws—Care of roads—67-1, 5, 69+471; 69-297, 72+123; 83-65, 68, 85+830; 90-1, 95+456.

Power to contract for employment of agents (103-1, 114+89).

— **Road and bridge fund—**69-297, 304, 72+123; 90-1, 5, 95+456; 103-1, 114+89.

2518. Road tax—The county board at its July meeting may include in its annual tax levy, an amount not exceeding three mills on the dollar of the

taxable valuation for the county road and bridge fund. Such taxes may be additional to the amount permitted by law to be levied for other county purposes. ('13 c. 235 § 31)

COUNTY ROADS OTHER THAN THOSE ESTABLISHED BY JUDICIAL PROCEEDINGS

2519. Powers of county board—Counties having 200,000 inhabitants or over—County roads, other than those established by judicial authority, shall be established, altered or vacated only by the county board. Damages resulting from establishing, altering or vacating such roads shall be determined in the manner hereinafter provided, and shall be paid by the counties through which they pass. All proceedings in establishing, altering or vacating roads shall be recorded in a public record book, designated as the "Book of County Roads."

The county commissioners of any county having two hundred thousand (200,000) inhabitants or over, are hereby authorized and empowered to constitute and declare any public highway or road in such county outside of the corporate limits of any incorporated city or village therein, a county road; and they are hereby given general supervision over such roads with full power to appropriate such sums of money from the county treasury of such county as they may deem advisable for improving the same; provided, that nothing contained in this section shall be so construed as to relieve the supervisors or town overseer of highways of any town in such county from any of the duties imposed upon them by existing laws relating to roads, cartways and bridges, nor to repeal any existing special law relating to roads, cartways and bridges applicable to such county.

In any county of this state having two hundred thousand (200,000) inhabitants or over, or which may hereafter have two hundred thousand (200,000) inhabitants or over, the county commissioners thereof are hereby authorized and empowered to extend any street or avenue beyond the city or village limits of any city or village in such county to connect with any road or highway in any adjoining county, which extension, however, shall not exceed one mile in length; and said county commissioners are given full power to change, alter, improve, or repair such extension of road within such county, and to appropriate such sum or sums of money from the county treasury of such county as they may deem advisable therefor; provided, that in no case shall the location of such road wherewith such extension shall be connected, be changed at the point where the same now crosses the county line between such county and such adjacent county or counties. ('13 c. 235 § 32)

27-119, 124, 6+457.

2520. Roads in more than one town, etc.—Petition—Whenever twenty-four freeholders of any county petition the county board for the establishment, alteration, or vacation of any road or of any roads which connect with each other running into more than one town, or partly in one or more towns and partly on the line between one or more towns, or on the line between two or more towns, in such county, or along the shore of any lake wholly or partly in such county, or into a town or towns and the unplatted part of any village or villages therein, such road or roads not being within a city, setting forth the beginning, course and termination or the beginnings, courses and terminations of the road or roads, and the names of the owners of the land, if known, through which the same may pass, and file the same with the auditor, he shall forthwith lay the same before the board, if in session, and if not, at their first session thereafter. If the petition relate to a road or roads, partly in a town or towns, and partly in the unplatted portion of a village or villages, before it shall be acted upon by the county board it shall have attached thereto a certified copy of a resolution of the village council or of each village council, as the case may be, approving the same. ('13 c. 235 § 33)

Under prior laws—38-441, 38+108; 68-297, 71+382; 80-40, 82+1099.

Where the petition was not signed by 24 freeholders, the commissioners acquired no jurisdiction (98-281, 108+521).

2521. Hearing on petition—Committee—Notice—If such petition appears reasonable on its face the board shall order a hearing thereon, designating in such order the time and place for such hearing and shall also appoint from its members a committee to examine the route or routes of such road or roads and fix the time and place upon such route or upon any one of such routes, at which said committee shall meet for the purpose. At least twenty days before the time fixed for such committee meeting, and not less than thirty (30) days before the time of said hearing, the board shall cause posted notice of the time and place of such meeting and hearing to be given in each town affected, setting forth a copy of the petition. Proof of such notice shall be made by affidavit of the person posting the same. Such affidavit shall be filed with the county auditor and be by him kept with the other papers relating to such proceedings. ('13 c. 235 § 34)

See 39-240, 39+324.

2522. Committee to examine and report—At the time and place designated, said committee shall meet and examine the road or roads proposed to be established, altered or vacated, and in such examination they may employ a surveyor. After such examination, they shall report to the board at its next session, setting forth, if a new road or roads or any alteration or alterations of any existing road or roads be proposed, the courses and distances thereof, and recommending the granting or rejection of the petition. ('13 c. 235 § 35)

Under prior laws—30-533, 16+408; 38-441, 442, 38+108; 66-358, 68+1062, 69+886; 68-297, 71+882.

The owner of land which the authorities are proceeding to take without compliance with the provisions of statute and the constitution may enjoin the proceedings until his damages are determined and paid or secured (98-281, 108+521).

2523. Hearing—Damages—Establishment of road—At the time and place designated, said board shall hear all parties interested as to the necessity for, and as to the amount of damages to land owners by reason of such establishment, alteration or vacation, and may adjourn such hearing from time to time, if necessary. It shall determine the damages which will be sustained by each owner through whose land such road or roads may pass, and with whom it cannot agree as hereinafter provided, or who is unknown, specifying the amount of damages, if any, awarded to each land owner and describing each parcel of land separately. If the board determines that the establishment of the road is desirable and of sufficient advantage to warrant the payment of damages assessed, it shall declare the road or roads established, altered or vacated in accordance with the petition. Otherwise, it shall declare the petition dismissed.

The damages sustained by reason of establishing, altering or vacating any road may be ascertained by the agreement of the owners and the county board; and, unless such agreement is made, or the owners release in writing, all claim to damages, the same shall be assessed and awarded before such road is opened, worked, used, altered or vacated. Every such agreement and release shall be filed with the county auditor and shall be final as to the matters therein contained.

In ascertaining the damages which will be sustained by any owner, the board shall determine the money value of the benefits which the establishment, alteration or vacation, as the case may be, will confer, and deduct such value, if any, from the damages, if any, and award the difference, if any, as damages.

If the petition be granted, the board shall provide for the laying out and construction of such road, in the case of the establishment of a new road or the alteration of an existing road or roads, and the carrying into effect the vacation of an existing road or roads, when such action is petitioned for.

All damages resulting from the establishment, alteration or vacation of any county road shall be paid by the county. ('13 c. 235 § 36)

2524. Appeal—Any tax payer of the county, or any person aggrieved by any determination of a county board, either establishing, altering or vacating or refusing to establish, alter or vacate any road, or by any award of damages made by such county board may appeal therefrom to the district court

of such county within the time and in the manner and with effect as is hereinafter provided. ('13 c. 235 § 37)

TOWN ROADS

2525. General supervision in town board—The town board of each town shall have general care and supervision of all town roads therein, and such care and supervision of county roads therein as is prescribed by the provisions of this act, and shall procure machinery, implements, tools, stone, gravel, and other material required for the construction and repair thereof; provided, however, that all work done on county roads under the supervision of town boards shall be done in accordance with rules and regulations to be made by the highway commission; provided, that in counties having a population of one hundred and fifty thousand (150,000) or over and which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction or improvement of roads within its confines the town board shall not have jurisdiction over county roads. Provided, however, that the county board of each county shall have the care, supervision and maintenance of all bridges in the county outside of the corporate limits of cities and villages which have originally cost \$1,000 or more. ('13 c. 235 § 38)

49-106, 109, 51+814; 67-1, 5, 69+471.

2526. Report to town meeting—The town board shall render to the annual town meeting a report in writing, containing:

1. The amount of road taxes levied and the amount collected during the preceding year, and also 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.

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 materials, during the year, with an estimate of the amount required for the ensuing year. ('13 c. 235 § 39)

2527. Taxation for road purposes—All real and personal property in each town liable to taxation, other than "monies and credits" taxed under chapter 285, Laws 1911 [2316-2328], shall be taxed for road purposes. All road taxes hereafter levied shall be paid in cash and hereafter no highway labor shall be assessed.

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, not exceeding, however, fifteen (15) mills per dollar on the taxable property of the town. 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.

After the annual town meeting, in case of emergency, the town board may levy a tax on the property in its town for road and bridge purposes in addition to the tax, if any, voted at the annual town meeting for road and bridge purposes, in an amount not to exceed five (5) mills on the dollar of the assessed value of the property in the town, and any tax so levied by the town board 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, however, the amount of the additional tax so levied by the town board for road and bridge purposes, in payment for work done or material used on the roads within the town. ('13 c. 235 § 40)

See §§ 1293, 2594 and notes.

2528. Dragging roads—Tax—The county auditor of each county shall annually extend upon the tax lists of his county, in the same manner as is provided by law for extending the county school tax, a tax of one mill on the dollar of the taxable property in each town, outside the corporate limits of

any borough, village or city in any such town; provided that in towns having an assessed valuation of one million (\$1,000,000) dollars or more the amount of such tax shall not exceed one thousand (\$1,000) dollars. The tax so levied shall be collected and the payment thereof enforced in the same manner as is provided by law for the collection and enforcement of other town taxes extended by the county auditor. The county treasurer shall settle with and pay over to the town treasurer such taxes when collected at the time and in the manner now provided by law with reference to other town taxes.

The proceeds of such tax levy shall be kept in a separate fund to be known as the "Dragging Fund," and shall be expended by the town board only for the expense of procuring a suitable number of drags and dragging the roads of the town.

The town board in each town, on recommendation of the town road overseer, shall enter into contracts for the dragging of the roads of the town, giving preference to the main traveled road and roads constituting mail routes within their respective towns; provided, however, that the compensation which may be agreed to be paid for each time a road is dragged shall not exceed one dollar per mile for each mile of road dragged.

The contract price shall be paid from the "Dragging Fund," in the same manner as other claims against the town, after approval by the road overseer. ('13 c. 235 § 41)

2529. Town road overseer and assistants—Each town shall constitute a road district. The office of district road overseer is hereby abolished and in place thereof, the town board shall appoint a competent road builder as road overseer for the entire town, who shall have charge, under the supervision of the town board of the construction of all town roads, and the maintenance of all town and county roads in the town. He may appoint one or more competent assistants, subject to the approval of the town board. No member of a town board shall be eligible for appointment as town road overseer or assistant overseer. The compensation of the road overseer and assistants shall be fixed by the town board at a sum not to exceed three dollars (\$3.00) per day for the time actually employed in the performance of their duties. Before entering upon his duties, each shall give a bond to the town with sureties to be approved by the town board, in the sum of two hundred and fifty dollars (\$250.00) conditioned for the faithful discharge of his duties and to return to the town all the property of the town which may come into his custody. The town overseer and his assistants, if any, shall hold office at the pleasure of the town board. Provided, that such road overseer shall have no jurisdiction over county roads in any county which now has or hereafter may have a population of one hundred fifty thousand (150,000) inhabitants or over, and a county superintendent of highways or other officer to superintend the construction and improvement of roads within its confines. ('13 c. 235 § 42)

2530. Establishment, alteration or vacation—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 pre-emption laws or under contract with the state, within three miles of the road proposed to be established, altered or vacated. Provided, however, that in any town not having eight (8) voters, who own real estate or occupy real estate under the homestead or pre-emption laws or under contract with the state, within three (3) 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 pre-emption 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. ('13 c. 235 § 43)

Under prior laws—Petition jurisdictional (13-129, 122). Statutory procedure exclusive (42-391, 44-127). Board may depart from course of road stated in petition (46-302, 48-1111).

Petition must state names of owners. (55-223, 229, 56+820). Effect of petition including more than one proposed road. Oral evidence admissible to prove petition properly signed (69-53, 71+819). Description in petition of road to be vacated held insufficient (80-355, 83+352). Description of proposed road with reference to section line held sufficient (82-471, 85+169).

2531. Notice of hearing—The petition shall be filed with the town clerk, who shall forthwith present it to the town board. Said board, within thirty 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 and act upon said 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 also cause ten days' posted notice thereof to be given. ('13 c. 235 § 44)

Under prior laws—Service of notice jurisdictional (55-223, 56+820; 111-423, 127+190, 20 Ann. Cas. 828). Fact of service and not proof thereof gives jurisdiction (80-40, 82+1099; 87-7, 91+25; 95-372, 104+130). Service on occupants (35-141, 146, 27+500; 87-7, 91+25; 95-372, 104+130). Who is occupant (111-423, 127+190, 20 Ann. Cas. 828). What is personal service (101-414, 112+526). Notice held sufficient as to place of meeting (87-7, 91+25). Prior to revision petition had to be posted before action by board (92-57, 99+420). Waiver of notice by appearance (64-547, 67+662; 74-339, 77+229; 80-40, 82+1099). Filing protest not appearance (111-423, 127+190, 20 Ann. Cas. 828). Party appearing cannot object to want of service on parties not appearing (80-40, 82+1099).

Sufficiency of petition (108-271, 121+902).

Proceedings are not rendered void by failure to serve notice on all owners affected, and are valid as to owners who are served or waive service (102-318, 113+695).

Posted notice and affidavit of posting held sufficient, though one notice was posted at a place which was not then a statutory place for posting within G. S. 1894 § 1030 (R. L. § 687 [1187]) (99-499, 110+1).

