

CHAPTER 163

TOWN ROADS

163.01 POWER OF TOWN BOARD OVER ROADS.

HISTORY. 1873 c. 5 ss. 1, 2; G.S. 1878 c. 13 ss. 1, 2; G.S. 1894 ss. 1775, 1776; R.L. 1905 ss. 1221, 1222; 1913 c. 235 ss. 38, 39; G.S. 1913 ss. 2525, 2526; 1915 c. 116 s. 8; 1921 c. 323 s. 31; 1923 c. 439 s. 6; G.S. 1923 s. 2571; 1927 c. 151; M.S. 1927 s. 2571.

While the duties of town supervisors in the matter of general improvements are discretionary, the courts may exercise control where the discretion has been exercised in an arbitrary manner. When a road has been established, the court may compel the town authorities to remove fences and obstructions and open the road, it appearing that there are available funds for that purpose. *Romsdahl v Town of Long Lake*, 175 M 34, 220 NW 166.

While there was no proof that the proper member of one of the town boards was present at the meeting, there was proof that the plaintiff repaired a mile of town line road. The contract was within the power of the town to make; the work was faithfully performed; and the town benefited. Plaintiff can only be reimbursed by payment and the towns should pay. *Lindgren v Towns of Algona and Norland*, 187 M 31, 244 NW 70.

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

Powers of town boards defined. *U. S. v Wheeler Township*, 66 F(2d), 977.

County board has a right to use 60 per cent of the one mill road tax for county aid roads, together with all of the gasoline tax. The commissioner of highways has supervision of the one mill road tax fund, but has no supervision over the gasoline tax fund. OAG June 29, 1933 (380b-8); 1934, 218.

Where the town board had the brush cut and piled along the right of way and such piling causes snow to accumulate, the town board may be compelled to remove the brush and any snow that blocks the driveway. 1934 OAG 484, Jan. 24, 1934 (377a-5).

Under Extra Session 1933, Chapter 28, Section 1, the town board may employ an attorney on a stipulated basis. OAG April 20, 1934 (434a-1).

Before the commissioner of conservation can clear a right of way or develop a roadbed in connection with emergency work, permission must be obtained from the local authorities. OAG Aug. 26, 1935 (377a-4).

Provided there is sufficient money in the treasury, the town board has authority to purchase snow removal equipment. OAG March 20, 1937 (434a-5).

A side road in an abandoned village is a town or county road as the case may be, and the town has authority to remove obstructions. OAG April 28, 1933.

163.02 EXPENDITURE OF FUNDS BY TOWNS THROUGH COUNTY BOARDS FOR CONSTRUCTION AND MAINTENANCE OF ROADS IN TOWNS.

HISTORY. 1923 c. 57 s. 1; G.S. 1923 s. 2571-1; M.S. 1927 s. 2571-1.

163.03 APPROPRIATION.

HISTORY. 1923 c. 57 s. 2; G.S. 1923 s. 2571-2; M.S. 1927 s. 2571-2.

163.04 TOWN BONDS FOR PAVING.

HISTORY. 1899 c. 227 ss. 1, 2; R.L. 1905 ss. 1211, 1212; 1921 c. 323 s. 32; G.S. 1923 s. 2572; M.S. 1927 s. 2572.

Ordinarily permanent improvement bonds may not be issued for graveling a road, unless special circumstances constitute such graveling a permanent improvement. OAG May 14, 1930.

Based on a vote of the electors, an existing highway may be hard-surfaced; and if the amount needed is greater than the sum available, bonds may be issued. OAG March 13, 1944 (43b-4).

Procedure outlined for issuance of town highway bonds. OAG Oct. 19, 1944 (43b-4).

163.05 TAXATION FOR ROAD PURPOSES BY TOWNS.

HISTORY. 1913 c. 235 s. 40; G.S. 1913 s. 2527; 1917 c. 119 ss. 20, 21; 1921 c. 323 s. 33; G.S. 1923 s. 2573; M.S. 1927 s. 2573.

Where the portion of the territory of an organized town is incorporated as a village under Laws 1885, Chapter 145, but remains a part of the town for purposes of assessment, general elections and similar, and voter residing in the village may vote at the annual meeting of said town for the purpose of levying a tax in said town. 1936 OAG 216, March 13, 1935 (434b-27).

