

## CHAPTER 161

## DEPARTMENT OF HIGHWAYS

**161.01 DEPARTMENT CONTINUED.**

**HISTORY.** 1925 c. 426 art. 11 s. 1; M.S. 1927 s. 53-36.

Laws, 1925, Chapter 426, as amended, modifies and amends the prior highway act to the extent of placing the making of contracts under the control of the highway commissioner, but subject to the approval of the commissioner of administration. *Mergens v Babcock*, 175 M 583, 225 NW 285.

The notice which must be given before letting a contract for trunk highway construction and before making purchases, is governed by section 161.03. OAG Aug. 31, 1938 (707a-13).

**161.02 COMMISSIONER OF HIGHWAYS.**

**HISTORY.** 1913 c. 235 s. 9; G.S. 1913 ss. 2496, 2497; 1917 c. 119 s. 6; 1919 s. 67 s. 1; 1921 c. 323 s. 12; G.S. 1923 s. 2553; M.S. 1927 s. 2553; 1937 s. 262 ss. 1 to 3; M. Supp. s. 2553.

When the state institutes a condemnation for a right of way for a trunk highway and omits to include a tract of land which it uses as part of the general project, the owner of the land upon proper showing may have such land included in the condemnation proceeding. *State ex rel v Stanley*, 188 M 390, 247 NW 509.

The statutes bestow great powers on the commissioner but also take precaution that they be exercised within the scope of his authority. Where there is a clear violation of the rights of a citizen, a remedy is available. *Nelson v Babcock*, 188 M 588, 248 NW 49.

A railroad company which constructs an overhead bridge with a center pier which has been approved by the highway commissioner, does not have the duty of caring for a reflector placed upon said pier. The maintenance of said reflector was the duty of the highway commissioner. *Murphy v G. N. Ry.* 189 M 109, 248 NW 715.

The determination as to whether a precautionary device is necessary, and the selection of the type best suited, must rest with the commissioner of highways; and an abutting landowner has no right to construct or maintain such device without official supervision or approval. *Otten v Big Lake Ice Co.* 198 M 356, 270 NW 133.

Where plaintiff sought to compel the commissioner of highways to pay to him certain back wages, a writ of mandamus will have issued unless there is a clear and complete right shown by the petitioner to receive that which the court is asked to command the official or officer to give him. Under this section, the commissioner had a right to reduce petitioner's wages from 80 cents to 70 cents per hour. *Goar v Hoffmann*, 209 M 308, 296 NW 24.

To allow plaintiff vacation with pay for any period prior to April 10, 1940, out of the state held fund, would be a pure gratuity since all work rendered in that department prior thereto was under hiring by appellant at an hourly wage fully paid, and there was no agreement or understanding that vacations should be taken with pay. *Nollet v Hoffmann*, 210 M 88, 297 NW 164.

Tax delinquent land was condemned for a state highway and the warrants for damages issued jointly to the owner and the county. The land having become forfeited to the state for taxes, the county auditor should not enforce the warrants except under court order. OAG Aug. 30, 1937 (450f-6).

Governmental responsibility for torts. 26 MLR 322.

## 161.03 POWERS OF COMMISSIONER OF HIGHWAYS.

**HISTORY.** 1913 c. 235 ss. 10, 11, 14 to 17; G.S. 1913 ss. 2497, 2498, 2501 to 2504; 1915 c. 116 ss. 3, 4; 1917 s. 119 ss. 6, 7, 9 to 12; 1919 c. 263 s. 2; 1921 c. 323 s. 12; 1923 s. 439; G.S. 1923 s. 2554; 1925 c. 341; 1927 c. 227 s. 3; M.S. 1927 s. 2554; 1929 c. 355 s. 1; 1931 c. 44 s. 1; 1933 c. 440 ss. 3, 5; 1935 c. 42 s. 1; 1935 c. 63 ss. 1, 2; 1935 s. 304; Ex. 1936 s. 17 s. 1; 1937 c. 30 s. 1; 1937 c. 131 s. 1; 1937 s. 262 ss. 4, 5; 1937 c. 490 s. 1; 1939 c. 277; 1939 c. 313; 1939 c. 400; M. Supp. s. 2554; 1941 c. 175; 1941 c. 345 ss. 1 to 5; 1941 c. 369; 1941 c. 456 ss. 1 to 4; 1943 c. 3 s. 1; 1943 c. 90 s. 1; 1943 c. 315 ss. 1, 2; 1943 c. 623 s. 1; 1945 c. 60 s. 1; 1945 c. 61 s. 1; 1945 c. 77 s. 1; 1945 c. 89 s. 1; 1945 c. 253 ss. 1, 2; 1945 c. 422 s. 1; 1945 c. 516 s. 1.