See note under § 1187 and § 9412 subd. 14.

Under G. S. 1894 § 1807, action on a petition, taken 14 days after petition filed, rendered the proceedings void (115-247, 132+204).

2532. Hearing and determination—At the time and place designated, the 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. ('13 c. 235 § 45)

Under prior laws—Proof of service of notice (80-40, 45, 82+1099; 92-57, 60, 99+420; 95-372, 104+130; 108-271, 121+902).

Where supervisors, after meeting to determine the petition, separated without determining it and without adjournment, and met three weeks thereafter and ordered the road laid, the order was void (110-87, 124+641).

2533. Survey and order—If the petition be granted, the 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 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 board. ('13 c. 235 § 46)

36-290, 30+888; 50-558, 52+961; 69-53, 71+819.

2534. Damages and benefits—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 shall be final as to the matters therein contained. The 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. ('13 c. 235 § 47)

Under prior laws—28-61, 9+30; 30-533, 16+408; 68-297, 71+382; 95-161, 103+895.

The town may not recover back from one owner money paid as damages because notice was not served on all. The proceedings being valid as to him, a legal highway existed (102-318, 113+695).

2535. Award—Filing papers—Record—Within five days after the date of the order establishing, altering or vacating a road, the board shall make its award of damages, and file such order and award, together with all petitions, affidavits and orders relating thereto, with the town clerk; but said clerk shall not record such final order within the period of thirty days, nor, in case of an appeal, until a final decision is had thereon, and not then unless such order is confirmed. In case said board does not file such order within twenty days, it shall be deemed to have rejected the application. After the order is confirmed, the same and the award shall be by said town clerk recorded and sent to the county auditor, who shall file and preserve the same. He shall give his receipt therefor to the clerk, who shall file the same and make an entry thereof in the record relating to such road. ('13 c. 235 § 48)

2536. Order or copy as evidence—The order establishing, altering or vacating any road, or a certified copy of the record thereof, shall be received in all courts as competent evidence of the facts therein contained, and shall be prima facie evidence of the regularity of the proceedings prior to the making thereof, except upon the hearing of an appeal. ('13 c. 235 § 49)

13-129, 122.

2537. Determination final for year—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 again acted upon within the time aforesaid. In case its determination granting a petition is appealed from and reversed, it shall not within one year from the date of such determination entertain a petition having the same or a similar object. ('13 c. 235 § 50)

2538. Appeals—Orders of a town board establishing, altering, vacating or refusing to establish, alter or vacate any road or cartway, or awarding damages, may be appealed from by the person or persons and in the manner and with the effect hereinafter provided. ('13 c. 235 § 51)

2539. Roads on town line—Whenever any town board receives a petition similar to that required for establishing a town road, praying for the location, alteration, or vacation of a road on the line between that and an adjoining town, it shall immediately notify the town board of such adjoining town, and the town board of each of said towns, or a majority of each, acting together as one board, shall determine said petition. They shall be governed, as to notice, survey, hearing, award of damages, filing and recording papers, and in all other matters pertaining to their duties, by the regulations in this act provided for the government of town boards in establishing, altering or vacating town roads. A copy of the proceedings shall be filed in the town clerk's office in each town.

Before making an order establishing a road under the provisions of this section, the two town boards shall divide the length of the proposed road into two parts, which parts may be of unequal length. Such division shall be so made as to divide as nearly equal as possible the cost and expense of constructing and maintaining the entire road to be established, and assigning to each of said parts one-half of such cost and expense.

After such division shall have been made the town boards shall thereupon by agreement determine which of such parts shall thereafter be opened, constructed and maintained by each. If the town boards cannot so agree the matter shall be determined by lot.

It shall be the duty of the town boards of the respective towns, parties to the laying out of a road under the provisions of this section, to proceed forthwith, to open and construct its share of such road and thereafter maintain the same. ('13 c. 235 § 52)

39-65, 38+926; 80-40, 82+1099.

2540. **Between town and city, etc.**—Whenever such a petition is presented to the council of a city or village, and the town board of a town, praying for the location, alteration or vacation of a road on the line between such town and the city or village, such board and council, or a majority of each, acting together as one board, shall determine said petition in the same manner in all respects as provided in the preceding section and the provisions of the preceding section shall apply to the town board and city or village council. ('13 c. 235 § 53).

2541. **Section line roads**—In towns which have not been organized, or in which no public roads have been established, the section lines shall be considered public roads, to be opened to the width of two rods on each side of such lines, upon the order of the county or town board, as the case may be, without any survey being had, unless it be necessary on account of variations caused by natural obstacles, subject, however, to the provisions of this act, in relation to the assessment of damages and the right to appeal. ('13 c. 235 § 54) 82-471, 85+169; 84-254, 87+782.

2542. **Cartways**—Any town board may establish a cartway two rods wide on petition of not less than five voters, freeholders of such town. All their proceedings shall be the same as provided in this act for establishing town roads. The cost and expenses thereof, and the damages awarded for lands taken therefor, shall be paid by the town, as in the case of town roads, and a record of such cartway shall be filed with the town clerk; provided, that, when a road or cartway is established which will not be a continuous road from one highway to another, one-half of the damages to the land through which it passes shall be paid by the persons benefited thereby.

Town boards shall, on petition of the owner of a tract of land, of not less than five acres in area, who has no access thereto except over the lands of others, establish a cartway not more than two rods wide connecting his land with a public road. The amount of damages, if any, to be paid by the petitioner to the town before such cartway is opened.

In any county having a population of two hundred thousand inhabitants or more, any town board may expend, road or bridge funds upon a legally established cartway, the same as on a town road. ('13 c. 235 § 55)

Taking land to furnish access to premises of a single owner over lands of another is not necessarily taking for private use (117-290, 135+996).

2543. **Dedication of land for road**—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 and the purpose of its dedication, and filing such application with the clerk. The clerk shall present the same to the town board which, within ten days after such filing, may make an order declaring the land described to be a public road or cartway. When so declared, such land shall be deemed duly dedicated for the purpose expressed in the application, and no damages shall be assessed therefor. ('13 c. 235 § 56)

2544. **Field notes, plat, etc.**—Upon the written request of any town board, the auditor of the county in which such town is situated shall furnish a copy of the description, field notes, and plat, if any, of each territorial, state, and county road running into or through such town, on file or of record in his office. On receipt of such copy the board shall file it with the clerk, who shall record the same in the road record book of the town. Such record shall be prima facie evidence of the existence of such road as described therein. ('13 c. 235 § 57)

2545. **Extraordinary improvement of roads**—Whenever it shall seem advisable and for the general public good, to improve any established highway in any town by macadamizing the same, or by using any hard material, or in any other way making a permanent improvement thereon, at an expense greater than any amount the town or county is authorized to make appropriation for, the question of making such improvement may be submitted to a vote under the following conditions: Whenever fifteen or more voters of such town, who own real estate therein, or occupy the same under the homestead or pre-emption laws of the United States or under contract from the state, shall file with the town clerk a petition asking for such improvement,

and for a submission of the same to vote of the people, said clerk shall immediately call a meeting of the town board, who shall make and file an estimate in writing of the probable expense of the improvement. Said clerk shall submit the proposition to the voters of the town at their next annual meeting, or if so requested, in said petition; he shall call a special town meeting to vote upon it, giving notice thereof as provided by law. At such special town meeting the polls shall be open from nine o'clock a. m. until five o'clock p. m. The ballot shall contain a statement of the question and the estimated cost, and the vote shall be "yes" or "no." If sixty per cent of the vote cast favors the proposition, the town board shall at once contract for the improvement. ('13 c. 235 § 58).

Bonds for such improvement—To provide funds for such improvement, the town board shall issue the bonds of the town to an amount not exceeding the estimated cost of the proposed improvement, and in no case exceeding, together with the outstanding indebtedness of the town, five per cent of the assessed valuation thereof. The bonds so issued shall bear interest, evidenced by coupons, at a rate not exceeding six per cent per annum, payable annually, and shall become due in ten equal installments, the first of which shall become due and payable not more than eighteen months after date, and annually thereafter. Said bonds may be sold by the town board at not less than par, and the proceeds shall be disbursed, by the town board, in the same manner that other funds are disbursed, for labor and material for said improvement. Said bonds shall not be valid until registered with the county auditor, who on receiving satisfactory evidence that the provisions of law relating to their issue have been complied with, shall register the same in his office and indorse his certificate of registration on said bond; and shall thereafter, in due manner and season, levy a sufficient tax to pay interest and principal of said bonds as the same shall accrue, to be collected as other taxes are collected. ('13 c. 235 § 58)

2546. Drainage of town roads—Subdivision (1). **Affidavit and notice**—Whenever the town overseer of roads shall file with the town board his affidavit stating that a road passing through or into said town runs into or through a swamp, bog, or other low land, and that it is necessary or expedient that a ditch should be opened through private lands, the probable length, width, and depth of such ditch, the termini and general course of the same, a description of the land over which said ditch will pass, the names of the owners thereof, if known, and that such road through such low ground cannot, without extraordinary expense, be made passable unless such ditch or ditches are opened, the chairman of said board shall prepare a notice, therein fixing a time, not less than six nor more than sixty days from the date thereof, when said board will meet at a place to be described in the notice, and personally examine the premises. Such chairman shall cause said notice, together with the affidavit, to be filed in the office of the town clerk, who shall make true copies of such notice and deliver them to said town overseer. Said overseer shall personally serve the same upon each of such land owners, if residents of the county, and upon the occupants of such lands where the owners are not residents of such county. Such ditch or ditches shall be laid out upon such lines as the owners of the land desire, when it is practicable and can be done without extra cost.

Subdivision (2). **Notice, when posted**—The overseer serving such notice shall make a return thereof to the town clerk, stating the facts and if it appears from such return that the owners of said lands, or any of them, are not residents of the county, and no occupant resides on the lands, then the clerk shall cause three weeks' published notice to be given, which shall be deemed sufficient notice.

Subdivision (3). **Hearing and assessment**—At the time specified in the notice, the town board shall examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and determine upon the advisability of opening such ditch. If it determines that it is expedient and advisable to open such ditch, it shall assess the amount of damages which, in its judgment, will be just and equitable com-

compensation to the owners for the right to open such ditch through their lands, including the right to enter upon such land whenever necessary for the purpose of cleaning out or repairing it. It shall also estimate the advantages, as well as the disadvantages which will accrue to the owner of any land through which such ditch may run, by reason of such opening. But the damages may be determined by agreement between the owners and the town board, and every such agreement or release of claim shall be in writing, and filed with the town clerk.

Subdivision (4). **Order establishing ditch—Appeal**—If on such hearing the board shall determine that the opening of such ditch is necessary and for the interest of the general public, it shall make an order establishing and opening the same, therein providing for the effectual drainage of such swamp, bog or other low land, so far as is necessary for the proper construction and maintenance of the road which runs through or into the swamp, bog or other low land, and file said order, together with a statement of all its doings in reference thereto, including the damages allowed, with the town clerk, who shall copy the same into a book to be kept by him especially for that purpose. If not appealed from within ten days from such filing, said determination and order shall be final and the overseer shall proceed to construct such ditch under the direction of said board. An appeal may be taken from any such determination and order, by any party aggrieved, in like manner as in the case of appeals from orders of the town board establishing or refusing to establish a town road.

Subdivision (5). **Ditches kept open**—After such ditch has been opened, the overseer shall keep the same in good condition and free from obstructions, and for that purpose he may enter upon the lands through which it passes whenever it becomes necessary.

Subdivision (6). **Obstructing ditches**—Any person who shall dam up, obstruct, or in any way injure any such ditch shall be liable in a civil action for double the damages assessed for such injury by the court or jury trying the case, and shall also be guilty of a misdemeanor.

Subdivision (7). **Payment of damages**—When the amount of damages to be paid to the owners of land taken for such ditch shall have been finally determined in accordance with the provisions therefor contained in this act, the town board shall provide for and make payment in the manner provided by law for the payment of damages for lands taken for a public road. ('13 c. 235 § 59)

59-3, 6, 60+675.

2547. **Special duties of overseer**—Whenever any public road in a town becomes obstructed or unsafe from any cause, the overseer shall immediately repair such road, and render his account therefor to the town board. ('13 c. 235 § 60)

APPEALS FROM COUNTY AND TOWN BOARDS

2548. **Who may appeal—Bond—Notice**—Any person aggrieved by any determination of a county or town board, or of a town board and village council, either establishing, altering or discontinuing, or refusing to establish, alter, or discontinue, any public road, or; by any award of damages made by such town or county board, may appeal therefrom, within thirty days after the filing of such determination or award, to the district court of the county, by filing with the clerk of such court a bond in the sum of not less than two hundred and fifty dollars, approved by the judge or by the court commissioner or auditor of such county, conditioned to pay all costs arising from such appeal in case the determination or award is sustained, and by service of a notice of appeal as provided in the next section.