Where the voters voted to levy \$3,000 for road purposes, and the town supervisor spent \$4,000, issuing town warrants for the extra \$1,000, such action might be warranted and legal under this section provided the circumstances were declared an emergency. 1934 OAG 865, March 3, 1933 (442a-21).

The maximum levying which a town may make for road and bridge purposes is 15 mills on the taxable property in the township. 1936 OAG 429, Dec. 19, 1936 (519k).

The power to levy an emergency tax is vested in the town board. The duty of determining whether or not there is an emergency rests on the town board, subject only to a review by the courts in a proper proceeding. 1938 OAG 466, Oct. 21, 1937 (519k).

The township funds being exhausted and there being an apparent necessity for snow removal the question as to whether or not this is an emergency is a question of fact. OAG Jan. 13, 1938 (519o).

The town may authorize construction of a building to house road equipment, and payment may be made out of the road and bridge fund. 1942 OAG 133, April 9, 1941 (382-a).

The maximum levy for road and bridge purposes is 15 mills, plus an emergency levy of five mills. Difficult terrain does constitute an emergency. Voters lack the power of declaring an emergency. The fact of an emergency is in the power of the town board. OAG July 21, 1944 (519K).

163.06 TOWN DRAGGING FUND AND TAX.

HISTORY. 1913 c. 235 s. 41; G.S. 1913 s. 2528; 1915 c. 116 s. 9; 1917 c. 259 s. 1; 1921 c. 323 s. 34; G.S. 1923 s. 2574; M.S. 1927 s. 2574; 1943 c. 128 s. 1.

Where a single member assumes authority, his acts may be ratified and the ratification will bind the town, and the allowing and paying the bill of a workman so employed is sufficient to give the workman such standing that the industrial commission is justified in finding that the relation between employer and employee exists. *Read v Town of Monticello*, 164 M 358, 205 NW 258.

The town board has the power of appointing road overseers. OAG Sept. 25, 1933.

Determination of proper homestead values to be used. 1940 OAG 317, Dec. 12, 1940 (519).

The town dragging fund is a tax of one mill levied by the county auditor. Road and bridge funds may be used. Voters have no power to levy a separate tax. OAG Feb. 21, 1944 (519K).

Towns may not contribute to the purchase of snow removal machinery; but may contract with the county for snow removal. OAG March 14, 1945 (377a-11).

163.07 TOWN ROAD OVERSEER.

HISTORY. 1860 c. 14 art. 3 s. 2; G.S. 1866 c. 10 s. 13; 1873 c. 5 ss. 3, 4, 14, 25; G.S. 1878 c. 10 s. 14; G.S. 1878 c. 13 ss. 3, 4, 14, 25; G.S. 1894 ss. 928, 1777, 1778, 1788, 1798; 1901 c. 256; R.L. 1905 ss. 1224, 1225, 1229, 1233, 1240; 1913 c. 235 ss. 42, 60; G.S. 1913 ss. 2529, 2547; 1915 c. 116 ss. 10, 13; 1921 c. 323 s. 35; G.S. 1923 s. 2575; M.S. 1927 s. 2575; 1937 c. 353 s. 1; M. Supp. s. 2575.

A town overseer has the authority to employ aid in removing an obstruction and the deceased being so employed, the industrial commission was warranted in declaring him an employee of the town and his representative entitled to compensation. *Yourzak v Platte*, 168 M 245, 209 NW 910.

Separation of the township into two or more road districts does not continue from year to year, but the matter must be acted on at each township meeting. OAG March 17, 1933.

It is not legal for a road overseer to sell gravel to the town. OAG June 6, 1933.

Where a town overseer uses his own team in repair of town roads, the board must fix the compensation. OAG June 30, 1933.

If road overseer is elected he holds office for the year if appointed, he holds at the pleasure of the board. If the compensation has been fixed by the voters, the board cannot change it; and if not fixed by the electors the fixing of the compensation devolves on the board. There is no statutory limitation. OAG June 15, 1944 (381a).