The commissioner of highways and not the court, is the agency to determine what land is necessary for right of way for trunk highways. *State ex rel v Voll*, 155 M 72, 192 NW 188.

Where the title to certain moneys due from the highway fund to the contractor are claimed by third parties, the venue for the trial is controlled by the special statutory proceeding provided for by section 544.14, wherein normally there can be no defendants. *Midland National v Hendrickson*, 159 M 355, 200 NW 17.

The commissioner of highways has the power of regulation and supervision of a state trunk highway as well within as without the limits of the cities and villages through which it extends, and a private party may not place "stop and go" signals on a trunk highway without permission from the commissioner. *Automatic Signal Co. v Babcock*, 166 M 416, 208 NW 132.

The amount of traffic on a highway and the acreage involved in determining damages are elements to be considered as bearing upon the loss of time and inconvenience to one whose land is divided by such highway. *State ex rel v Lambert*, 171 M 368, 214 NW 653.

The powers of the commissioner of highways as to the letting of contracts are subject to the limitations imposed by Laws 1925, Chapter 426; and where a contract is made against the disapproval of the commissioner of administration, the contract cannot go into effect and performance cannot be compelled by mandamus. *Mergens v Babcock*, 175 M 583, 222 NW 285.

Where the trunk highway and a railroad track intersect, the railroad and warehouse commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. *State v N. P. Ry.* 176 M 501, 223 NW 915.

A village which approves the plans of the construction by the state highway commissioner of a trunk highway upon a village street, and authorizes a change of grade according to such plan, makes itself liable for the damage caused abutting property. *McGuire v Village of Crosby*, 178 M 144, 226 NW 398; *Foss v City of Montevideo*, 178 M 430, 227 NW 357.

The commissioner of highways is required by law to locate, construct and maintain the state highways, duties requiring the exercise of judgment and discretion, and is not personally liable for acts done in performing that duty unless done corruptly or maliciously. *Brecht v Babcock*, 179 M 263, 228 NW 916.

The highway commissioner's order designating the permanent rerouting of a trunk highway is the exercise of a legislative function constitutionally delegated and commissioned by the legislature and is conclusive on the courts as to the necessity of the taking. An enlargement by the court, against objection, including easements over their lands not sought in the state's petition is an unwarranted interference by the court. *State ex rel v Erickson*, 185 M 60, 239 NW 908.

When the state institutes condemnation for a highway and omits to include land which it uses and damages, the owner, upon a proper showing, may have such land included in the proceedings. *State ex rel v Stanley*, 188 M 390, 247 NW 509.

The defendant village was not responsible for the condition of the trunk highway because the general highway act relieves villages of responsibility for maintenance of highways after they have been taken over by the state highway

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department and become part of the trunk highway system. *Lundstrom v Giacomo*, 194 M 624, 261 NW 465.

Where the state intervenes and joins plaintiffs in suits in equity by taxpayers to cancel contracts for the paving of state trunk highways entered into by the commissioner of highways, the state subjects itself to the jurisdiction of the court and on recovery may be required to pay to the taxpayer plaintiffs the reasonable expenditures and attorney's fees incurred by the plaintiffs. *Regan v Babcock*, 196 M 243, 264 NW 803.

Where the agent of the contractor accepted in writing an order from a subcontractor to pay to the plaintiff bank money coming on an estate for work done on a highway contract, the transaction is good and valid provided the party who accepted in the name of the contractor, as in this case, had authority to do so. *Farmers State Bank v Anderson*, 195 M 475, 263 NW 443.

Where the limits of the highway have not been fixed by formal written order by the highway commissioner, there being no formal action by the commissioner indicating the purpose for which the property was to be acquired, any attempted purchase was void and beyond the statutory power of the highway commissioner. *State ex rel v Werder*, 200 M 148, 273 NW 714.

On showing in support of application for temporary injunction, it cannot be said that specifications for parking meters were so narrowly drawn as not to permit full and free competition; nor does the ordinance in question contemplate the illegal appropriation out of public funds because the meters are to be paid for only out of receipts. *Hendrickson v City of Minneapolis*, 207 M 151, 290 NW 428.

A claim statute may recognize legal obligations if it sees fit so to do. It may compensate by direct appropriation or it may waive immunity from suit. There is no conflict between Laws 1939, Chapter 420 and section 161.03. *Westerson v State*, 207 M 418, 291 NW 900.