In case the town or county board determines to establish, alter or discontinue a road, or refuses so to do, any taxpayer of the county, as to a county road, and any taxpayer of the town, as to a town road, through which such road or any part thereof, passes, shall have the same right of appeal. ('13 c. 235 § 61)

Under prior laws—Who is an "aggrieved" party (27-253, 6+802; 36-145, 30+454; 40-369, 41+1073; 87-403, 92+404). Filing bond before serving notice of appeal proper but not

essential (33-515, 24+197). Filing bond within thirty days jurisdictional (35-468, 29+72). No provision for a return. Appeal held properly perfected (92-248, 99+895). See 110-87, 124+641.

2549. **Notice of appeal—Service, etc.**—The notice of appeal shall state briefly the grounds of appeal—whether it relates to the damages assessed, or to the establishing, altering, or discontinuing a road, or to the refusal so to do, and whether it is taken to reverse entirely the decision of the board, or some portion thereof, and, if the latter, what portion. It shall be signed by the party appealing, or his attorney, and be served upon the chairman of the town or county board, as the case may be. A copy thereof, when the appeal is from the action of a county board, shall be filed with the auditor of the county, and, when from that of the town board, with the clerk of each town in which such road may be located. ('13 c. 235 § 62)

Under prior laws—23-372; 33-515, 24+197; 37-445, 35+264; 71-42, 73+628; 78-31, 80+836; 92-248, 99+895.

Sufficiency of notice of appeal (108-278, 121+902; 110-87, 124+641).

Findings that notice of appeal had been properly filed with the auditor held sustained by the evidence (101-317, 112+267).

Held that there was a sufficient "filing" of the notice with the clerk (108-224, 120+526, 121+874).

Filing copy of notice of appeal with the town clerk of each town is jurisdictional, but filing may be shown by extraneous evidence (117-290, 135+996).

2550. **Proceedings on appeal**—Such appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than twenty days after the appeal is perfected. Except where the parties otherwise agree, the court or jury shall reassess the damages, unless such re-assessment is rendered unnecessary by the determination of other matters involved; but its proceedings shall be based upon the same principles which the board was required to follow in its determination. Upon final judgment being rendered, the clerk shall file a certified transcript thereof, with the county auditor, if the appeal was taken from the action of the county board, and with the clerk of each town affected by such determination, if the appeal was from the action of a town board. If the determination appealed from be affirmed or if the damages be reduced, the appellant shall pay costs and disbursements; but if such damages be increased, or such determination be altered, modified, or reversed otherwise than as to amount of damages, such costs and disbursements shall be paid by the town or county, as the case may be; the same to be taxed and allowed as in other cases, and judgment entered therefor in like manner. ('13 c. 235 § 63)

68-297, 71+382; 74-339, 77+229; 92-248, 99+895.

2551. **Proceedings after reversal, etc.**—When on appeal the determination of any town or county board is reversed or altered, the board from whose determination such appeal was taken shall proceed to establish, alter, or vacate such road, in conformity with the decision of such appeal; and the proceedings thereon shall be the same as if they had originally so determined to establish, alter or vacate such road. The amount of damages finally determined and awarded, whether by the town or county board, or by the court or jury, together with the charges of officers and other persons necessarily employed in establishing, altering or vacating any road, shall be audited by the board making the original assessment. Such board shall, in its report of such audit, specify the amount of damages, and charges due each individual, and such amounts shall be certified to by the board so auditing the same, and, in case of town roads, deposited with the town clerk, and paid by the town, and in case of county roads, with the county auditor, and paid by the county. Before any town road is opened or used, an amount of town orders equal to the damages assessed to each individual shall be duly issued and deposited with the town clerk for the use and benefit of said individual, and delivered to him on demand. The issuing and depositing of said orders shall be deemed to be sufficient security for the payment of said damages. ('13 c. 235 § 64)

58-96, 59+976.

GENERAL PROVISIONS APPLICABLE TO ALL ROADS

REGULATIONS CONCERNING USE OF ROADS.

58-555, 557, 60+545, 28 L. R. A. 608, 49 Am. St. Rep. 533; 74-436, 437, 77+238; 110-158, 124+831.

2552. Meeting and passing vehicles—When persons meet on any road or bridge, traveling with vehicles, each shall seasonably drive to the right of the middle of the traveled part of such road or bridge, so that the vehicles may pass without interference.

The driver of any vehicle passing another vehicle traveling in the same direction shall drive to the left of the middle of the traveled part of the road, and, if such road be of sufficient width to permit such passing, the driver of the leading vehicle shall not obstruct the same. ('13 c. 235 § 65)

2553. Intemperate drivers—No person owning or having control of a coach or vehicle traveling upon any road for the conveyance of passengers, shall employ any person to drive the same who is addicted to the excessive use of intoxicating liquors.

Every person who violates any provision of this section shall forfeit for each offense such sum as the court shall fix, not exceeding fifty dollars, and shall also be liable to any party injured for all damages sustained by reason of such offense; provided, that complaint for such violation shall be made within three months, and every action for damages shall be begun within one year thereafter. ('13 c. 235 § 66)

2554. Leaving horses unfastened—No driver of any vehicle used for the conveyance of passengers for hire, shall leave the horses attached thereto, while any passenger remains in or upon the same, without securely fastening such horses or leaving some suitable person in charge thereof; and, if any driver shall violate the provisions of this section, he and his employer shall, in an action for damages instituted by any person injured by reason of the violation of this section, be deemed guilty of negligence. ('13 c. 235 § 67)

2555. Traction engine—Whistle, etc.—Every engineer, owner, or other person in charge of a traction engine propelled along a road, who shall blow or permit the whistle of such engine to be blown within five hundred feet of a team passing on such highway, if the team can be seen from the position of such engine, or who shall not stop the same at least one hundred feet before meeting a horse or team traveling on such road, unless on a side hill where such stoppage might expose the flues of the engine and cause an explosion, and not start the same until such horse or team shall have passed the engine, shall be guilty of a misdemeanor. ('13 c. 235 § 68)

2556. Traction engine—Bridges—Every owner, engineer, or other person in charge of a traction engine, before taking such engine across a culvert or bridge, shall place extra planking thereon for the protection of the same, and neglect to do so shall render him liable for one-half the expense of repairing any damage caused by his failure to do so; provided, the amount so paid by him shall not exceed fifty dollars. Such sum may be recovered in a civil action against the owner. ('13 c. 235 § 69)

REGULATIONS AFFECTING ABUTTING OWNERS

2557. Removal of fences—Whenever a town or county board has established a road through inclosed, cultivated or improved lands, under any of the provisions of this act, and its decision has not been appealed from, or, if appealed from, its order has been sustained, it shall give each owner or occupant of land through which such road is established twenty days' notice, in writing, to remove his fences, and, if he does not remove them within such time, it shall cause them to be removed, and the road to be opened and worked; but no inclosure shall be so opened between April 1 and October 1. ('13 c. 235 § 70)

13-307, 282; 30-533, 536, 16+408.

2558. Seeding roads—Trees—Any person living upon or owning land fronting on a public road, a portion of which is not in actual use or needed for public travel, may plow, level, and seed the same to grass, except within

one rod of the center. But he shall not by such work interfere with the travel upon the road, or the improvements of the same, or be entitled to compensation therefor, or acquire title to any portion of said road thereby. Such landowner may plant trees on the sides of such road, within six feet of the outside line thereof, with the written approval of the town board as to town roads and the county board as to county roads. Any person, other than one acting under the authority of the town or county board, which has supervision of any road, who shall plow or dig up any part of a road, except as above specified, shall be guilty of a misdemeanor. ('13 c. 235 § 71)

82-456, 85+215, 83 Am. St. Rep. 441.

2559. Hedges—Fences in road—A person owning property along the line of a road or street sixty feet or more wide, who shall plant a close hedge upon such property, may erect a fence upon such road or street not more than six feet from the line thereof, for the purpose of protecting the hedge, and may maintain such fence for five years after the hedge is planted. ('13 c. 235 § 72)

2560. Hedges and trees within road limits—Subdivision (1).—The town boards of supervisors are hereby given the right and power to determine upon the necessity and order the cutting down of hedges and trees within road limits. Provided, that trees, other than willow trees, shall not be so cut down unless the center of such trees is more than six (6) feet from the side of any road as established by statutory proceedings or dedicated specifically to public use; provided, such trees or hedges, or either of them, interfere with keeping the surface of the road in good order, or cause the snow to drift onto or accumulate upon said road in quantities that materially obstruct travel.

Subdivision 2. **Owner to be notified, etc.—**When the town board of any town in this state shall determine that such cutting down of hedges or trees within the limits of such roads is necessary, or that the same would aid materially in keeping such roads in repair or free from snow, they shall notify the owner or owners of the abutting lands of such decision and order the trees or hedges cut down within ninety days after such notice. If the said owner or owners fail or refuse to comply with such notice and order within the time specified, the said town board shall have the power to cause such trees or hedges to be cut down at the expense of the town. The timber and wood of such trees shall belong to the said owner or owners of the abutting land, provided they pay the expense of cutting down said trees or hedges and remove the same from the roadside within sixty (60) days. If such timber or wood is not removed within said time, the town board shall sell the same or destroy it if it cannot be sold at a profit, and if sold, pay the proceeds thereof into the road and bridge fund of said town.

Subdivision (3). **Expenses, how paid—**The town board of supervisors are hereby granted the further right and power to appropriate and pay out of the road and bridge fund of their town, or from any other fund available the cost of cutting down such trees and hedges and the removal or destruction of the same, if done at public expense. ('13 c. 235 § 73)

2561. Tunnels under roads—Every owner of land on both sides of a public road may tunnel under such road to permit stock to pass from one side to the other, but he shall at his own expense construct such tunnel so as not to endanger the public in the use of such road. Before constructing such tunnel, the land owner shall obtain from the town board of the town in which it is located, its approval of the place, the kind of tunnel, and the manner of its construction. If the tunnel be constructed without such approval, it shall be valid, unless within one year from its completion said town board shall cause the same to be abated. Bridges over tunnels shall be not less than sixteen feet wide, properly protected with railings, and constructed of such materials as to be safe for travel; and if, within one year after the construction of such bridge, the town board shall deem it or its appurtenances insecure, it may cause the same to be put in the proper condition at the expense of its owner, and, whenever said board shall deem the tunnel out of repair, it may cause the necessary repairs to be made at the expense of such owner. In either case the reasonable cost of such repairs shall be certified by the town clerk to the county auditor and by him assessed upon the land in the same

manner as the road taxes. Provided, that when any such public road is not on a section or sectional subdivision line, the owner of the lands on both sides of such road shall be permitted to construct an appropriate tunnel to be approved by the town board of such town, which tunnel the owner shall maintain at his own expense for the first year and which shall be thereafter maintained by the town board at the expense of the town. ('13 c. 235 § 74)

2562. Roads on mineral lands—Whenever a public road crosses mineral land or other lands outside the limits of any city, village or borough, which the owner or lessee desires to mine in such way as to remove the supports of the road or to improve said lands by building any structure or building thereon, he may, at his own expense, change such road to other land, and make a new road thereon, suitable for public travel; provided that no such change of road on lands other than mineral lands shall be made unless the same be first approved by the town board and the state highway commission, and the new road be first constructed, and approved by said town board and said highway commission; and, if he cannot obtain such land upon reasonable terms, the county or town board, or the city or village council, as the case may be, upon requisite petition, shall make such change under the provision of law for establishing roads. Provided, however, that before any such road is changed a sixty day notice of the intention of the owner or lessee thereof to change the same shall be served upon the board of the municipality in which the road is situate, by filing with the clerk thereof a declaration of such intention in the form of said notice; and provided, however, that the said owner or lessee shall be liable to the owner or occupant of any land abutting upon said road or any affected by such change to the extent of the damage sustained by reason of such change, and for the recovery of which an action may be brought after such change is made. In case such board or council desire to establish a road over mineral lands, it may agree with the owner or lessee of the land that, in case he shall consent to its establishment, its location shall be changed upon his request. Provided, however that before such road will be changed by any such board or council, ninety days' notice thereof shall be posted in three conspicuous places along said road, which said notice shall state the time when said road shall be changed. ('13 c. 235 § 75)

2563. Dedication by user—Whenever any road or portion thereof shall have been used and kept in repair and worked for at least six years continuously as a public highway, the same shall be deemed dedicated to the public, to the width of two (2) rods on each side of the center line thereof and be and remain, until lawfully vacated, a public road, whether the same has ever been established as a public highway or not. ('13 c. 235 § 76)

28-114, 9+578; 42-391, 44+127; 42-541, 44+1027; 48-271, 51+606; 51-381, 53+703; 51-386, 53+759; 53-68, 55+116; 56-428, 57+928; 62-198, 64+393; 64-459, 67+360; 77-539, 80+702; 81-140, 155, 83+527, 86+69, 53 L. R. A. 175; 83-44, 85+906; 84-254, 87+782; 93-1, 100+373, 106 Am. St. Rep. 418, 2 Ann. Cas. 972; 94-403, 103+10; 99-450, 109+840.

1899 c. 152 had no application to roads which had become established highways by user prior to the time the act took effect (107-239, 119+1063. See, also, 119-512, 138+935).

To establish a highway under R. L. § 1197, mere use for public travel for six years is not sufficient. It must also be shown that some work had been done or repairs made on some part of the highway at least six years before the contest as to its validity arose (118-467, 136+1103).