163.08 LIGHTING OF HIGHWAYS.

HISTORY. 1921 c. 323 s. 36; G.S. 1923 s. 2576; M.S. 1927 s. 2576.

The town board has the power of making a contract for the lighting of a public highway, and the duration of the contract depends upon what may be reasonable under the surrounding circumstances. Five years has been held as not being an unreasonable term. OAG April 24, 1935 (377b-10h).

Town boards have authority to light streets and highways and paying the expense from the road and bridge fund, without submitting the question to the voters. OAG Feb. 15, 1945 (396c-7).

163.09 EXPENSE OF TOWNSHIP LINE ROADS.

HISTORY. 1921 c. 323 s. 37; G.S. 1923 s. 2577; M.S. 1927 s. 2577.

Under the statute a town line road is divided into parts, the division being such as to make the cost of construction and maintenance as nearly equal as possible. Each town constructs and maintains the entire portion assigned to it, and should there be a bridge on the part of the road assigned to one of them, the towns if they wish, may agree to maintain the bridge jointly. *Town of Vivian v Town of Dunbar*, 175 M 243, 221 NW 3.

Maintenance of bridge on town line roads. OAG May 23, 1944 (642a-9).

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

HISTORY. 1913 c. 235 s. 6; G.S. 1913 s. 2493; 1915 c. 116 s. 1½; 1921 c. 323 s. 38; G.S. 1923 s. 2578; M.S. 1927 s. 2578; 1943 c. 530 s. 1.

A village may not purchase a right of way outside of its limits, but it may construct or rebuild a road outside of its boundaries in places where a road already exists. OAG April 13, 1933.

The village may improve a township road lying beyond its corporate limits, provided the road leads into the village and is within the limits of the state. OAG July 9, 1937 (476b-13).

Governmental responsibility for torts. 26 MLR 492.

163.11 CITY MAY DELEGATE ITS AUTHORITY TO IMPROVE HIGHWAYS.

HISTORY. 1921 c. 323 s. 39; G.S. 1923 s. 2579; M.S. 1927 s. 2579.

163.12 TOWN ROAD DRAINAGE TAX.

HISTORY. 1921 c. 323 s. 40; G.S. 1923 s. 2580; M.S. 1927 s. 2580; 1937 c. 402 s. 1; M. Supp s. 2580.

Levy by a town for road drainage is subject to the limitations contained in sections 163.05 and 163.12. OAG Feb. 9, 1937 (5190).

Town board may not provide money to private individuals to drain their own land. OAG Feb. 29, 1944 (44a-10).

163.13 ESTABLISHMENT, ALTERATION, OR VACATION BY TOWN BOARDS.

HISTORY. 1873 c. 5 ss. 33 to 40; 1877 c. 48 s. 1; 1877 c. 51 s. 1; 1878 c. 43 s. 1; G.S. 1878 c. 13 ss. 33 to 40; 1879 c. 85 s. 1; Ex. 1881 c. 29 s. 1; 1883 c. 63 s. 1; 1885 c. 29; 1887 c. 43; G.S. 1878 Vol. 2 (1888 Supp.) c. 13 s. 37a; 1891 c. 68-1; 1893 c. 169 s. 1; 1893 c. 183 s. 1; G.S. 1894 ss. 1806 to 1811, 1820 to 1822; 1897 c. 199; 1899 c. 227; 1901 c. 204; 1903 c. 75; R.L. 1905 ss. 1171 to 1178, 1209; 1911 c. 217 s. 1; 1913 c. 235 ss. 43 to 51; G.S. 1913 ss. 2530 to 2538; 1921 c. 323 s. 43; G.S. 1923 s. 2583; M.S. 1927 s. 2583.

The statute provides that in town line road proceedings the board of supervisors of the respective towns, or a majority of it "acting together as one board," shall hear and determine the same. This creates a single commission or tribunal for such cases, and a majority vote of the members thereof is valid and a legal determination. A majority vote of both town boards is not required. *Skove v Town Boards*, 154 M 118, 191 NW 584.