Arbitration is authorized by this section and the procedure is similar to that in fire insurance cases. *Park Construction v Independent School*, 209 M 201, 296 NW 475; *State ex rel v O'Neil*, 209 M 220, 296 NW 7.

Where contracting parties first agree to a statutory arbitration and later make a complete submission to an arbitration which does not comply with the statutes but which is good at common law, it will be given effect as a common law arbitration. Because of the statute section 572.01, and because it never had any sound basis in fact, the doctrine is discarded that general agreements to arbitrate oust the jurisdiction of the courts and are therefor illegal as against public policy. Earlier cases overruled. *Park Construction Co. v Independent School District*, 209 M 182, 296 NW 475.

In a proceeding to condemn land for highway purposes, an option obtained by the commissioner of highways but never exercised governing purchase of land designated and located by his order, is not relative evidence on issue of damages for taking of land covered by the option. *State ex rel v Nelson*, 212 M 62, 2 NW (2d) 572.

The commissioner of highways is authorized to acquire by purchase, gift or condemnation on behalf of the state, all necessary right of way needed in laying out and constructing the state highway system and so much as shall be necessary for the proper and safe maintenance thereof. The commissioner had the right to acquire appellant's easement. *Burnquist v Cook*, 220 M —, 19 NW(2d) 395.

Minor changes in trunk highway No. 169 where the same passes through the village of Coleraine would not be contrary to law. 1934 OAG 488, June 22, 1934 (229d-5).

Old state road No. 2 was succeeded by state highway No. 1, but parts of the old road continued in use. The county board in attempting to vacate state road No. 2 failed to get the approval of village proctor and consequently state vacation proceedings are void and of no effect. 1934 OAG 492, May 26, 1933 (379c-14).

When the state relinquishes a road used as a temporary location for a trunk highway, for a further more permanent location, that portion so relinquished takes on its former status. 1934 OAG 495, Aug. 1, 1934 (377a-15).

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The commissioner of highways has the sole, final, and exclusive power to select land for highway purposes, and his action is final until set aside by a court. Any action of the commissioner of highways relating to the selection of land can be reviewed only by a certiorari. 1934 OAG 452, Dec. 31, 1934 (229i-1).

A municipality is not liable for torts committed outside the scope of its power and authority. No liability exists against a city for the negligent operation of a snowplow upon a trunk highway "while the same is engaged in work upon the highway within the city in removing snow thereon". 1936 OAG 61, April 30, 1936 (844b-8).

The commissioner shall designate the final location of any trunk highway by order and a certified copy of the order shall be sent to the county auditor and to the county register of deeds (or registrar of titles). The county auditor or auditors, register of deeds or registrar of titles, shall receive and file any such order and shall number and index same in a book kept for such purposes. 1936 OAG 232, Oct. 10, 1935 (229d-15).

Where a patrolman arrests or apprehends a violator on a trunk highway, any fines collected from the violator should be paid to the state treasurer. OAG March 24, 1939 (199b-4).

A highway patrolman acts only as a private citizen while assisting some other police agency in connection with a crime not related to trunk highways. OAG March 20, 1939 (229k-1).

Cash deposited as bail by persons arrested by officers of the state motor patrol, and forfeited when not appearing for trial, must be paid to the state treasurer and not to the county treasurer. OAG Jan. 27, 1931.

Moneys in the trunk highway maintenance fund may be used to erect buildings to be used for office space, garage, and rest rooms for highway patrolmen when on or off duty. OAG Jan. 16, 1932.

When a person is arrested by the highway patrol for violation of highway traffic act, the expense of his incarceration rests on the county. 1940 OAG 42, Dec. 24, 1940 (559a).

Superintendent of the bureau of criminal apprehension and superintendent of the state highway patrol are not incompatible offices. 1940 OAG 287, Jan. 14, 1939 (213f).

Fines collected for breach of traffic laws, if the arrest is by the state patrol, paid to the state treasurer; but if the arrest is by the sheriff, paid to the county treasurer. 1942 OAG 20, Jan. 1, 1942 (199B-4).

A school board and the state highway department may contract in re snow removal. 1942 OAG 37, Nov. 15, 1941 (377a-11).

When arrests are made under the traffic act by state patrol, in or out of a municipality, but prosecuted before a municipal judge the fine is paid to the state; but if the arrest is under a city ordinance the fine goes to the city. In the first instance the county attorney prosecutes, and in the second the city attorney. OAG Feb. 17, 1944 (989a-6).

Land may be acquired for town road purposes; procedure outlined. OAG Oct. 5, 1944 (377b-10-1).