2564. Use of railroad right of way—The continued use of any road by the public upon and parallel to the right of way of any railroad company shall not constitute such road a legal highway, or a charge upon the town in which the same is situated, and no right shall inure to the public or any individual by such use. ('13 c. 235 § 77)

2565. Alteration of road—Old road open two years—Whenever a road shall be changed by order of a county or town board, the road as it existed before the change shall remain open to public travel for two years from the date of the order; but the board may vacate such road within said two years when it deems the new road to be fit for public travel at all times of the year. ('13 c. 235 § 78)

2566. Certain roads when deemed vacated—A public road in any county having a population of two hundred thousand or more, outside the limits of

any city or village, which has been acquired or established in any manner other than by grant, deed or condemnation, or of which there is no public record, which has not been used for public travel and on which no road tax has been expended for three years, shall be deemed vacated; and the title thereto shall at once revert in the original owner of the land, his successors or grantees, without any proceedings, except as follows: Any person having an interest in the land, and claiming such vacation, shall post at least six notices in conspicuous places in the town, including one at each end of the portion claimed to be vacated, and give thirty days' written notice to the town board, specifying in each such notice his claim, and a description of the road sufficient for identification, before he shall do any act to interfere with public travel; but, where such road has been inclosed for three years, no notice shall be required. If the town board, after notice, shall determine that such road has not been so vacated, it shall so notify the claimant in writing, within thirty days thereafter, who shall not inclose or interfere therewith until the question of its vacation has been lawfully determined. Failure to serve such notice shall be deemed a waiver of all right to question such vacation. ('13 c. 235 § 79)

2567. Town boards to construct culverts—The town boards are hereby required to install one substantial culvert for an abutting owner in cases where by reason of grading a public highway, the same is rendered necessary for a suitable approach upon said highway over driveways from abutting lands. ('13 c. 235 § 80)

MISCELLANEOUS PROVISIONS

2568. Condemnation of gravel beds, etc.—Whenever any county or town board or common council of any village or city, shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may procure, by purchase or condemnation, in the manner provided by law (the procedure in such condemnation proceedings shall, as near as practicable, be that provided in chapter 41 of the Revised Laws of Minnesota for 1905 and such procedure shall apply to condemnation proceedings under this section) any plot of ground, not exceeding five acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams to pass, and on the most practicable route to the nearest public road. ('13 c. 235 § 81)

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

2569. Side roads and ford crossings—The county board of each county, and the town board of each town, may establish side roads and ford crossings adjacent to or near any bridge over a stream in its county or town, when such bridge was built at an expense of not less than one thousand dollars and forms part of a public road. Such side road shall intersect such main road at the nearest practicable point. It shall not be less than two nor more than four rods wide. In all other respects the same proceedings shall be had as are required by law for establishing county or town roads as the case may be. (13 c. 235 § 82)

2570. Bridges over Minnesota river—Rates of toll—Any corporation organized for the purpose, or any counties, towns, cities or villages interested, may jointly or separately erect and operate a fixed span bridge over the Minnesota river at any suitable point, down to and including the borough of Le Sueur. All such bridges erected over said river below Le Sueur shall be provided with a suitable draw, with an opening of not less than eighty feet, which on reasonable signal or notice, shall be opened to allow the passage of vessels. Before any such bridge is erected, the location and plan thereof shall be approved by the governor.

Any corporation maintaining a bridge over said river may charge and receive the following rates of toll from all persons using the same: For each foot passenger or bicycle rider, five cents; for each hog, sheep or calf, two cents; for each head of cattle, five cents; for each vehicle or sleigh drawn by one animal, twenty cents; for each additional animal used; five cents; for

each automobile, twenty cents; for any other vehicle or animal, a reasonable rate of toll. Such rates of toll may be changed by law whenever the net annual income from such bridge shall exceed a reasonable percentage of the cost thereof. ('13 c. 235 § 83)

2571. Bridges over navigable waters—Whenever in the opinion of the board of county commissioners of any county or supervisors of any town, or the board of trustees or council of any city or village of this state, it becomes necessary, for the purpose of accommodation of travel on any highway, to erect a bridge over any river or waterway within their respective jurisdictions, the navigable portions of which river or waterway lie wholly within the limits of the state, such board or council may cause the erection of a fixed bridge over such river or waterway, without a draw; provided, the clear height above the ordinary high water stage of such waterway and the clear width of the opening, shall be sufficient to accommodate the ordinary navigation of such waterway; and provided further, that the location and plans thereof are submitted to and approved by the chief of engineers of the United States army and by the secretary of war, before construction is commenced. ('13 c. 235 § 84)

This section supersedes 1905 c. 63.

2572. Securing free use of toll bridge—Any counties, towns, cities or villages interested may secure the free public use of any toll bridge now or hereafter built across any streams in this state, and may jointly or severally, together or separately enter into any contract with the owner of such bridge, or with each other, or with each other and the owner of such bridge, as they shall deem proper, to secure such free public use of such bridge, whether by purchase, lease or otherwise. ('13 c. 235 § 85)

This section supersedes 1909 c. 31.

2573. Final payment on road contract—Final payment shall not be made on any contract for road work by any county or town board where the amount involved in the contract exceeds two hundred dollars, until an assistant state engineer has examined the work and certified that the same has been properly done and performed according to contract and his certificate to that effect shall have been filed in the office of the county auditor of the county, or town clerk of the town, as the case may be. Such examination shall be made and such certificate shall be filed by the assistant engineer, within thirty days from the date of written notification by the contractor to the state engineer of the completion of the work. Any county auditor or any town clerk who issues a warrant or an order in final payment upon a road contract where the amount involved in such contract exceeds the sum of two hundred dollars, until such certificate shall have been filed, shall be deemed guilty of a misdemeanor. The provisions of this section shall not apply to any county now having or which may hereafter have a population of one hundred fifty thousand (150,000) inhabitants or over and a county superintendent of highways, or other officer to superintend the construction or improvement of roads within its confines. ('13 c. 235 § 86)

2574. State engineer to inspect bridges—It shall be the duty of the state engineer to make an annual inspection of all bridges exceeding thirty feet in length, as far as time and conditions permit, and report the condition of the same to the highway commission and the appropriate county board, and make such recommendations as he may deem advisable. ('13 c. 235 § 87)

2575. Reconstruction or repair of certain bridges—Subdivision (1). **Powers of county board**—Whenever it shall become necessary to reconstruct or repair any bridge upon any county or town road in any town or towns or upon any town line in this state and the said bridge is unsafe for travel or has been condemned by the proper authorities, and the said town fails, neglects or omits to construct, reconstruct or repair the same, or provide for the expense and cost of so constructing, reconstructing or repairing the same, the county board of any such county in which said town is located shall have the power and authority and are hereby given power and authority to reconstruct or repair any such bridge, upon giving notice to the town board

of such town of their intention to do so and fixing a time and place for hearing the necessity and advisability of making such reconstruction or repair.

Subdivision (2). **Statement—Taxes**—When any county board shall have reconstructed or repaired any such bridge as hereinbefore provided, such county board shall cause to be prepared an itemized statement, in duplicate, of the cost of such reconstruction or repair. One of such statements shall be filed with the county auditor and the other filed in the office of and with the town clerk of said town. And such town clerk shall forthwith notify the several members of the town board that such a statement has been filed and that a meeting of said board to act thereon will be held at his office at a time within ten days thereafter specified by such clerk in such notice. Such board shall meet at said time and levy a special tax upon all the taxable property of the town sufficient to pay the amount expended by the county in such reconstruction or repair of such bridge. Said town board shall certify said tax on or before October 15th next succeeding to the county auditor, and the county auditor shall extend the same with other town taxes upon the tax list of said town. Mandamus may be brought by such county against such town for failure of its board to do any of the things prescribed within the time fixed for the doing of the same; provided, that if such tax would exceed one-eighth of one per cent of the assessed valuation of such town, then the county shall bear one-half of such expense so far as the same shall exceed said one-eighth of one per cent. When two or more towns are interested in said bridge, the statement hereinbefore provided for shall be made in as many copies as there are towns interested and one more, and the county board shall apportion to each interested town the amount which each town should properly pay toward the work done by the county, and such amount shall be levied by the town boards of each town after the filing of the cost of the bridge and the amount belonging to each town with the town clerk thereof. The proportion which each town shall pay shall be determined at the hearing upon the necessity and advisability of reconstructing or repairing such bridge. ('13 c. 235 § 88)

2576. **Obstruction of or damage to highways—Penalty**—Any person who shall, with intent to prevent the free use thereof by the public, obstruct any of the public highways of this state in any manner, or who shall dig any holes therein, or remove any earth, gravel or rock therefrom, or any part thereof, or who shall in any manner obstruct any ditch on the side of any such highway, and thereby damage the same, shall be guilty of a misdemeanor. It is hereby made the duty of the members of the town boards of the several towns of this state to make complaint and prosecute all violations of the provisions of this section. ('13 c. 235 § 89)

139+355.

2577. **Removing snow**—It shall be the duty of the town board of each town, so far as funds are available for the expense thereof, to keep all highways within their towns in a passable condition by the removal of snow therefrom; and for that purpose the road overseer is authorized to employ, by and with the consent of the town board, such men and teams as may be necessary for the purpose. The town board may also provide for the erection of snow fences when deemed desirable. ('13 c. 235 § 90)

2578. **Laws repealed**—All laws and parts of laws inconsistent with the provisions of this act are hereby repealed.

The following laws and parts of laws are hereby expressly repealed, to-wit:

Subdivision (1). **Revised Laws 1905**—All of chapter 13, Revised Laws of Minnesota, 1905, except sections 1246 to 1254 [2610-2618] thereof inclusive.

Subdivision (2). **General Laws 1905**—All of chapters 66, 116, 245, 151, 324, 70, 80 and 215 of the General Laws 1905.

Subdivision (3). **General Laws 1907**—All of chapters 423, 361, 173, 262, 285, 458 and 19 of the General Laws of 1907.

Subdivision (4). **General Laws 1909**—All of chapters 394, 117, 50, 484, 390, 291, and 432, of the General Laws of 1909.

Subdivision (5). **General Laws 1911**—All of chapters 217, 100, 359, 378, 335 and 70 of the General Laws 1911.

Provided, however, that the express or implied repeal by the provisions of this act, of any law now in force shall not affect any action or proceeding now pending in any court, or any cause of action which has already accrued under such law so repealed, or any proceeding which at the time of the passage of this law has been instituted for the establishment, vacation, alteration, laying out, construction or repair of any road or the assessment and payment of damages therefor or the collection and enforcement of any taxes levied or assessed for road purposes, including road labor assessed, and any such taxes uncollected at the time of the passage of this act shall be collected and the payment thereof enforced under the provisions of law existing at the time of such levy and assessment.

Nothing in this act shall repeal or in any way affect the provisions of chapter 254, Laws 1911 [2603-2609]. ('13 c. 235 § 91)

The following inconsistent acts appear to be repealed: 1913 cc. 69, 70, 75, 168, 221.

OTHER MISCELLANEOUS PROVISIONS¹

2579. Road districts in counties having 75,000 inhabitants and 5,000 square miles—Road foreman—In any county in this state now or hereafter having a population of more than 75,000 inhabitants according to the then next preceding state or national census and an area of more than 5,000 square miles, the county commissioners of such county may divide the same into two or more road districts and appoint by a majority vote of the board one or more road foreman for each district whose duties shall be those fixed by this act, and in addition thereto such other and further duties as such board of county commissioners may from time to time see fit to impose. ('05 c. 131 § 1)

105-256, 117+610, 127 Am. St. Rep. 560.