The keeping in repair and working of a road for six years, which together with the user is required to establish dedication to the public, must be done under the authority and at the expense of government, functioning through an appropriate agency. The vacation of an abandoned road in 1889 is not affected by the act of 1903. *Whiteley v Strickler*, 159 M 145, 198 NW 420.

A road established under a special act of the legislature cannot be vacated by a town board. *School District v Town of Faxon*, 160 M 29, 199 NW 434.

The determination of the local governing body regarding the vacation of the road is a legislative function and cannot be disturbed unless the board's act is arbitrary. *Rolf v Town of Hancock*, 167 M 187, 208 NW 757.

When a permanent trunk highway is located by the highway commissioner, the old road is not thereby vacated but reverts to the control of the county or town board. The amount of traffic on a highway is an element to be considered as bearing upon inconvenience of one whose land is divided by the highway. *State ex rel v Lambert*, 171 M 369, 214 NW 653.

When a person having an easement to travel over a strip of ground improve it as a road, it does not follow that he is to be paid damages when such strip is included in a public road. In re appeal of *Sowers*, 175 M 168, 220 NW 419.

In a proceeding before a town board to establish a road in park from allotted lands held in trust for certain Indians, one not interested in such lands cannot question the jurisdiction of the board. In re appeal of *Sowers*, 175 M 168, 220 NW 419.

In laying out a cartway, the board had designated as one of the three places of posting notices of hearing a bulletin board in the village of Nicollet. This village is geographically but not governmentally a part of the town. The plaintiff participated in the hearing, and on appeal to the district court in the matter of the assessment of damages, made no objection to this lack of service until the court had established the cartway. It was held that the plaintiff waived the defect. *Bruns v Town of Nicollet*, 181 M 192, 231 NW 924.

Peterson participated in the proceedings and presented the manner in which the road would do damage to his farm, and by such appearance waived the service of notice. *Peterson v Board of Supervisors*, 199 M 455, 272 NW 391.

Owner of land abutting on a road is entitled to compensation for inconvenience of access to his property caused by vacation of road. *Underwood v Town Board*, 217 M 385, 14 NW(2d) 459.

The cartway was presumed to be dedicated to the width of four rods wide but the order not having been filed, no proper dedication had been made. It had, however, been maintained and kept in repair for more than six years within a width of one rod, consequently the cartway was established by users to the width of one rod only. 1934 OAG 214, Sept. 28, 1934 (379c-1).

Proceedings for the establishment of a town road being defective, the district court enjoined the construction of the road. It is held that the restraining order did not prevent the town board from instituting new proceedings while the hearing was pending. OAG Aug. 15, 1934 (377b-10k).

Where the benefits exceed the damages, the parties affected are not entitled to recover anything in compensation for such excess benefits. 1936 OAG 247; Jan. 22, 1935 (375b-10d).

Where a town road is established and it is not probable that the road will be constructed in the near future, the landowners may continue to use the land until the road is actually constructed. OAG May 13, 1931.

Town board may establish a road or cartway pursuant to sections 163.13 or 163.15, or for any distance less than a mile, extending from the public highway to the shore of a lake, not meandered. OAG Sept. 7, 1934 (377b-10d).

The determination of a local governing body is entirely within its legislative powers and cannot be disturbed unless the act is arbitrary. OAG June 13, 1938 (377b-10k).

The fact that a power company maintains a line on an unused road does not affect the right of the town board to vacate the road. OAG Jan. 27, 1939 (624c-14).

It is mandatory that the order making an award of damages be filed within 20 days in order that it be effective. OAG Sept. 28, 1934 (379c-1).

The property owner owning land on both sides of a section line cannot tell the town board to construct a cattle pass at the expense of the town. OAG July 2, 1935 (377b-10d).

A petition was favorably acted upon to build a new road and vacate the old one. Even if the new road is not erected, the vacation of the old road is effective. 1942 OAG 145, Sept. 1, 1942 (377A-15).

In obtaining land for town road purposes. OAG Oct. 5, 1944 (377 b-10-1).

163.14 DEDICATION OF LAND FOR ROAD.

HISTORY. 1899 c. 221; R.L. 1905 s. 1196; 1921 c. 323 s. 44; G.S. 1923 s. 2584; M.S. 1927 s. 2584.

