

CHAPTER 163

TOWN ROADS

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163.01 POWER OF TOWN BOARD OVER ROADS. Subdivision 1. **Supervision.** 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 chapter, and shall procure machinery, implements, tools, stone, gravel, and other material required for the construction and repair thereof; provided, that in counties having a population of 150,000 or over the town board shall not have jurisdiction over county roads.

Subd. 2. **Appropriation of funds.** The town board may appropriate money from the town road and bridge fund to aid in the construction or improvement within the town of any county road which has been designated as a state aid road. Any money so appropriated shall be paid into the county road and bridge fund and used only for the purpose designated by the town board at the time it makes such appropriation. The town board may with the consent of the county board appropriate to the county the whole or any part of the town road and bridge fund and the town dragging fund for the purpose of constructing, improving, or maintaining such highways, for the construction, improvement, or maintenance of which the town is liable, as the town board shall designate. Any money so appropriated shall be paid into the county road and bridge fund and used only for the purpose designated by the town board at the time it makes such appropriation.

Subd. 3. **Annual report.** 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 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 material during the year, with an estimate of the amount required for the ensuing year;

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

A copy of such statement shall be filed with the county auditor.

[1921 c. 323 s. 31; 1923 c. 439 s. 6; 1927 c. 151] (2571)

163.02 EXPENDITURES BY TOWNS THROUGH COUNTY BOARDS FOR ROADS IN TOWNS. Any town may at its annual meeting determine to authorize the town board to expend through the county board of the county in which such town is situated funds of the town for the construction, improvement, and maintenance of roads within such town, with the construction, improvement, and maintenance of which the town is charged by law.

[1923 c. 57 s. 1] (2571-1)

163.03 APPROPRIATION. Upon such determination by the annual meeting of any such town, the town board shall have authority to appropriate and pay to such

county moneys from the town road and bridge fund for the construction, improvement, or maintenance of any road, with the construction, improvement, or maintenance of which the town is charged by law, and the moneys so appropriated shall be credited to the road and bridge fund of the county and expended in the construction, improvement, and maintenance of such road as shall be designated by such town boards. No such appropriation shall be made except with the consent of the county board of such county.

[1923 c. 57 s. 2] (2571-2)

163.04 TOWN BONDS FOR PAVING. Subdivision 1. **Submitted to voters.** When 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: When 15 or more voters of such town, who own real estate therein, or occupy the same under the homestead or preemption 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 a vote of the people, the 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. The clerk shall submit the proposition to the voters of the town at their next annual meeting; or, if so requested in the 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 a. m. until five p. m. The ballot shall contain a statement of the question and the estimated cost, and the vote shall be "yes" or "no." If 60 per cent of the vote cast favors the proposition, the town board shall at once contract for the improvement.

Subd. 2. **Funds.** 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 rate not exceeding six per cent per annum payable annually and become due in ten equal instalments, the first of which shall become due and payable not more than 18 months after date, and annually thereafter. The 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 such improvement, and shall not be valid until registered with the county auditor, who, on receiving satisfactory evidence that the provisions of the law relating to their issue have been complied with, shall register the same in his office and endorse his certificate of registration thereon, and thereafter in due manner and season levy a sufficient tax to pay interest and principal of the bonds as the same shall accrue, to be collected as other taxes are collected.

[1921 c. 323 s. 32] (2572)

163.05 TAXATION FOR ROAD PURPOSES BY TOWNS. All real and personal property in each town liable to taxation, other than money and credits so taxed, shall be taxed for road purposes and all road taxes hereafter levied shall be paid in cash.

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 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 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 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.

[1921 c. 323 s. 33] (2573)

163.06 TOWN DRAGGING FUND AND TAX. The 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 \$1,000,000 or more, the amount of such tax shall not exceed \$1,000. 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 expended by the town board only for the expense of procuring a suitable number of drags and dragging the roads of the town, in putting straw on sandy roads and removing snow from town and county roads. If, on the first day of April in any year, there shall be an unexpended balance in the dragging fund which exceeds in amount the sum of \$100, the town board may transfer all or part of the amount in such dragging fund in excess of \$100 to the town road and bridge fund. Such transfer shall not be made until it shall first affirmatively appear that the town board has theretofore procured a suitable number of drags and that the roads of the town have been properly dragged.

The town board in each town, on recommendation of the town or district road overseer, may enter into contracts for the dragging of the roads of the town or district giving preference to the main traveled roads and roads constituting mail routes within their respective towns. The compensation which may be agreed to be paid for each time a road is dragged shall not exceed \$1.50 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.