2580. Same—Duties of foreman—Any such foreman so employed shall have charge of the construction or repair of the county roads in his district or such portions of them as are entrusted by the county board to his supervision and shall see that the orders of the board with reference to such construction and repair are carried out; shall keep the time of the men employed upon such road work and shall direct them in their labor; shall have the charge and care of the tools and implements belonging to the county used in such road work, shall keep an inventory thereof and at the completion or suspension of the work shall return to such board a list of such tools and implements remaining in his care and make such disposition of the same as he may be directed to do by the board; shall, in addition to directing the work of the men so employed, work with them so far as practicable in cases where the number of men employed is less than fifteen; but such foreman shall not be paid for any time not actually employed in and about said work and in carrying out the orders of the board. ('05 c. 131 § 2)

2581. Same—Monthly statements—How audited and paid—Each road foreman so appointed shall present to such board on or before the second day of each month a statement showing his own name, the name of each workman employed under him during the month previous, each day of the month on which any work was done and the number of hours of work performed by himself and each of such workmen during each such day; and indicating what time checks, if any, have been issued for any of said work. Said statement shall be verified by the oath of such foreman to the effect that the same is just and true in all respects; that the services therein set forth were actually rendered by the persons and at the times therein stated and were of the value therein charged; and that no part of the claims therein referred to or any of them has been paid. When any such statement, duly verified and containing the particulars in this act provided, is presented to the board of county commissioners of any such county, said board shall audit such statement or so much thereof as may seem to them just and proper and so much of the same as is audited and allowed shall be paid to the foreman and the individual workmen or their assigns by warrants upon the coun-

¹ How far some of these provisions are superseded by the foregoing sections of this chapter is not clear. See § 2578.

ty treasurer in the same manner as other bills against the county are audited and allowed, but no sworn statement shall be required except that of the foreman herein provided. ('05 c. 131 § 3)

2582. Same—Time checks—How assigned and paid—At the end of the month, or at the date of his discharge, the foreman may issue to any workman employed under him during the month a time check, showing the date of its issuance, the name of the workman to whom issued, the number of days and hours of work, the rate of wages, the full amount due and any offsets or deductions. Said time check may be assigned by endorsement upon the back thereof, and such endorsement if agreeing with the name of the party to whom such time check is issued and if witnessed by at least one witness shall be prima facie genuine. Any time check so issued shall be subject to correction to conform to the sworn statement hereinbefore provided and shall not be paid until such sworn statement has been audited and allowed as in this act provided. In case a time check has been given, no warrant shall be issued for the work covered by it unless the time check is presented to the county auditor except in cases where the time check has been lost or destroyed; in which case the party to whom the same was issued, or his assignee, before he is entitled to payment shall make affidavit to the facts relating thereto and file the same, together with a bond to the county with sureties satisfactory to the county auditor in an amount not less than double the amount of his claim. ('05 c. 131 § 4)

2583. Same—False statement—Penalty—Any foreman who, with intent to defraud such county either to his own advantage or to the advantage of any other person or persons, shall make, swear to, or present or cause to be presented to the board of county commissioners of any such county any statement called for by the provisions of this act and containing any false or inaccurate particulars, items or charges, either as to his own work or that of any workman or workmen employed under him, shall be guilty of a felony; and the making, swearing to or presenting or causing to be presented of any such statement shall be prima facie evidence of such intent to defraud. ('05 c. 131 § 5)

2584. Road and bridge fund in certain counties—Exclusive control—That the board of county commissioners of all counties in this state now having, or which shall hereafter have a population of one hundred fifty thousand inhabitants or over, shall have the exclusive control of the expenditures of all moneys appropriated by such boards out of the general road and bridge fund of such counties for the purpose of constructing or repairing, or aiding in the construction or repair of roads and bridges, or either, in any township or village in such counties. ('05 c. 164 § 1)

By section 4, 1901 c. 240 (giving county commissioners in counties having 200,000 inhabitants exclusive control of road and bridge fund) was repealed. This act was not among the acts of that year repealed by § 9454.

See § 2491.

2585. Same—Moneys, how expended—Contracts, how let—That all moneys so appropriated shall be expended by and under the general direction and supervision of such board of county commissioners in the following manner: That in all cases except as hereinafter provided, before expending any money for such purpose or purposes, such board of county commissioners shall require the county surveyor of such county or his deputy, to furnish to such board a survey of the work for which it is proposed to expend such money, together with suitable plans and specifications thereof and estimated cost thereof, and that upon the receipt of the same by such board, it shall be the duty of such board, if it shall deem such expenditure advisable, to invite bids for such work by posting notices for at least fifteen days prior to the letting of the contract for the same in at least three of the most public places in the township, wherein such work is to be done, and in case any portion of such work is within the limits of any incorporated village, by also posting notices in three of the most public places in such village, and in all cases, there shall be three publications of said notices in the official newspaper, and such notices shall contain a brief description of such work, and shall state the time and place of awarding the contract for the same, and at the time and place mentioned in such notices, it shall be the duty of such

board to let such contract to the lowest responsible bidder, who shall in all cases be required to enter into a written contract evidencing the same, and said board shall require a satisfactory bond for the faithful performance of such contract, provided, nevertheless, that nothing herein contained shall be construed to prevent such board from rejecting all bonds for such work and readvertising for new bids if in the judgment of such board all bids are excessive, and provided that if such board shall deem it impossible to get such work done at a fair cost by letting such work to a contractor, said board may direct the county surveyor to employ men, purchase materials and equipments and to proceed to do such work in accordance with the plans, specifications and estimates hereinbefore referred to, and said county surveyor shall thereupon do such work under the supervision of such county boards and provided further that such board may, without readvertising for bids and letting contracts as above required, expend, under the supervision of the county surveyor, or his deputy, for repairs and maintenance of roads and bridges, or for the protection of travel thereon, such sum or sums, as such board may appropriate, and may employ a repair crew for such purpose, and may purchase and retain the necessary road machinery and tools and materials for the purpose of making such repairs, but such expenditures shall not in any one year, exceed one-half of the amount so appropriated for roads and bridges for said year in said county. ('05 c. 164 § 2, amended '13 c. 291 § 1)

1905 c. 164 § 2 was also amended by 1907 c. 224, and 1909 c. 208 § 1.

See note under preceding section.

2586. Same—Duties of county surveyor—The county surveyor shall keep a full official record of all work in his office, which record shall belong to the county. He shall report annually the character and condition of the county roads and bridges, together with a statement of all work done during the year, and such recommendations, statistics and other material as he may deem proper for such report. This report shall be printed by the county board. ('05 c. 164 § 3)

2587. Connecting roads through villages in counties having over 200,000 and less than 275,000 inhabitants—Whenever, in any county now having, or which may hereafter have a population of over 200,000 and not over 275,000 inhabitants, the board of county commissioners shall have permanently improved any county road leading up to the limits of any village, and shall have also permanently improved any other public road leading up to the limits of such village at another point, and any public way or road within the limits of such village constitutes a natural or convenient connection between such improved roads, in such case the board of county commissioners, with the consent of the village council, may cause such connecting way within the village limits to be permanently improved. ('09 c. 196 § 1)

2588. Same—Cost, how paid—Such improvement shall be provided for and made in the same manner and under like conditions as are improvements to county roads, and the cost of making such improvement may be paid out of the county road and bridge fund. ('09 c. 196 § 2)

2589. Roads within city of first class in county having more than \$250,000,000 valuation—Powers of county board—That in any county of this state, now or hereafter having a total assessed valuation of all its taxable property, as fixed by the state tax commission, of more than \$250,000,000.00 the board of county commissioners shall have the authority to appropriate and expend within the limits of any city of the first class located in such county, such sum or sums of money from the county road and bridge fund, as said board shall deem proper, not exceeding one-half the amount that may have been assessed and collected for such road and bridge fund on the taxable property within said city, for the building, repairing or otherwise improving of any road or highway, including the construction and repairing of any bridge thereon, within the limits of any such city, but said county shall in no event and under no circumstances become liable to keep up or maintain the roads, highways or bridges, or any of them, within the limits of such city, constructed, repaired or otherwise improved by said county board, or be liable in any manner for their want of repairs. ('13 c. 342 § 1)

Section 2 repeals acts, etc., in conflict.

2590. Road within city of third class—Powers of county board—Any county board of any county in this state, in which is situated a city having a population of ten thousand inhabitants and not more than twenty thousand inhabitants, may annually appropriate not to exceed one-half of the amount raised annually by taxation upon the taxable property situate in such city for a county road and bridge fund or purposes, to be expended upon the roads and bridges within such city or within two miles of the limits of such city upon roads leading into such city. Every such appropriation shall be made by resolution and shall be made payable to the city treasurer of such city, and such resolution shall specify the place or places where the same, or any part thereof, shall be expended, and it shall be unlawful to use the same, or any part thereof, for any other purpose or at any other place than as specified in such resolution. ('13 c. 330 § 1)

2591. Counties having more than 2,500 square miles and more than 15,000 inhabitants and no city having more than 3,500 inhabitants—Superintendent of highways—In each county now or hereafter having an area of more than twenty-five hundred square miles and a population of more than fifteen thousand inhabitants according to the then next preceding state or federal census, and containing no city or village having a population of more than thirty-five hundred inhabitants according to such census, there shall be appointed by the county board a county superintendent of highways who shall be a competent surveyor and road builder, and who may be the same person as the county surveyor of said county. The officer so appointed next after the passage of this act shall hold his office until the January meeting of the county board next after the next general election, and until his successor is appointed and qualified; and each officer thereafter appointed shall hold his office for four (4) years and until his successor is appointed and qualified. It shall be the duty of such county superintendent of highways to inspect all roads, bridges and ditches constructed by his county and all work done and material furnished under contract with his said county in the construction, maintenance and repair of roads, bridges and ditches, promptly, from time to time, as requested by the county board; and no moneys shall be paid out by the county on any such contract until the said superintendent of highways shall have certified that he has inspected and found sufficient and in compliance with such contract the work or materials for which such payment is desired, nor until the county attorney of said county shall have certified that the payment so desired is due and in accordance with the terms of such contract. ('13 c. 254 § 1)

2592. Same—Compensation—Bond—Deputies—Said county superintendent of highways shall receive five dollars (\$5.00) per day for time actually devoted to the performance of his duties, and shall be allowed his actual, reasonable and necessary expenses incidental to the performance of his duties. All payments to him for compensation and expenses shall be on his itemized and verified bills duly allowed by the board. He shall give bond to the county in the sum of five thousand dollars (\$5,000.00) with sufficient sureties approved by the county board, conditioned for the faithful performance of his duties; and for each willful violation of the conditions of his bond by either act or omission, he and his bondsmen shall be liable to the county or to any other person damaged thereby in the full amount of the damage resulting therefrom together with the sum of twenty-five dollars (\$25.00) as a penalty. Said officer may appoint such deputies as may be necessary for the prompt performance of his duties, but he and his bondsmen shall be responsible for their acts or omissions. ('13 c. 254 § 2)

2593. Same—Inspection by county board—Nothing herein contained shall be construed to prevent said county board or any member or committee thereof from personally inspecting such work or materials in the event such county superintendent of highways shall fail or neglect to properly and promptly inspect same upon request from such county board; but in such case the total, expense to the county board for such inspection by the board or its member or committee shall not exceed fifty dollars (\$50.00) on any one contract or job, nor shall it exceed ten per cent of the contract price; in such case the inspection by said board or its duly authorized committee or member and written report thereon

shall answer the purposes of an inspection and certificate by said county superintendent of highways. ('13 c. 254 § 3)

2594. Road taxes in villages—Assessment—All road taxes, except poll taxes, may be required to be paid in cash in any village in this state whenever a majority of the voters of such village voting by ballot upon the question shall so determine. Such question shall not be voted upon unless a petition signed by at least ten voting tax payers of such village, praying for the payment in cash of all road taxes, is filed with the clerk or recorder of such village ten days before the annual election in such village, in which case the clerk or recorder shall specify in the notice of such annual election that such question will be voted upon. If such question is decided in the affirmative, all taxes thereafter assessed for the maintenance and repair of roads and bridges in such village shall be paid in money and disbursed by the village council or governing board of such village as other village taxes. The village council or governing board of such village may assess all the property of such village not to exceed six mills on the dollar on the last assessed valuation thereof, and if they so assess, they shall certify the same to the county auditor for extension and collection, the same as other village taxes, and before such taxes are collected, such village council or governing board of such village may pledge the credit of the village by issuing village orders not to exceed the taxes so assessed, to the expense of road and bridge work. Provided, however, that for the year 1909, upon a petition as above provided for, being filed with the village clerk or recorder on or before the last Tuesday in March of said year, the village council may cause a special election to be held for the purpose of voting upon said question, by giving the notice required in the case of special elections in villages. ('09 c. 435 § 1)

See §§ 1293, 2527 and notes.

2595. Bridges over stream forming state boundary—Municipalities may unite—Counties, towns, cities and villages bordering upon streams of water which form the boundary line of this state may construct and maintain foot and wagon bridges across any such stream the same as if such stream was wholly within the limits of the county, town, city or village constructing the same; and any such local subdivision within which such bridge may be desired may singly or in conjunction with other such subdivisions unite in the construction and maintenance of said bridge with any one or more of the local subdivisions in the adjoining state or province into which any such bridge may extend; provided, that in such construction and maintenance the rights of adjoining states and provinces shall in no wise be infringed. ('07 c. 399 § 1)

2596. Bridges over navigable river forming state boundary—Appropriation by county board of not over one-half cost—Proceedings—Whenever one-half the resident taxpayers of any county, whose county line is the boundary line of a state, as appears by the last preceding assessment roll of such county, shall petition the board of county commissioners of such county, praying for an appropriation to build a bridge across any navigable river on the line of any such county, when the county line is the boundary line of a state, setting forth therein the location of such bridge as near as may be, its estimated cost and the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to pay for such structure, and the time when it will be completed, such petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named, it shall be the duty of the board of county commissioners to publish a notice in the official paper of the county, once each week for three consecutive weeks, briefly stating the object of such petition and that the same will be heard and considered at the next regular meeting of such board. At the time appointed for the hearing of such petition, the board of county commissioners shall investigate the need for such bridge, and if they find the same to be necessary shall, by resolution duly entered upon the minutes of the board, appropriate towards the building of such bridge, from the county treasury a sum not exceeding one-half of the estimated cost of such bridge to be paid as hereinafter provided; provided, however, the appropriation hereinbefore mentioned shall be upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of the cost of such bridge will be

paid; provided, further, that the consent of the general government to span such river shall first have been obtained. ('09 c. 425 § 1)

2597. Same—Committee to confer with neighboring state or municipality, etc.—If the remaining one-half of the cost of such bridge shall be made up by an appropriation from any neighboring state or by a municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three or more, to meet such other municipal agency, confer with its members and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county. ('09 c. 425 § 2)

2598. Same—Bonds, when may be issued—Tax levy—When one-half or such other proportion as may be, of the cost of such improvement shall be provided for by any municipality within this state, it shall be lawful for such municipal corporation, by a majority vote of the legal voters thereof after ten days' notice, to meet the necessary expense by the issuance of bonds bearing interest not to exceed seven per cent per annum and not to run longer than twenty years after the date of issue, nor to be sold for less than par value, interest payable semi-annually; provided, that the limit of indebtedness of such corporation prescribed in the constitution is not thereby exceeded. In case the limit of indebtedness of such municipality would be thereby exceeded, then it shall be lawful for such municipality to make a sufficient tax levy for general purposes to meet the necessary expenditure in the construction of such bridge, and when the same shall be completed and accepted the share of the cost thereof to be borne by such municipality shall be paid out of the general fund by orders drawn in the usual form and manner. ('09 c. 425 § 3)

2599. Same—Not more than one wagon bridge—Limit of cost—Not more than one wagon bridge across a navigable river in each county shall be built under this article, and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars. ('09 c. 425 § 4)

2600. Strength of bridges—All bridges hereafter constructed on any public street or highway in any county, township, town or village, in the state of Minnesota, shall be of sufficient strength to support, with perfect safety, any wagon, engine or other vehicle with a weight of twenty tons on two axles with ten foot centers, with not to exceed three-fourths of said weight concentrated on one axle, when driven at a speed of not to exceed three miles an hour; nothing herein contained shall apply to any automobile. ('13 c. 508 § 1)

Section 2 repeals inconsistent acts, etc.