A road by prescription is established on a boundary line between two farms by the joint use thereof by the owners of the farms during a period of 50 years. The easement became appurtenant to each farm, and every part thereof. *Sorkil v Strom*, 156 M 155, 194 NW 333.

Where for over 50 years there had been a wagon road or trail along a narrow strip of land along the Minnesota river, the road being used by several owners to reach their lands and haul produce, and by hunters and others, such use and acceptance constituted a dedication. *Carpenter v Gantzer*, 164 M 105, 204 NW 550.

163.15 CARTWAYS.

HISTORY. 1873 c. 5 s. 47; 1877 c. 50 s. 1; G.S. 1878 c. 13 s. 47; 1879 c. 51 s. 2; 1883 c. 119 ss. 1, 3, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 13 ss. 47a, 47c, 47d; G.S. 1894 ss. 1832, 1833, 1835, 1836; 1899 c. 152; 1899 c. 160 ss. 1, 3, 4; 1903 c. 85; 1903 c. 242; 1905 c. 66 s. 1; R.L. 1905 ss. 1181 to 1184, 1194, 1206; 1913 c. 235 s. 55; G.S. 1913 s. 2542; 1915 c. 116 s. 10½; 1921 c. 323 s. 45; 1923 c. 439 s. 8; G.S. 1923 s. 2585;

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1927 c. 164; 1927 c. 401; M.S. 1927 s. 2585; 1929 c. 336; 1937 c. 208 s. 1; M. Supp. s. 2585.

The verdict of a jury determining the damages to which a landowner is entitled for carrying a cartway over his farm is supported by sufficient evidence. *Benison v Town Board*, 156 M 429, 195 NW 143.

The cartway established under this section is a public cartway and not a private road. It matters not that the principal benefit inures to one individual. Any one may use it. The right to use, and not the extent of the use, controls. *Rask v Town Board*, 173 M 572, 218 NW 115.

Only two persons had access to an unopened public road reached by this cartway. One of the owners had no possible outlet to the public highway unless the cartway was established. The other had another out if he cared to use it. The cartway was established in a regular manner, and the board did not act arbitrarily, and there is no show of collusion, and the cartway was legally laid out. *Trout Brook Realty v Town of Featherstone*. 173 M 448, 217 NW 499.

The claim that there was no public necessity for the cartway does not go to the jurisdiction of the town board but presents a question for the board to determine. *Powell v Town Board*, 175 M 395, 221 NW 527.

A taxpayer participating in the proceedings is estopped after the order has been made to claim that the notice served upon him was defective. *Bruns v Town of Nicollet*, 181 M 192, 231 NW 924.

The amount of damages to a farm is determined as of the time of the trial and not as of the time when the board made its award. *Bruns v Town of Nicollet*, 186 M 259, 243 NW 74.

The finding of a legal cartway, which the owners of neither farm could obstruct, located over plaintiff's land, is not inconsistent with the location of the true boundary line directly west thereof, the cartway being a mere easement. *Lenzmeier v Ess*, 199 M 10, 270 NW 677.

Where the owner of a farm has no access to a public highway except over the land of others, he is entitled to a cartway connecting his land with a public highway. The fact that for some years he has been able to gain access to a public road by means of a private road belonging to others, does not preclude him from gaining a cartway to the public highway. *Kroyer v Board of Supervisors*, 202 M 41, 271 NW 234.

Town board may exercise its judgment and establish cartway, the width of which is less than two rods. 1934 OAG 449, Feb. 8, 1934 (379c-1).

The cartway may not be established for the purpose of connecting two pieces of land belonging to the same owner, the proposed cartway not connecting with any established highway. 1934 OAG 451, Sept. 28, 1934 (377b-1).

Where five voters, freeholders, file a petition and three of those original signers later file objections and request the dismissal of the petition, the board is without jurisdiction to proceed with the establishment of said cartway, since the statute requires "not less than five voters, freeholders, of such town." 1938 OAG 256, June 3, 1937 (377b-1).

A high bank lies between the owner's land and the public highway so that it is impossible to make a successful grade to the highway from his own property. The question as to whether a cartway may be established over another person's property is a matter of determination of the town board. It has to determine whether or not the facts are such that the petitioner does not have access over his own land to the public highway. 1938 OAG 257, June 23, 1938 (377b-1).