[1921 c. 323 s. 34; 1943 c. 128 s. 1] (2574)

163.07 TOWN ROAD OVERSEER. Each town shall constitute one road district except when otherwise provided. When directed so to do by the voters of the town at the annual meeting the town board shall divide each town into as many road districts, not exceeding four, as shall be directed by the voters at the annual town meeting; provided, that if a town constitutes but one road district, the road overseer may appoint one or more competent assistants, subject to the approval of the town board. It shall be the duty of the town board to appoint a road overseer for each district, who shall have charge, under the supervision of the town board, of the construction of all town roads in his district and the maintenance of all town and county roads therein. The voters at the annual town meeting may, if the question is proposed by any voter at any time during the business hour of such meeting, determine whether to elect or appoint the road overseer in the same manner as other town business is transacted and such determination shall continue in force until changed by the voters at a subsequent town meeting. If the determination be to elect the road overseer, he shall be elected by a ballot at such meeting and annually at each annual town meeting thereafter until such determination is changed; and, in a town which is divided into two or more road districts, the voters of each road district shall elect a road overseer for such district. No member of the town board shall be eligible for appointment or election as town or district road overseer. Should any person elected as a road overseer fail, neglect, or refuse to qualify as such within 12 days after his election, or if a vacancy occurs in the office, then the town board shall appoint a road overseer for the unexpired term and until his successor qualifies. A road overseer shall be a voter of the town or district for which appointed or elected. The compensation of the road overseer may be fixed by the annual town meeting for the time actually employed in the performance of his duties. Before entering upon his duties he shall give a bond to the town, with sureties to be approved by the town board, in the sum of \$250, conditioned for the faithful dis-

charge of his duties and to return to the town all the property of the town which may come into his custody. The overseer, if appointed, shall hold office at the pleasure of the town board.

The road overseer shall have no jurisdiction over county roads in any county which now has or hereafter may have a population of 150,000.

When 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, in case of a town or county road, and to the county board, in case of a state aid road.

[1921 c. 323 s. 35; 1937 c. 353 s. 1] (2575)

163.08 LIGHTING OF HIGHWAYS. The town board of any town is hereby authorized to light any public highway within its territorial jurisdiction where such lighting is necessary for the safety of travel upon such highway at night. The cost of the installation and maintenance of such lights shall be paid from the town road and bridge fund.

[1921 c. 323 s. 36] (2576)

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

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

[1921 c. 323 s. 37] (2577)

163.10 ROADS; IMPROVEMENTS WITHIN OR WITHOUT BOUNDARIES. The council of any village, borough or of any city of the fourth class or the town board of any town, or the county board of any county, 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 ferries and bridges thereon whether they are within or without the county in which it is situated. Such municipalities may also engage in the manufacture of crushed rock for use on public highways and said crushed rock may be conveyed, by gift or sale, to other municipalities for such use.

[1921 c. 323 s. 38; 1923 c. 374; 1943 c. 530 s. 1] (2578)

163.11 AUTHORITY TO IMPROVE HIGHWAY DELEGATED. Any city of the fourth class in this state may delegate to an adjoining municipality the authority to improve any public highway within such city connecting it with such an adjoining municipality, or it may make a joint contract with such adjoining municipality for the improvement of such highway, under the joint supervision of both municipalities.

If the authority to improve such highway is delegated to any adjoining municipality by such city, it may cause to be paid over from time to time for such improvement during the progress thereof or upon the completion thereof to such municipality or such contractor as may make such improvement any money it may have in its treasury available for the payment of such improvement.

[1921 c. 323 s. 39] (2579)

163.12 TOWN ROAD DRAINAGE TAX. Subdivision 1. **Power.** In any town wherein the voters shall at the annual town meeting vote as hereinafter provided to authorize the town board so to do, the town board may levy and assess on the real and personal property in the town, other than money and credits taxed under the provisions of chapter 285, a tax not to exceed in amount ten mills on the dollar of the assessed value of such property, which tax so levied shall be known as the town road drainage tax. Such tax shall be additional to all other taxes which the town is or may hereafter be authorized to levy, and the amount of such tax so

levied and collected shall be deemed to have been levied and collected for road and bridge purposes within the meaning of any law limiting the amount of taxes which may be levied or voted at the annual town meeting; provided, that in towns having an assessed valuation of not less than \$1,000,000, nor more than \$8,000,000, and which otherwise come under the provisions of sections 368.02 to 368.11 the amount of such tax so levied and collected shall not be deemed to have been levied and collected for road and bridge purposes within the meaning of any law limiting the amount of taxes which may be levied or voted at the annual town meeting.

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

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

"Shall the town board be authorized to levy and	(Yes.....)
assess a Town Road Drainage Tax?	(No)"

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

[1921 c. 323 s. 40; 1937 c. 402 s. 1] (2580)

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

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

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

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

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

Subd. 6. **Award.** Within five days after the date of the order establishing, altering, or vacating a road, the town 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 the town clerk shall not record such final order within the period of 30 days nor, in case of an appeal, until a final decision is had thereon, and not then unless such order is confirmed. In case the town board does not file such order within 20 days, it shall be deemed to have rejected the application. After the order is confirmed, the same and the award shall be, by the 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 it and make an entry thereof in the record relating to such road.