2601. Certain orders establishing or vacating highway legalized—That, when any board of supervisors in any township in this state has by their order established or vacated any highway, and the proceedings had therein are in all respects valid except that the notice for the hearing on petition to establish or vacate such highway was posted in three public places in such town where such highway is so established or vacated, instead of the places designated at the annual town meeting for the posting of notices, and no appeal has been taken from such order within the time prescribed by law, such order is hereby legalized and made as valid and effectual for all purposes as though the notice for the hearing on such petition had been posted in the places so designated at the annual town meeting. ('07 c. 169 § 1)

See § 2495.

2602. Certain payments to road and bridge fund legalized—That in any county in this state in which there have been heretofore duly issued and negotiated the bonds of such county for the purpose of building certain roads under and by virtue of chapter two hundred eighty-nine of the General Laws of Minnesota for the year 1895, and the sum realized from the sale of said

bonds has heretofore been covered into the general road and bridge fund of said county by the county treasurer thereof, instead of into a special fund for the construction of the roads for which said bonds were voted, said deposit of said sum to the credit of said general road and bridge fund of said county shall be and the same is hereby legalized, and said sum so covered into said general road and bridge fund by said county treasurer shall be incorporated therewith and become a part thereof, and may hereafter be used and disbursed for any purpose for which said general road and bridge fund may be lawfully used and disbursed; provided, however, that nothing herein contained shall operate to in any way invalidate any of said bonds so issued, and negotiated. ('05 c. 226 § 1)

STATE RURAL HIGHWAYS

2603. Definition—Petition for, by whom approved—Expense, how borne—Highways may be laid out, or constructed, or substantially improved in territory outside of cities and villages by county boards, where they are wholly within a single county, and by the district court, when they extend into more than one county; and such highways shall be known as "state rural highways." Such highways shall be constructed or improved only upon the approval of a petition for the same by the county board or boards as the case may be, and state highway commission and the expense therefor shall be borne one-fourth by local assessment, one-fourth by the county, and one-half by the state. ('11 c. 254 § 1)

See § 2578.

2604. How established, constructed and improved—Procedure of Laws 1905, c. 230, applicable—State rural highways shall be established, constructed and improved, or either constructed or improved, by a procedure identical with the proceeding prescribed by sections 3 to 52, inclusive of chapter 230 of the General Laws of Minnesota for the year 1905 [5525-5578], exclusive of amendments, so far as the same may be made applicable to the laying out, improving and construction of highways and the raising of money therefor and to the assessment of benefits and the payment of damages, if any, incident to such construction or improvement; and said sections of chapter 230 are hereby made a part of this act, except as specified parts thereof are herein excluded or amended to adapt the said law more nearly to the construction or improvement of highways. ('11 c. 254 § 2)

2605. Construction of certain words in Laws 1905, c. 230—Act, how far applicable—Duties of state highway commission, etc.—Wherever the words "ditch, drain or water course," or either of them, appear in said chapter 230 [5523-5589] they shall for the purposes of this act be deemed to include "state rural highways"; the words "county ditch" or "judicial ditch" shall be read as "state rural highway"; the survey and report of the engineer shall be of the facts pertinent to the proposed construction or improvement, instead of the facts pertinent to ditches; the last five provisos of section 4 of said chapter [5526] are not to be deemed applicable to state rural highways; one-fourth only of the cost of "state rural highways" shall be met by the assessment of lands or property therefor including that of corporations, municipal or private; section 42 of said chapter 230 [5568] shall be, and hereby is, amended so as to read as follows:

The state highway commission shall approve all petitions for state rural highways before the auditor's notice of first hearing thereon shall be served, posted or published; during all the proceedings carried on with and devoted to the construction, or substantial improvement of any state rural highway, the state highway commission shall confer with and give its advice to the court or board in charge of such proceedings; upon notice of the establishment of any such rural highway, or the ordering of the substantial improvement of an existing road into a "state rural highway," the state highway commission shall provide from any funds in its control a sum sufficient to meet one-half of the expense of such highway so established or ordered improved and may direct that such sum be paid in ten annual installments, or

that it may be paid as soon as available; the warrant of the state auditor shall be issued upon the order of the state highway commission to the county, or counties, responsible primarily for the expense of such construction or improvement in such amount as said commission shall specify in accordance with the rule as to payment hereinbefore described. ('11 c. 254 § 3)

2606. Counties primarily liable for expenses, etc.—The county, or counties, in which any state rural highway shall be constructed or improved shall be liable primarily for all the expenses of such proceedings, construction, and improvements and for all the damages, if any, to be caused by such construction or improvement of a highway, in such proportion as such counties would be liable under section 33 of said chapter 230 [5559] were such liability for the expense of the proceedings for and construction of a ditch and said county or counties shall provide for the prompt payment of all expenses incurred therefor, whether for proceedings, damages, or construction work. ('11 c. 254 § 4)

2607. Duties of county attorney—The county attorney shall, as part of his official duties, attend upon every hearing upon any matter relative to the proceeding for the construction of or improvement of any road as already established or to become a state rural highway whenever the county in which he is such attorney may be affected by any results or consequences of such hearing. He shall examine each draft of the service of any notice given under the provisions of this act, and shall file a written opinion with the board prior to the time of such hearing as to whether or not the notices of such hearing have each and all been legally served. ('11 c. 254 § 5)

2608. Petition for highway—Plan and estimate—Notice of hearing—Copies of the general plan and detailed estimate of the cost of any proposed state rural highway shall be appended to the petition for such highway before the same shall be signed, and copies of the same shall, before the circulation of such petition, be filed with the auditor of each county in which any part of such proposed highway will be. A copy of such plan and estimated cost shall be furnished to the state highway commission before the petition therefor shall be signed. In each notice of a hearing upon such petition there shall appear in capital letters the following notice: "The general plan and estimated cost of the proposed state rural highway are on file in and may be examined at the office of the county auditor." But such plans and estimates shall not be published or posted as a part of the petition, nor need they be served upon any interested party. ('11 c. 254 § 6)

2609. State may contribute, etc.—The state, in addition to the amount hereinbefore provided to be paid by it, or any county, town, or municipal corporation in which said road is in whole, or in part located, or any interested person, may contribute to the establishment, construction or improvement of such road, and may do so by bearing a part of the burden thereof that would otherwise be laid upon any county, or town, or person. The amount of such contribution shall be deducted at the time it is given from the obligation of the county, town or person aided. ('11 c. 254 § 7)

FERRIES

2610. Ferries—License—No person shall establish, operate, or maintain, upon any water in this state, any ferry upon which to carry or transport persons or property for hire, without first obtaining a license therefor from the county board. (1246)

2611. Notice of application—Any person intending to apply for a ferry license shall give two weeks' posted notice of such intention, stating therein, as near as possible, the points between which he proposes to operate such ferry, and shall file such notice, with proof of posting, with the auditor of the county in which the ferry is situated, at least ten days prior to the presentation of his application; but no notice of an application for a renewal of a license shall be required. (1247)

2612. License—Requisites—On proof of the posting and filing of such notice, and on being satisfied that the applicant is a suitable person, that a ferry is necessary at the point specified, and that such point is not within half a mile of any other established ferry, the county may grant the license applied for, for a period specified therein, not exceeding ten years. All licenses so granted shall be sealed with the seal of the board, signed by its chairman, and attested by the auditor. (1248)

2613. Licensee to give bond—Before receiving such license, the applicant shall give bond to the county, to be approved by such board, in a penal sum of not less than five hundred dollars, conditioned that he will keep the ferry in proper condition for use, and attend the same at all times fixed by law for operating it; that he will neither demand nor take illegal tolls; and that he will faithfully perform all other duties enjoined upon him by law. Such bond shall be filed with the auditor. (1249)

2614. License fee—The county board shall fix ferry licenses at such sums as it may deem reasonable, but not less than five dollars nor more than two hundred dollars per annum. The licensee shall pay the license fee yearly in advance to the county treasurer, taking duplicate receipts therefor, one of which he shall file with the auditor within ten days from its date. All ferries shall be deemed situated in the county where the ferry house is situated, and the license fee shall be required only in such county. (1250)

2615. Ferries between counties—Where a stream over which a ferry license is applied for runs between two counties, the county board of each county shall have full jurisdiction in the premises, and, when either board has exercised such jurisdiction and established a ferry, no other board shall exercise any jurisdiction over the same. When the stream forms a part of the boundary line of the state, the county board of the county in this state bordering on such stream may grant a license and exercise all the powers herein conferred, so far as the same do not conflict with the rights of other states. And when application shall be made in two counties separated by a stream for a ferry license over such stream at the same point, the board of the county in which notice of application was first filed with the county auditor shall have sole jurisdiction in the matter. (1251)

2616. Equipment and attendance—Every licensed ferryman shall provide and keep sufficient and safe boats in good repair for the conveyance of persons and property, and a sufficient number of hands to manage them, and shall give proper attendance from daylight until dark. He shall also attend at any hour of the night, when called upon, for the purpose of conveying the United States mail, or any person desiring, with or without a team or vehicle, to cross on said ferry. But when the stream is impassable by reason of high water, wind, storm, or drift ice, or when it is frozen over, no damage shall be recovered for failure or refusal to carry persons or property across such stream. (1252)

2617. Tolls—Penalties—The county board shall establish at each ferry the tolls for passengers, horses, carriages, and other things there transported. Every ferryman who neglects to keep such boats and give such attendance as provided for in this chapter, or demands or receives more than the amount designated by said county board, shall forfeit twenty dollars, and be liable for all damages caused thereby, either or both of which may be recovered by an action on his bond. (1253)

2618. Ferries in cities—The provisions of this chapter relating to ferries shall not apply to any stream so far as the same is bordered by any city or village. The council of such city or village shall have the sole right to grant ferry licenses across such stream as far as the same borders thereon, and to make and enforce such regulations for such ferries, ferry licenses, and fees as it may deem proper, except that such licenses shall not be granted for a longer term than ten years. But this section shall not be so construed as to abridge the rights of the county board in any county other than the one in which such city or village is situated. Every ferryman licensed by a council hereunder shall have the same rights, and be subject to the same liabilities as those licensed by county boards. (1254)

MOTOR VEHICLES

2619. Definitions—The term “motor-vehicle,” as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances, and such vehicles as run only upon rails or tracks.

The term “local authorities” shall include all officials of counties, cities, towns or villages.

The term “chauffeur” shall mean any person operating or driving a motor vehicle as an employee, or for hire.

The term “state,” as used in this act, except where otherwise provided, shall also include the territories and the federal districts of the United States.

The term “owner” shall also include any person, firm, association or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

The term “public highway” shall include any highway, town road, country road, state road, public street, avenue, alley, park, parkway or public place in any county, city, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages. ('11 c. 365 § 1)

111-488, 127+495, 31 L. R. A. (N. S.) 682.