Liability of municipality for change of grade made within its limits by state highway department. 14 MLR 182.

Governmental responsibility for torts. 26 MLR 319, 322, 496.

## 161.035 CONTINGENT FUND.

HISTORY. 1943 c. 92.

## 161.04 GOVERNMENT WAR MATERIALS.

HISTORY. 1921 c. 323 s. 14; G.S. 1923 s. 2555; M.S. 1927 s. 2555.

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## **161.05 TOLL BRIDGE MAY BE PART OF TEMPORARY TRUNK HIGHWAY SYSTEM.**

HISTORY. 1913 c. 235 s. 84; G.S. 1913 s. 2571; 1937 c. 218 s. 1; M. Supp. s. 2554-3.

## **161.06. RELINQUISHMENT OF HIGHWAY EASEMENTS.**

HISTORY. 1929 c. 287 s. 1; M. Supp. 2554-1.

## **161.07 STATE PATROLMAN MAY BE DISCHARGED.**

HISTORY. 1935 c. 254 s. 1; M. Supp. s. 2554½.

## **161.08 CAUSES FOR DISCHARGE.**

HISTORY. 1935 c. 254 s. 2; M. Supp. s. 2554½a.

## **161.09 CHARGES MUST BE WRITTEN.**

HISTORY. 1935 c. 254 s. 3; M. Supp. 2554½b.

## **161.10 WITNESSES MUST ATTEND HEARING; DECISION; PUNISHMENT.**

HISTORY. 1935 c. 254 s. 4; M. Supp. 2554½c.

## **161.11 RIGHT OF APPEAL.**

HISTORY. 1935 c. 254 s. 5; M. Supp. 2554½d.

## **161.12 APPLICATION.**

HISTORY. 1935 c. 254 s. 6; M. Supp. 2554½e.

## **161.13 PUBLIC UTILITIES AND WORKS ON TRUNK HIGHWAYS.**

HISTORY. 1921 c. 323 s. 17; G.S. 1923 s. 2558; M.S. 1927 s. 2558.

Cities and villages may regulate traffic on trunk highways by ordinance not in conflict with the state law, but that power cannot be executed so as to encroach upon the authority given to the commissioner of highways. *Automatic Signal Co. v Babcock*, 166 M 416, 208 NW 132.

Under the provisions of the statutes and the constitution, the maintenance of a trunk highway is placed upon the commissioner of highways. The railroad crossing having constructed an overhead bridge with a center pier, which was approved by the highway commissioner, did not have the duty of caring for a reflector placed upon said pier. *Murphy v G. N. Ry.* 189 M 112, 248 NW 715; *Engstrom v Duluth, Mesabi & Northern*, 190 M 208, 251 NW 134.

The control exercised by the commissioner of highways in requiring a private corporation or a political division to move its telephone poles from the right of way, is a function of police power, done by the state through its agent in its sovereign capacity, and no compensation should be paid to the operator of the telephone system. 1934 OAG 461, Oct. 4, 1933 (229i-4).

A certain pole line located within the right of way of a county road should be moved temporarily while improvements are made. This section refers only to trunk highways and is not applicable to county roads, but undoubtedly the county board would have the power under section 162.01, subd. 1, to temporarily remove the poles. 1936 OAG 238, May 4, 1935 (377b).

## **161.14 LOGGING RAILROADS ACROSS PUBLIC HIGHWAYS.**

HISTORY. 1927 c. 288 s. 1; M.S. 1927 s. 2558-1.

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Where a party owns the fee on both sides of the road, he may use such highway as his convenience and necessity may require, unless and until such use unreasonably interferes with public travel thereon. The presence of a properly constructed logging railroad is not incompatible with travel on the highway. *Kinghurst v International Lbr. Co.* 174 M 305, 219 NW 172.

### 161.15 LOGGING RAILROADS; PERMITS; CONSTRUCTION; REMOVAL.

HISTORY. 1927 c. 288 s. 2; M.S. 1927 s. 2558-2.

### 161.16 BONDS FOR CONSTRUCTION OF LOGGING RAILROADS.

HISTORY. 1927 c. 288 s. 3; M.S. 1927 s. 2558-3.

### 161.17 HIGHWAYS IN CITIES, VILLAGES, OR BOROUGHs EXCEPTED.

HISTORY. 1927 c. 288 s. 4; M.S. 1927 s. 2558-4.

### 161.18 CERTAIN RECORDS FILED IN OFFICE OF COMMISSIONER OF HIGHWAYS.

HISTORY. 1921 c. 323 s. 53; G.S. 1923 s. 2593; M.S. 1927 s. 2593.