Subd. 7. **Order.** 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 be prima facie evidence of the regularity of the proceedings prior to the making thereof, except upon the hearing of an appeal.

Subd. 8. **Refusal to establish.** The determination of a town board refusing to establish, alter, or vacate any road shall be final, unless appealed from, for one year from the filing of its order; and no petition for establishing, altering, or vacating such road shall be acted upon within that time. In case its determination granting a petition is appealed from and reversed, it shall not within one year from date of such determination entertain a petition having the same or a similar object.

Subd. 9. **Appeal.** 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.

[1921 c. 323 s. 43] (2583)

163.14 DEDICATION OF LAND FOR ROAD. Subdivision 1. **Application.** One or more owners may dedicate land for a road or cartway by making application therefor in writing to the town board, describing the land 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.

Subd. 2. **Bridge over lake.** Any person owning land to exceed 40 acres constituting part of an island within any meandered lake may at his own expense erect a wagon bridge across such portion of the lake as may separate his land from the nearest town road on shore, provided such structure shall not interfere with the use of that part of the lake for the passage of such water craft as would otherwise pass that point; but, before proceeding with the construction of such bridge, proper plans and specifications therefor shall be prepared and submitted to

and approved by the town board of the town in which such bridge is to be constructed. Upon the completion of any bridge constructed in accordance with the provisions of this section, the town board shall examine and approve the same and endorse such approval upon the plans and specifications therefor; and thereupon the same shall be filed in the office of the clerk of the town in which such bridge is located and such bridge shall thereupon become a part of such town road and open to the use of the public as such.

[1921 c. 323 s. 44] (2584)

163.15 CARTWAYS. Subdivision 1. **Establishment.** Any town board may establish a cartway two rods wide and not more than three rods wide on petition of not less than five voters, freeholders of such town. All their proceedings shall be the same as provided in chapters 160 to 164 establishing town roads. The cost and expense 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, not more than one-half of the damages to the land through which it passes may be assessed against the persons benefited thereby.

Subd. 2. **Petition.** Any town board 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; and, if the petition contains a prayer therefor, the order establishing such cartway may authorize the petitioner and his successors in interest in the lands so connected with a public road to construct and maintain fences along or within the outer limiting lines of the cartway so established; the amount of damages, if any, to be paid by the petitioner to the town before such cartway is opened.

Subd. 3. **Expenditure of funds.** Any town board may expend road or bridge funds upon a legally established cartway the same as on town roads if, in the judgment of such board, the public interests require it; provided, that where any town board has refused to allocate funds for the upkeep of a cartway, then, upon the petition of ten taxpayers of the town, the town board shall present for the approval of the voters, after due notice, at the annual town meeting such petition for allocation of funds, and at such town meeting the electors of the town shall allow or reject such petition. If the majority of those voting approve the petition for allocation of funds, the town board shall expend road and bridge funds for such cartway.

[1921 c. 323 s. 45; 1923 c. 439 s. 8; 1927 c. 164; 1927 c. 401; 1929 c. 336; 1937 c. 208 s. 1] (2585)

163.16 LANDS DEDICATED AS ROAD OR STREET; IMPROVEMENT. Land dedicated to public use as a street, road, or cartway, if not less than 30 feet in width, shall be deemed a legal cartway and subject to improvement by the town board as in the case of cartways two or more rods in width.

[1927 c. 211 s. 1] (2585-1)

163.17 ROADS ON TOWN LINE. Subdivision 1. **Petition.** When 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 town, or a majority of each, acting together as one board, shall determine the 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 chapters 160 to 164 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.

Subd. 2. **Division of road before order.** 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 such parts one-half of such cost and expense.

Subd. 3. **Opening of road.** 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.

Subd. 4. **Construction.** 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.

Subd. 5. **Hearing on petition.** When 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 council and board, or a majority of each, acting together as one board, shall determine the petition in the same manner in all respects as provided in section 160.15, and the provisions of section 160.15 shall apply to the town board and city or village council.

[1921 c. 323 s. 47] (2587)

163.18 DEFINITIONS. The words "town road" and "town roads" shall mean those roads and cartways which have been or may be established, constructed, and improved under the authority of the several town boards and all roads lying wholly within one town and not within the limits of any city or village, including roads therein established by use.

[1933 c. 228 s. 1] (2620-17)

163.19 ALTER, VACATE, OR ABANDON ROADS. The town board of any town may alter, vacate, and abandon a town road upon petition of all the owners and occupants of all the land contiguous thereto, which petition shall be filed with the town clerk and proceedings thereon by the town board shall be in conformity with the provisions of section 163.13 as far as the same are applicable.

[1933 c. 228 s. 2] (2620-18)

163.20 FIELD NOTES, PLAT. 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 any territorial, state, or county road running into or through such town, on file or of record in his office. On receipt of such copy the town 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.

[1921 c. 323 s. 53] (2593)