2620. Application for registration—Every owner of a motor-vehicle which shall be operated or driven upon the public highways of this state, for each motor-vehicle owned, except as herein otherwise provided, shall cause to be filed, by mail or otherwise, in the office of the secretary of state, a verified application for registration, duly sworn to before a notary public of the county in which said applicant resides, on a blank to be furnished by the secretary of state for that purpose, containing:

(1) A brief description of the motor-vehicle to be registered, including the name of the manufacturer, the factory number, horse power, character of the motive power, and model, if such number or model there be;

(2) The name, residence and business address of the owner of such motor-vehicle, and the name of the county in which he resides; provided that if such motor-vehicle is used solely for commercial purposes, the application shall so certify and also state the business in connection with which such vehicle is so used, or to be used. ('11 c. 365 § 2)

2621. Age of driver—No person shall operate or drive a motor-vehicle, licensed under the provisions of this law, who is under sixteen (16) years of age unless such person is accompanied at the time by a duly licensed chauffeur, or the owner of the motor-vehicle being operated, provided, that such owner, in such case, must be sixteen (16) years of age, or over. ('11 c. 365 § 3)

2622. Registration book—Upon receipt of an application for registration of a motor-vehicle, or vehicles, as provided in section 2 [2620] and in section 11 [2629] of this act, the secretary of state shall file such application in his office, and register such motor-vehicle, or vehicles, with the name and residence and business address of the owner, manufacturer or dealer, as the case may be, together with the facts stated in such application, in a book or index to be kept for that purpose, under the distinctive number assigned to such motor-vehicles by the secretary of state, which book or index shall be open to inspection during reasonable business hours. ('11 c. 365 § 4)

2623. Number and tags—Upon the filing of such application, and the payment of the fee provided in section 7 [2625], the secretary of state shall assign to such motor-vehicle a distinctive number, and without other fee, issue and deliver to the owner a set of two (2) tags of registration, upon each of which shall be displayed the distinctive number assigned in the form and size provided in section 10 [2628], which shall be evidence of payment of license fee of such registration.

In the event of the loss, mutilation or destruction of a certificate of registration, the owner of a registered motor-vehicle may obtain from the secretary of state a duplicate thereof upon filing with the secretary of state an affidavit showing such fact, and upon the payment of a fee of one dollar (\$1.00). ('11 c. 365 § 5)

2624. Re-registration triennially—Such registration shall be renewed triennially and upon the payment of the same fee as provided in this act for original registration, such renewal to take effect on the first day of January, every third year. ('11 c. 365 § 6)

2625. Registration fees—A fee of one and fifty one-hundredths dollars (\$1.50) shall be paid to the secretary of state upon the registration or re-registration of a motor-vehicle, in accordance with the provisions of this act. ('11 c. 365 § 7)

2626. Tag to be displayed on vehicles, etc.—No person shall operate or drive a motor-vehicle on the public highways of this state after January first, 1912, unless such vehicle shall have been registered in accordance with this act, and shall have the tags of registration assigned to it by the secretary of state conspicuously displayed, one on the rear and one on the front or dash of such vehicle, securely fastened, so as to prevent the same from swinging, and it shall be the duty of the person driving the motor-vehicle to keep said tags free from grease, dust or other blurring material, so as to be plainly visible at all times.

No person shall display on such vehicle at the same time any number plate of more than one state. ('11 c. 365 § 8)

2627. Color of number plate to be changed triennially—Such certificates shall be of a distinctly different color or shade each term of years, there being at all times a marked contrast between the color of the number plate and that of the numerals or letters thereon. ('11 c. 365 § 9)

2628. Form of certificate—Such certificate of registration shall be substantially of the following size and form, namely: A plate or placard of metal or enameled or other suitable material eight and one-half inches in length and five inches in width for one, or two numerals; ten inches in length and five inches in width for three numerals; to facilitate the manufacturer an "O" may be prefixed at the discretion of the secretary of state; twelve inches in length and five inches in width for four numerals; on the left end of this plate, with letters running vertically from the top, there shall be the four letters, "Minn." Each letter of this shall be approximately one inch in length, and on the right end, arranged in the same manner, and of the same size, there shall be the four numerals of the term of years in which the license is issued; and on the body of such plate there shall be the distinctive numbers assigned to the vehicle in numerals four inches long, each stroke of which shall be at least one-half inch in width; provided, that motor cycles shall be assigned tags three inches in width and of a height to permit numerals to be placed vertically; across the top of this tag, with letters running horizontally, there shall be the four letters "Minn.," and across the bottom, arranged in the same manner, there shall be the four numerals of the year in which license is issued; except that the letters shall be in proportionate size to the small plate; provided further, that in case of a motor-vehicle registered under section 11 [2629] of this act, there shall be, in addition to the foregoing, the letter "M" preceding the numeral or numerals for the manufacturer of vehicles, and the letter "D" preceding the numeral or numerals for the dealer in vehicles. The letter in this instance to be approximately three and one-half inches in length and four inches in width, and to be added to the length of the registration certificates heretofore specified. ('11 c. 365 § 10)

2629. Registration by manufacturers and dealers—Every person, firm, association or corporation manufacturing or dealing in motor-vehicles may, instead of registering each motor-vehicle so manufactured or dealt in, make a verified application, duly sworn to before a notary public of the county in which such person resides, or firm, association or corporation has its principal place of business, upon a blank to be furnished by the secretary of state,

for a general distinctive number for all motor-vehicles owned or controlled by such manufacturer or dealer, such application to contain:

(1) A brief description of each style or type of vehicle manufactured or dealt in by such manufacturer or dealer; and

(2) The name, residence and business address of such manufacturer or dealer.

On the payment of a registration fee of ten dollars (\$10) such application shall be filed and registered in the office of the secretary of state in the manner provided in section 2 [2620] of this act.

There shall thereupon be assigned and issued to such manufacturer or dealer a general distinctive number and duplicate tags of registration in the manner provided by section 2 [2620], which shall be in the form of plates, as provided for in section 10 [2628], duplicates of which shall be carried or displayed by every motor-vehicle of such manufacturer or dealer so registered when the same is driven or operated on the public highways.

Such manufacturer or dealer may obtain as many duplicate sets of such tags of registration as may be desired upon payment to the secretary of state of one dollar (\$1.00) for each set of duplicates. Such registration shall be renewed annually upon the payment of the same fee as provided for original registration, such renewal to take effect on the first day of January of each year.

Nothing in this subdivision shall be construed to apply to the motor-vehicle operated by a manufacturer or dealer for private use, or for hire. ('11 c. 365 § 11)

2630. Exemption of non-resident owners—The provisions of the foregoing sections, in regard to registration, shall not apply to a motor-vehicle owned by a non-resident in this state, other than a foreign corporation doing business in this state, who is temporarily within the state while passing into or through this state from an adjoining state; provided, that such non-resident shall have displayed in a conspicuous way on the motor-vehicle he is operating, a number and tag, which shall make it and the place from which it comes easily identified; provided further, that should such non-resident owner remain continuously within the state for a period of more than thirty (30) days, he shall be required to register his motor-vehicle in like manner as a resident owner. ('11 c. 365 § 12)

2631. Contracts for certificates and tags, how let—All registration certificates and tags required in accordance with the provisions of this act shall be secured by the secretary of state pursuant to notice and call for bids therefor, such notice to state the quality of material desired in such certificates and tags, the specifications thereof and the amount or number desired, and such notice shall be published for three successive days each in a daily newspaper published in St. Paul and Minneapolis, the first publication to be not less than twenty days prior to the time of opening bids. Each bid shall be accompanied by a certified check on a state or national bank of this state equal to ten per cent of the amount of the bid, payable to the state treasurer, the amount of such check to be forfeited to the state in case successful bidder fails to enter into contract and furnish bond within ten days after awarding contract. The lowest and best bid shall be accepted by the secretary of state, state auditor and state treasurer and they shall enter into a contract with the successful bidder in accordance with such notice and such plans and such bids. Such successful bidder shall within ten days file with the secretary of state a bond for the amount of such bid, payable to the state and to be approved as to form by the attorney general, sureties to be approved by the secretary of state and conditioned for the faithful fulfillment of the terms of such contract by such successful bidder. ('11 c. 365 § 12½)

2632. Brakes, horns, lamps, mufflers, etc.—Not to stand unattended, etc.—(1) Every motor vehicle operated upon the public highway of this state shall be provided with adequate brakes sufficient to control the vehicle at all times, and a suitable adequate bell, horn, or other device for signaling, and shall, during the period from one hour after sunset to one hour before sunrise, display at least two lighted lamps, visible from the front, and one on the rear of such vehicle, which shall also display a red light, visible from

the rear. The white rays of such rear lamp shall shine upon the number plate carried on the rear of such vehicle. The light of the front lamp shall be visible at least two hundred feet in the direction in which the motor is proceeding. No such motor vehicle shall be permitted to remain standing upon any public street, highway, or other public way unattended in this state, at any time with the motor running.

Every such motor vehicle using gasoline as motive power shall use a "muffler," so-called, and the same shall not be cut out or disconnected within the limits of any city or village, within the state, or at the time of passing any house or animal being led, ridden or driven.

(2) **Stopping on signal, and other regulations**—A person operating or driving a motor-vehicle, shall, on signal by raising the hand, or by request, from a person riding, leading or driving a horse, or horses, or other draft animals, bring such motor-vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided, that in case such horse or animal appears badly frightened, or the person operating such motor-vehicle is so signaled or requested to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. In approaching or passing a car of a street railway, which has been stopped to allow passengers to alight or embark, the operator of every motor-vehicle shall slow down, and if it is necessary for the safety of the public, he shall bring said vehicle to a full stop not less than ten feet from said street car. Upon approaching a pedestrian, who is upon the traveled part of any highway, and not upon a sidewalk, and upon approaching an intersecting highway, or a curve or a corner in a highway where the operator's view is obstructed, every person operating a motor-vehicle shall slow down and give a timely signal with his bell, horn or other device for signalling; provided, however, that no person shall unreasonably obstruct or impede the right of travel upon the public highways of a driver of a motor-vehicle, or of a horse, and any one so doing shall be held amenable under this act. ('11 c. 365 § 13, amended '12 c. 7 § 1)

2633. Speeds and signals at cross roads outside of cities and villages—Every person operating or driving a motor-vehicle on the public highways of this state shall, when approaching a cross road outside the limits of a city or incorporated village, slow down the speed of same, and shall sound his bell, horn or other device for signaling in such a manner as to give notice and warning of his approach. ('11 c. 365 § 14)

2634. Road rules—Whenever a person riding, driving or leading a horse or other animal, or driving or operating a motor or other vehicle on any public highway, shall meet another person thus riding, driving or leading a horse or other animal or thus driving or operating a motor or other vehicle, if such persons are moving in opposite directions, each shall slacken his pace, if necessary, and reasonably turn to the right so as to give half of the travel road, if practicable, and a fair and equal opportunity to pass, to the other; or, if they are moving in the same direction, the person overtaking shall pass on the left side of the person overtaken, and the person overtaken shall, as soon as practicable, turn to the right so as to give half of the traveled road to the other.

The operator of a motor-vehicle, upon meeting or overtaking any horse, or other draft animal, driven or in charge of a woman, child or aged person, shall not pass said animal at a rate of speed greater than four miles per hour; provided, that in case said animal exhibits any signs of fright, the operator shall bring his machine to a stop, and, upon request or raising of the hand of the person in charge of said animal, or in case said animal continues to exhibit signs of fright, or in case the person riding, driving or leading said animal cannot control the same, the said operator shall stop the motor of such vehicle, so long as shall be reasonably necessary to prevent damage to property, or life or limb of such person or animal.

Any person shall, at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right, and pass to the right of such intersection when turning to the left.

In cities or villages, or any place where traffic is large, or on streets usually congested with traffic of horse drawn vehicles or street cars, slow moving vehicles must keep near the right curb, allowing those moving rapidly to keep nearer the center of the street.

All vehicles, however, must keep to the right of the center of the street. ('11 c. 365 § 15).

R. L. § 1277 did not impose the absolute duty on signal to stop the motive power in addition to stopping the vehicle. Whether failure to stop the power was negligence must be determined by circumstances (102-377, 113+904, 14 L. R. A. [N. S.] 251, 12 Ann. Cas. 289).

Under 1909 c. 259 § 14, prescribing the rule, "In cities or villages, or any place where traffic is large," etc., as in this section, held, that defendant was properly convicted, though he was not blocking traffic, but merely driving on a part of the street most convenient for him (111-488, 127+495, 31 L. R. A. [N. S.] 682).

Under 1909 c. 259 § 14, held not as matter of law negligent for pedestrian to walk on left side of street or driveway, nor, to avoid rapidly approaching vehicle, to turn to left (112-149, 127+484, 29 L. R. A. [N. S.] 822).

Under 1909 c. 259 §§ 14, 16, a driver, who negligently, because of excessive speed or not having his machine under control, fails to keep to right of intersection of street, when turning to right, but crosses to left, and collides with another vehicle lawfully on that side, whose driver is free from negligence, held responsible for consequent damages (113-190, 129+383, 41 L. R. A. [N. S.] 346).

2635. Rates of speed—No person shall drive a motor-vehicle upon any public highway of this state at a speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor-vehicle, operated on any public highway in this state, where the same passes through the closely built up portions of any incorporated city, town or village, or where the traffic is more or less congested, exceeds ten (10) miles an hour for a distance of one-eighth of a mile, or if the rate of speed of any motor-vehicle, operated on any public highway of this state, where the same passes through the residence portions of any city, town or village, exceeds fifteen (15) miles an hour for a distance of one-eighth of a mile, or of [if] the rate of speed of any motor-vehicle operated on any public highway in this state, outside the closely built up business portions, and the residence portions of any incorporated city, town or village, exceeds twenty-five (25) miles an hour for a distance of one-quarter of a mile, such rates of speed shall be prima facie evidence that the person operating such motor-vehicle is running at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the way, or so as to endanger the life or limb or injure the property of any person.