Town boards are required to afford egress of cartway to a public road where practicable in a manner set out by the conditions in this section. *Watson v Towns of South Side*, 185 M 111, 239 NW 913.

Owner of an island, which is sometimes accessible to the mainland over the bottom of the lake, has no absolute right to demand that the township construct a cartway for him affording access to a public road. OAG Dec. 9, 1931.

It is a question of fact for the town board as to whether or not a land owner has access to a public road except over the land of others. OAG May 6, 1944 (377b-1).

Town board has authority over a petition for a cartway wholly within the town, though it runs to the town boundary. OAG July 24, 1944 (377b-1).

163.16 LANDS DEDICATED AS ROAD OR STREET; IMPROVEMENT.

HISTORY. 1913 c. 235 s. 56; G.S. 1913 s. 2543; 1917 c. 479 s. 1; 1927 c. 211 s. 1; M.S. 1927 s. 2585-1.

163.17 ROADS ON TOWN LINE.

HISTORY. 1873 c. 5 ss. 42, 73; G.S. 1878 c. 13 ss. 42, 73; 1879 c. 110 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 13 s. 46a; G.S. 1894 ss. 1824, 1829, 1875; R.L. 1905 ss. 1179, 1180, 1185; 1913 c. 235 ss. 52, 53; G.S. 1913 ss. 2539, 2540; 1921 c. 323 s. 47; G.S. 1923 s. 2587; M.S. 1927 s. 2587.

An order laying a town line road with such variations from the town line as are stated in the opinion, is authorized by this section. *Skrove v Town Boards*, 154 M 118, 191 NW 584.

The statute providing that town boards shall join in the expense of constructing a bridge made necessary by a drainage ditch, or by reason of altering or changing any water course, has application only in drainage proceedings. *Town of Vivian v Town of Dunbar*, 175 M 243, 221 NW 3.

The evidence sustains the finding that the defendant towns duly laid out and established a public road four rods wide on the town line dividing said towns as it passes between the lands described in the complaint. *Freeman v Town of Pine City*, 205 M 309, 286 NW 299.

Town boards of two towns situated in adjoining counties have authority to establish roads between said towns on a line between said counties, and may continue to maintain their proportionate share of the maintenance of such roads. 1938 OAG 267, Feb. 17, 1938 (377b-10d).

Where townships agree upon maintenance of a township line road and the state takes over a portion of the road, in the absence of an agreement, the division must stand. OAG May 5, 1931.

Signers of a petition for a town line road may be residents of either town, and must be voters residing within three miles of the proposed road. OAG May 12, 1932.

Where a public road is located between a town and a city, the municipalities are to determine by agreement which part of the road each will maintain. If they cannot agree the location for each is selected by lot. 1942 OAG 143, Oct. 2, 1941 (379c-8-c).

Where two towns establish a line road, the commissioner of highways cannot require them to acquire additional land on which there is an embankment which should be removed to avoid obstruction of vision; nor can one town require the other to join in such acquisition. OAG Dec. 18, 1944 (229i-4).

163.18 DEFINITIONS.

HISTORY. 1933 c. 228 s. 1; M. Supp. s. 2620-17.

Roads established by judicial proceedings are county roads rather than town roads, and the county board has control and supervision, and shall appropriate from the county road and bridge fund for their construction and maintenance. 1934 OAG 474, Feb. 3, 1934 (380b-2).

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

HISTORY. 1933 c. 228 s. 2; M. Supp. s. 2620-18.

The town board cannot vacate an alley dedicated by plat unless it has recognized it as a public highway and has assumed the duty of maintaining it. OAG Feb. 25, 1937 (434b-13d).

163.20 FIELD NOTES, PLAT.

HISTORY. 1881 c. 152 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 13 ss. 73a, 73b; G.S. 1894 ss. 1876, 1877; R.L. 1905 s. 1200; 1913 c. 235 s. 57; G.S. 1913 s. 2544; 1921 c. 323 s. 53; G.S. 1923 s. 2593; M.S. 1927 s. 2593.