If the rate of speed of a motor-vehicle, operated on any public highway in this state, in going around a corner or curve in a highway, where the operator's view of the road traffic is obstructed, exceeds six (6) miles per hour, such rate of speed shall be prima facie evidence that the person operating such motor-vehicle is running at a rate of speed greater than is reasonable and proper, having regard to the traffic and the use of the way, or so as to endanger the life or limb or injure the property of any person.

If a licensed physician shall have his motor-vehicle stopped for exceeding the speed limit, while he is in the act of responding to an emergency call, the registration number of the vehicle, and the driver's license number may be inspected and noted, and the physician shall then be allowed to proceed in the vehicle to his destination, and subsequently such proceedings shall be taken as would have been proper had the person violating the provisions as to speed not been a physician. ('11 c. 365 § 16)

1909 c. 259 § 16, prescribing rate of speed, etc., held constitutional (112-157, 127+473).

See 113-190, 129+383, 41 L. R. A. (N. S.) 346.

2636. Duty of driver in case of accident—Every driver of a motor-vehicle, after knowingly causing an accident, by collision or otherwise knowingly injuring any person, horse or vehicle, shall forthwith bring his motor-vehicle to a full stop, return to the scene of the accident, and give to any proper person demanding same, his name, number of his driver's license and regis-

tration number of his motor-vehicle, and the names and residences of each and every male occupant of said motor-vehicle, and upon failure to do so, shall be guilty of a gross misdemeanor. ('11 c. 365 § 17)

2637. **Local regulations prohibited—Exceptions—**No city, town, village or other municipality shall make or pass any ordinance, rule or regulation limiting or restricting the speed of motor-vehicles, and no ordinance, rule or regulation heretofore or hereafter made by any city, town, village or other municipality in respect to or limiting the use or speed of motor-vehicles shall have any force, effect or validity; provided however, that nothing in this act shall be construed as limiting or preventing local authorities from regulating motor-vehicles offered to the public for hire; and provided further, that local authorities may exclude motor-vehicles from any cemetery or ground used for the burial of the dead, and may, by general ordinance or regulation, exclude motor-vehicles, used solely for commercial purposes, from any park or part of a park system; and provided further, that the local authorities having jurisdiction over the public parks and boulevards connecting or pertaining to the same, shall not by the terms of this act, be prohibited from adopting and enforcing such reasonable ordinances, rules or regulations concerning the speed at which motor-vehicles may be operated within and upon any such parks, parkways or boulevards; provided the rate of speed of motor-vehicles, fixed by such ordinances, rules or regulations, shall not be less than the rate fixed for other vehicles; and provided such authorities shall, by sign, conspicuously placed so as to be easily read by the operator of said motor-vehicle, indicate the rate of speed permitted. ('11 c. 365 § 18)

2638. **Board of automobile examiners—Examination and licensing of chauffeurs—Revocation of license—Numbers or marks and badges—Non-resident chauffeurs—**There is hereby created a board of automobile examiners, consisting of three members, who shall be men possessing a technical and practical knowledge of the construction, mechanism and operation of motor-vehicles, whose term of office shall be two (2) years, and who shall be appointed by the governor: Provided that the term of office of the members of the board, appointed during the year 1911, shall terminate December 31st, 1912. The said board shall have a seal, and shall keep its records and books in the office of the secretary of state; and it shall be the duty of the latter to provide all necessary blank form and record books, and clerical assistance, upon request of said board. The members of said board shall receive a compensation of five dollars (\$5.00) per day while in actual session, and all traveling expenses, and shall be paid by voucher, certified by the secretary of state, out of the appropriation provided for by section 23 [2642] of this act.

It shall be the duty of said board to conduct the examination of all applicants for "chauffeur's licenses" herein provided for, at such times and such places as shall be designated by the secretary of state; to pass upon the qualifications of such applicants, and to issue to those having a technical and practical knowledge of the construction, mechanism and operation of motor-vehicles, a license, to be known as a "chauffeur's license;" provided, that no such license shall be issued to any person under eighteen (18) years of age or who is an habitual and excessive user of intoxicating liquors, or to any person of defective eyesight, or other physical infirmity, which in the judgment of said board renders such person incompetent to manage and care for a motor-vehicle. Such licenses shall expire on December 31st of each year, and a new license shall be issued to the holder of the expired license upon the payment of two dollars (\$2.00); provided further, that upon the third conviction by any court of a violation of any of the provisions of this act, the secretary of state is hereby empowered and directed to revoke the license of any chauffeur so convicted, and said chauffeur shall not be entitled to receive a new license or to have an expired license renewed or re-issued to him within six (6) months after the revocation or expiration of his license, and then only upon and after he has been re-examined by the board, who shall, in their discretion, have the power to refuse to grant such license,

if in their opinion the applicant is incompetent to manage and operate a motor-vehicle.

Application for license to operate a motor-vehicle as a chauffeur may be made by mail, or otherwise, to the secretary of state, or his duly authorized agent, upon blanks prepared under his authority. Such applications shall be accompanied by a photograph of the applicant in such forms and numbers as the secretary of state shall prescribe, said photographs to be taken within thirty (30) days prior to the filing of said application, and to be accompanied by the fee provided therein. Every such application shall be sworn to by the applicant and shall be accompanied by a fee of three dollars (\$3.00).

In case said applicant, upon examination by the board of examiners, shall have been found competent, and such fact has been certified to the secretary of state, such applicant shall thereupon be assigned some distinguishing number or mark, and the license issued shall be in such form as the secretary of state shall determine; it may contain special restrictions and limitations concerning the type of motor power, horse power, design and other features of the motor-vehicles which the licensee may operate; it shall contain the distinguishing number or mark assigned to the licensee, his name, place of residence and address; a brief description of the licensee for the purpose of identification, and photograph of the licensee. Such distinctive number or mark shall be of a distinctly different color each year, and in any year shall be of the same color as that of the certificate of registration issued for that year. The secretary of state shall furnish to every chauffeur so licensed a suitable metal badge, with the distinguishing number or mark assigned to him thereon, without extra charge therefor. This badge shall thereafter be worn by such chauffeur, pinned upon the outside of his clothing, either upon his breast about midway between his shoulders, or upon the front of his hat or cap, at all times while he is operating or driving a motor-vehicle on public highways. Said license shall be valid only during the term of the license of the chauffeur to whom it is issued, as aforesaid. Every person licensed to operate motor-vehicles as aforesaid shall endorse his signature on the margin of the license, in the space provided for that purpose, immediately upon receipt of said license, and such license shall not be valid until so endorsed; and it shall also be the duty of said licensee to have said license at all times in his possession while operating a motor-vehicle in this state.

Upon the receipt of such an application, the secretary of state shall thereupon file the same in his office and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor-vehicles, and when the applicant shall have passed the examination provided for in the preceding section, the number or mark assigned to such applicant, together with the fact that such applicant has passed such examination, shall be noted in said book or index.

No chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge, nor shall any person, while operating or driving a motor-vehicle, use or possess any license or badge belonging to another person, or a fictitious license or badge. No person shall operate or drive a motor-vehicle as a chauffeur upon a public highway of this state after the first day of January, 1912, unless such person shall have complied in all respects with the requirements of this section; provided, however, that a non-resident chauffeur, who has registered under the provisions of law of the foreign country, state, territory or federal district of his residence, substantially equivalent to the provisions of this section, shall be exempt from license under this section; and provided further, that he shall wear the badge assigned to him in the foreign country, state, territory or federal district of his residence in the manner provided in this section; provided further, that in case said chauffeur remains in this state for sixty (60) days or more, he shall be required to comply with all of the provisions of section 19 [2638] hereof. ('11 c. 365 § 19)

2639. Taking into custody for violation of act—Undertaking to appear, etc.—In case any person shall be taken into custody because of any violation

of any of the provisions of this act, he shall forthwith be taken before any magistrate or justice of the peace in any city, village or county, and be entitled to an immediate hearing, and if such hearing cannot be had, be released on giving his personal undertaking to appear and answer for such violation at such time or place as shall then be indicated, secured by a deposit of a sum of money not exceeding twenty-five dollars (\$25.00), or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor-vehicle, and in case the person taken into custody is not the owner, by leaving the motor-vehicle, with a written consent given at the time by the owner, who must be present with such judicial officer. ('11 c. 365 § 20)

2640. Intoxication of driver—Penalty—Whoever operates a motor-vehicle while in an intoxicated condition, shall be guilty of a misdemeanor. ('11 c. 365 § 21)

2641. Tampering with or damaging vehicle, etc.—No person shall tamper with or drive or operate or use a motor-vehicle without the permission of the owner, and no person shall, without authority of the person in charge, climb upon or into any automobile, whether while the same is in motion or at rest, or hurl stones or any other missiles at the same, or occupants thereof, or shall, while such motor-vehicle is at rest and unattended, sound the horn or other signalling device, or attempt to manipulate any of the levers, starting crank, brakes or machinery thereof, or set such vehicle in motion, or otherwise damage or interfere with the same. ('11 c. 365 § 22)

2642. Disposition of fees—Appropriation—Expenses—At the end of each month the secretary of state shall pay into the state treasury, to the account of the general fund of the state, all moneys received by him under this act, and file with the state auditor a verified statement of the amount and sources thereof.

For the purchase of tags, books of registration and the salary of two additional clerks in the office of the secretary of state—one at a salary of fifteen hundred dollars (\$1500) per annum, and the other, who shall be employed from time to time as may be deemed necessary, at five hundred dollars (\$500) per annum, and for the other expenses provided for in this act—the sum of twenty thousand dollars (\$20,000); January 1st, 1912—ten thousand dollars (\$10,000.00) January 1st, 1913, and ten thousand dollars January 1st, 1914, or so much thereof as may be necessary, is appropriated out of the general fund of the state.

On or before the tenth of each month, the secretary of state shall file a statement and certify to the state auditor the items and amounts of all expenses necessarily incurred by him in the carrying out of this act, and such items and amounts, being duly audited, shall be paid by the state. ('11 c. 365 § 23)

2643. Suit for damages—Evidence, etc.—Nothing in this act shall be construed to curtail or abridge the right of any person to prosecute a civil suit for damages by reason of injuries to persons or property resulting from the negligent use of the highways by a motor-vehicle, or its owner, or his employee or agent, and in all actions and proceedings against the registered owner of a motor-vehicle, for negligence in the operation of such vehicle, or for any violation of this act, the fact that such motor-vehicle has upon it the registration number assigned to such owner under this act, shall be prima facie evidence that such motor-vehicle belonged to such registered owner. ('11 c. 365 § 24)

2644. Taking and removing without consent—Penalty—Any person who enters any warehouse, garage or building of any kind and takes and removes therefrom, for his own use or that of others, any automobile or motor-vehicle, without the knowledge and consent, expressed or implied, of the owner thereof, shall be deemed guilty of a felony and upon conviction thereof shall be punished accordingly.

The fact that such automobile or motor-vehicle was voluntarily returned to its original place by the party taking the same before or after the owner discovers such removal, or the fact that the party taking the same was then

and there in the employ of the owner of such property, shall not be deemed a defense in the prosecution of such offender. ('11 c. 365 § 25)

2645. Violation of act—Penalty—Duty of clerk of court—Reversal of conviction—Any person violating any of the provisions of this act shall be guilty of a misdemeanor; provided, that if any licensed chauffeur is convicted or found guilty of violating any of the provisions of this act, it shall be the duty of the clerk of said court wherein said conviction is had, to make at once a certified report thereof to the secretary of state. Said report shall contain the name and address of the offender, the number of his license, a statement of the charge made against said chauffeur, a brief statement of the evidence and the verdict or decision of the jury or judge trying the same. If any conviction is reversed on appeal, the person convicted may serve on the secretary of state a certified copy of such reversal, whereupon the secretary of state shall enter the same in the proper book or index in connection with the record of such conviction. ('11 c. 365 § 26)

2646. Laws repealed—Chapters 259 and 265, Laws of Minnesota for 1909, sections 1263 and 1273 and 1277, inclusive, Revised Laws of Minnesota for 1905, and all other sections, acts or parts of acts inconsistent herewith are hereby expressly repealed. ('11 c. 365 § 27)

See, also, § 2578.

2647. Rubber tires or casings to be marked—No person shall sell any rubber tire or casing for use on motor vehicles unless the name of the manufacturer and the year in which the same was made, are conspicuously and permanently marked thereon in raised type cast with the tire or casing. ('11 c. 358 § 1)

2648. Same—Violation a misdemeanor—Any person who shall sell or offer for sale a rubber tire or casing in violation of the provisions of this act shall be guilty of a misdemeanor. ('11 c. 358 § 2)

CHAPTER 13A

VESSELS NAVIGATING LAKES AND RIVERS

2649. Definitions—That the following regulations for preventing collisions shall be followed by all vessels navigating all lakes and rivers of the state of Minnesota:

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and

Every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel," shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules, when she is not at anchor, or made fast to the shore, or ground.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere. ('09 c. 278 § 1)

Section 20 repeals inconsistent acts and parts of acts. See § 2669.

2650. Lights—Within what hours—The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. ('09 c. 278 § 2)

2651. Steam vessel under way—A steam vessel, when under way shall carry:

(a) On or in front of the foremast, or, if a vessel without a foremast, then in the fore part of the vessel, a bright white light so-constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed