

159.09 EMERGENCY SERVICE

HISTORY. 1945 c 255 s 9; 1953 c 89 s 6.

159.10 CLASSES OF SERVICE

HISTORY. 1945 c 255 s 10; 1953 c 89 s 7.

159.12 SERVICE IN ACCORDANCE WITH PREVAILING PRACTICE

HISTORY. 1945 c 255 s 12; 1953 c 89 s 8.

159.18 CORPORATION NOT TO PRACTICE

HISTORY. 1945 c 255 s 18; 1953 c 89 s 9.

HIGHWAYS; ROADS**CHAPTER 160****ROADS, GENERAL PROVISIONS****160.01 SCOPE OF ACT; DEFINITIONS**

NOTE: See Minnesota Constitution, Article XVI, adopted Nov. 2, 1920.

Plaintiff was a guest-passenger in an automobile which, on a misty, hazy night, in the face of lights which blinded the driver, struck the center pier of a railroad overpass on which there were warning signs in the form of diagonal black and white stripes and a reflector "keep to right" sign. In absence of evidence that four reflectors, installed more than ten years previously by the state highway department in the prow of the base of the center pier, were operative, the trial court properly directed a verdict for defendant owner of the overpass. Proximate causes of injury to plaintiff were blinding lights of oncoming traffic and a misty, hazy night.

The commissioner of highways had power under section 106.04 to grant a private mining corporation the right to maintain an overhead railroad bridge at the place here involved. The words "railroad company" in that statute apply without restriction of their meaning to those railways engaged in common carriage. In this record, there is no evidence that the mining company was committing a nuisance or trespassing on the highway. *Willoughby v Duluth Ry.*, 229 M 160, 38 NW(2d) 186.

The term "county road" as defined in section 160.01, subdivision 4, and as used in M.S.A., chapter 164, includes those which have heretofore been or which hereafter, as provided in chapters 160, 161, 162, 163, and 164, may be, established, constructed, or improved under the authority of the several county boards, except those heretofore designated as state roads; and also all roads lying within the county or on the line between counties, established by judicial proceedings. OAG Nov. 6, 1948 (642-A-12).

160.02 WIDTH OF ROADS

Where adjoining landowners jointly lay out a way between their lands, each devoting a part of his land to that purpose, the use of the way by the respective parties, for the prescriptive period, raises a presumption of the granting of an easement on the theory that each party by his use thereof has continuously asserted an adverse right in a portion of the way lying on the other's land. The parol conveyance of an easement, whether it be pursuant to a fiction of a lost grant or pursuant to an actual parol agreement void under the statute of frauds, will, if followed by an adverse user for the prescriptive period, establish an easement by prescription. *Alstad v Boyer*, 228 M 307, 37 NW(2d) 372.

160.03 ROADS, GENERAL PROVISIONS

400

Whenever a new town road is to be established the procedure under section 163.13 should be followed, and where a four-rod road is being laid out procedure should be under the provisions of section 160.02. OAG Aug. 3, 1950 (377-B-10-J).

County may go beyond its right-of-way limits where it has permission or easement to do so, for the purpose of back sloping where a utility has a pre-existing easement upon the lands where the back sloping will be made; a subsequent easement to the county for such back sloping is subject to the utility easement; county may pay a utility for the cost of moving its poles upon or from premises where a utility has an easement for its land. OAG March 25, 1948 (624-C-14).

Before proceedings are commenced under the provisions of chapter 117 for the condemnation of right of way for a town road, a resolution should be adopted by the town board setting forth the necessity and reasons for establishing the road. OAG Sept. 5, 1946 (817-N).

160.03 BRIDGES, CULVERTS; WIDTH

HISTORY. 1921 c 323 s 4; 1939 c 319 s 1; 1943 c 82 s 1; 1953 c 194 s 1.

If a bridge over a non-navigable stream located in a city park within the city limits is constructed as a foot bridge and not for vehicular traffic, section 160.03 is not applicable; but it is applicable if the bridge is part of a road or highway. OAG March 25, 1949 (642-A-5).

160.04 RAILROAD BRIDGE OVER HIGHWAY

Section 160.04 gives authority to the commissioner of highways to approve overhead bridges with a center pier, and the defendant in this case was not liable for injuries sustained by a passenger in an automobile which struck the pier, the construction of the pier having been duly authorized. *Willoughby v Duluth Railway Co.*, 229 M 160, 38 NW(2d) 186.

Plaintiff was a guest-passenger in an automobile which, on a misty night, in the face of lights which blinded the driver, struck the center pier of a railroad overpass on which there were warning signs in the form of diagonal black and white stripes and a reflector "keep to right" sign. In absence of evidence that four reflectors, installed more than ten years previously by the state highway department on the prow of the base of the center pier, were operative, the trial court properly directed a verdict for defendant owner of the overpass. Proximate causes of injury to plaintiff were blinding lights of oncoming traffic and a misty night.

The commissioner of highways had power under M.S.A., Section 160.04 to grant a private mining corporation the right to maintain an overhead railroad bridge at the place here involved. The words "railroad company" in that statute apply without restriction of their meaning to those railways engaged in common carriage. In this record, there is no evidence that the mining company was committing a nuisance or trespassing on the highway. *Willoughby v Duluth Ry.*, 229 M 160, 38 NW(2d) 186.

160.06 TRUNK HIGHWAYS

In approving of the plan of street construction submitted by the state highway commissioner, the city actively participated in the plan's adoption and became liable for damages for injuries resulting from any defect in the plan to the same extent that it would have been had it, without any participation by the state, formulated and adopted such plans for one of its trunk highway streets. *St. Paul v Faricy*, 228 M 264, 37 NW(2d) 427.

160.07 STATE AID ROADS

Laws 1911, chapter 254, made the county primarily liable for the expense of constructing a rural highway. The county may adopt and ratify an agreement for sharing the cost of construction of a state aid road with a village where the agreement was ultra vires in a secondary sense only. The law does not confer legislative power on the judiciary. It clearly expresses legislative intent capable of ascertainment. *Alexander v McInnis*, 129 M 165, 151 NW 899.

MINNESOTA STATUTES 1953 ANNOTATIONS

401

ROADS, GENERAL PROVISIONS 160.17

The county has the duty of improving and maintaining state aid and county aid roads. A village cannot be compelled to contribute to the cost thereof; but under the provisions of sections 429.30 and 429.31, the village may contribute to cost of state aid and county aid roads. OAG June 2, 1950 (377-B-8).

The designation and abandonment of state aid roads is governed by Minnesota Statutes 1949, Sections 160.07, 160.43, 160.45. OAG May 21, 1952 (379-C-11).

Where a railroad constructs a ditch for its own purpose, it must pay the cost of the construction of a bridge for any state aid road of such ditch. OAG May 28, 1948 (642-B-9).

160.08 COUNTY ROADS

HISTORY. 1873 c 5 s 55; 1887 c 45; 1897 c 199 s 7; 1915 c 116 s 1; 1921 c 323 s 10; 1951 c 147 s 1.

Where a county highway was constructed at the behest of the county under the provisions of the federal highway act, which prescribes that construction must be undertaken by the state highway department, the county and not the state is liable for damages arising from negligence occurring in the construction of the highway. The state acts only in the capacity of agent for the county. Poynter v County of Otter Tail, 223 M 121, 25 NW(2d) 708.

No more money should be expended from public funds in drainage than is necessary to benefit the roads. Money should not be expended to benefit private property. OAG January 30, 1948 (377-B-10-D).

A judicial road being a county road, under section 160.01, the duty of rebuilding a submerged portion thereof is on the town because of the provisions of section 160.08. OAG June 19, 1953 (379-C-6).

160.09 TOWN ROADS

HISTORY. 1873 c 5 s 34; 1913 c 235 s 5; 1921 c 323 s 11.

Where a bridge on a township road was washed out and the road overseer placed a barrier across the road on one side of the washout but did nothing on the other side, failure to place a warning on the other side of the washout was an act of "nonfeasance" so that the town officers were not liable to a party injured in driving into the washout. Giefer v Dierckx, 230 M 34, 40 NW(2d) 425.

Since the enactment of Laws 1899, Chapter 65, title to a highway may not be acquired in adverse possession. OAG Oct. 15, 1946 (377-B-10-D).

The supervisors in 1870 established a public highway. There has been no abandonment. Since the enactment of Laws 1899, Chapter 65, title to a public highway cannot be acquired by adverse possession, but in the instant case the town board may proceed to improve the road involved as public need and necessity therefor may exist, and without the necessity of instituting further road proceedings for that purpose. OAG Oct. 15, 1952 (377-B-10-R).

The provisions of section 160.15 that section lines shall be considered public roads, does not apply to organized towns. OAG Oct. 3, 1950 (377-A-10).

160.15 SECTION LINE ROADS

The use of the street of a city for moving houses is an unusual use, and the permission of the street authorities must be obtained. Upon paying or tendering the reasonable cost of temporary displacing of power lines and cables and the license fee if any, the church would have a right to move a building. OAG Oct. 19, 1950 (624-C-14).

160.17 ESTABLISHED ROADS

Where in 1877 a road was established under Laws 1873, Chapter 5, as amended, containing provisions similar to section 163.12, and the road was never thereafter

MINNESOTA STATUTES 1953 ANNOTATIONS

160.19 ROADS, GENERAL PROVISIONS

402

vacated, notwithstanding orders subsequently establishing a cartway along the same route, the road is still four rods wide as originally established. OAG Sept. 12, 1946 (377-B-10-D).

The town board may use town snow removal equipment for removal of snow upon either public or private property within the town upon certain conditions; but the town board is not authorized to contract with the county for the use of county equipment for removal of snow from private property. OAG Jan. 8, 1953 (377-A-11).

160.19 DEDICATION BY USER

HISTORY. 1921 c 323 s 50; 1949 c 158 s 1.

Where by conduct or otherwise the owner of property manifests an intention of dedicating such property to the public as a highway, and where by use or by acts of public officials in improving and maintaining such property as a highway there is an acceptance thereof by the public, a common-law dedication thereof is accomplished. *Mueller v Drobny*, 225 M 338, 31 NW(2d) 40.

In order to establish a public highway by statutory user under section 160.19, both use by the public and maintenance at public expense for the statutory period must be shown, but it is not necessary to show maintenance and repair at public expense in order to establish a common-law dedication, *Bosell v Rannestad*, 226 M 413, 33 NW(2d) 41.

The driver of a vehicle approaching an intersection from the left must yield the right-of-way to the driver on the right if they approach so nearly at the same time that there would be eminent hazard of a collision if both continued the same course and the same speed; but this rule must be applied in the light of existing circumstances in each case and it is for the jury to say whether or not the rule has been violated and if so, whether the violation of the rule was the proximate cause of the collision. *Bosell v Rannestad*, 226 M 413, 33 NW(2d) 41.

Section 160.19, providing for the dedication of a road by statutory user, is not exclusive and did not supersede the common-law dedication of a highway. The intent of the owner to dedicate a road to the public may be implied from a long time use by the public. *Keiter v Berge*, 219 M 374, 18 NW(2d) 35, states the rules for the establishment of a public highway by common-law dedication. *Bosell v Rannestad*, 226 M 413, 33 NW(2d) 41.

A public highway over defendant's land was established by statutory user for a sufficient period so that defendant might be enjoined from obstructing the roadway. Where the roadway had been used by the public and kept in repair as a public highway at public expense the roadway was dedicated and accepted as a public highway; this is true even though only a part of the highway had been kept in repair. *Anderson v Birkeland*, 229 M 77, 38 NW(2d) 215.

The public user of a road may be established by persons who during summer season have occasion to take such road to the lakeshore for recreation or other purposes. *Anderson v Birkeland*, 229 M 77, 38 NW(2d) 215.

The basic element of dedication is the owner's intent and not public use for the period of prescription and when that intent is clearly manifested, the dedication against the owner becomes effective and irrevocable as soon as we have a public user of a degree and character sufficient to indicate a public acceptance, and such user to be effective need not exist for any definite length of time. *Anderson v Birkeland*, 229 M 77, 38 NW(2d) 217.

Where the village of Minneota, in 1907, purchased a strip of land 33 feet wide and 1500 feet long, running along its border, which was never dedicated for street purposes but which has been called Market Street and used as a roadway without repair, and on which the village now desires to build an open ditch so as to eliminate a natural water-course now doing damage, the so-called Market Street having been dedicated by common law to street purposes, may be vacated only by statutory pro-

MINNESOTA STATUTES 1953 ANNOTATIONS

403

ROADS, GENERAL PROVISIONS 160.275

cedure for vacancy and the proceedings must be instituted by a majority of owners abutting on the alleged street. The building of a ditch thereon would be regulated by the provisions of section 429.011 et seq. The abutting owners being a farmer who owns the country side of the street and the eight owners of property on the village side of the alleged street must be compensated according to the provisions of section 117.19 OAG Sept. 28, 1953 (396-C-18).

160.21 ALTERATION OF ROAD

Abutting property owners own the center of the street subject to the public examiner thereon. When the street is vacated the burden of the public easement is discharged and thereupon the abutting property owners take their portion of the street free from any easement whatsoever. This rule is applicable where a village or a school district are abutting property owners. OAG June 12, 1953 (396-G-16).

The vacating of a highway to the center of a bridge on one side, and the street leading to the center of the bridge on the other side, automatically causes vacation of the bridge so that it may be dismantled. OAG Oct. 30, 1950 (642-A).

160.22 REMOVAL OF FENCES

Section 160.22 establishes the minimum width for all town roads or cartways. No maximum is mentioned. The road may be wider than four rods when the town board so determines. If the landowner opposes entry on his land for the purpose of construction of said road or cartway, he must not commit a breach of the peace but may institute civil proceedings, such as injunction to protect his rights. OAG Nov. 5, 1953 (377-A-5).

160.26 DRAINAGE OF ROADS

NOTE: Excepted from Rules of Civil Procedure insofar as inconsistent or in conflict therewith.

Whatever money is spent by a town for the protection or improvement of roads must be spent for the benefit of the public and not for the improvement of the land of an adjoining owner. While there is always danger of complications arising where a public body joins in an enterprise with an individual for the accomplishment of a project involving benefits to the individual and the public, there is no express provision forbidding a joint enterprise supervised by the federal soil conservation service where the town and an individual landowner join in the construction of a dam to result in soil conservation, improvement to abutting owner's land and protection of the highway and drainage ditches. OAG Oct. 15, 1947 (273-B-4).

No more money should be expended from public funds in drainage than is necessary to benefit the roads. Money should not be expended to benefit private property. OAG Jan. 30, 1948 (377-B-10-D).

A railroad is required to bridge a ditch on its right of way at a point of intersection with the highway where the ditch was constructed by the railroad company for its own benefit. OAG May 28, 1948 (642-B-9).

160.27 SEEDING ALONG HIGHWAYS

A town board has control and jurisdiction over town roads. A party whose land abuts a public rural highway may use a portion thereof not needed for public travel and seed the same to grass within one rod of the center, but such work must not interfere with travel or improvement of the road. The privilege of the abutting owner is subject to the public easement. The maintenance of a fence by the abutting owner encroaching upon the road may constitute a public nuisance under section 616.01 OAG April 10, 1951 (377-D-10-J).

160.275 TREE PLANTING ALONG COUNTY OR TOWN ROADS

HISTORY. 1953 c 670 s 1.

MINNESOTA STATUTES 1953 ANNOTATIONS

160.28 ROADS, GENERAL PROVISIONS

404

160.28 HEDGES AND TREES

Judicial review by means of extraordinary remedies. 33 MLR 570, 685.

In the absence of statutory authority, a town in a county having in excess of 150,000 population is unauthorized to expend town funds for the construction and maintenance of an automatic traffic signal in cooperation with the state highway department at the intersection of a county road and trunk highway. OAG Nov. 17, 1953 (989-A-21).

160.31 BOARDS TO CONSTRUCT CULVERTS

Abutting owners are entitled to reasonable access to the town road and the question whether such reasonable access has been furnished is a question of fact. This applies where the owner is not satisfied with the access furnished him and applies for an additional outlet to the town road. OAG Dec. 22, 1949 (377-A-3).

Trunk-driveways from abutting property established under county aid must provide the necessary culvert, but no such obligation rests on trunk highway construction. OAG June 2, 1950 (377-B-8).

160.32 ACQUISITION OF LANDS CONTAINING ROAD BUILDING MATERIAL

A county is limited in acquiring not to exceed a 40-acre tract for gravel or other road-building material purposes. Where the owner of a tract of 65 acres will not sell except as a whole the county may acquire the part they wish to obtain by condemnation proceedings. OAG July 16, 1952 (125-A-41).

In the absence of statutory authority, the county may not engage in the business of selling gravel from its county pit for private purposes. OAG July 21, 1952 (125-A-42).

160.34 OBSTRUCTION OF OR DAMAGE TO HIGHWAYS

HISTORY. 1921 c 323 s 75; 1923 c 439 s 11; 1949 c 566 s 1.

Sections 160.34, 219.383, and 616.01 prohibiting the obstruction of highways, are in pari materia and are to be construed together. *Mienek v Fleming*, 224 M 38, 27 NW(2d) 800.

Section 160.34 prohibits the digging of any hole in any highway or removing dirt, gravel, or rock therefrom. OAG Nov. 4, 1948 (377-A-8-A).

The town board has general supervision of town roads and such supervision of county roads within the town as is prescribed by Minnesota Statutes 1949, Chapter 163. It is the duty of the town board to see that the road is not obstructed and if there is an obstruction to remove it and spend the town money for that purpose. The adjoining landowner may use the right of way for a use not inconsistent with the use of the road, but the road use is paramount. A town is not liable for the illegal or unauthorized acts of its officers but in certain instances the officers themselves might be liable. OAG Aug. 8, 1950 (844-H, 377-B-10-H).

Town authorities are not authorized to grant permits for the placing and maintaining of billboards or other advertising facilities within the limits of a trunk highway. OAG June 23, 1952 (441-H).

The use of road ditches by the abutting owners must be compatible with and so as to not unreasonably interfere with public travel. OAG Dec. 11, 1953 (602-H).

160.35 MOVING BUILDINGS OVER ROADS

When one who moved buildings made a payment to the village for permit to move buildings and made the payment under protest he could recover back the money so paid if the exaction was unlawful. *Moore v Village of Gilbert*, 207 M 75, 289 NW 837.

MINNESOTA STATUTES 1953 ANNOTATIONS

405

ROADS, GENERAL PROVISIONS 160.41

On paying or tendering the reasonable cost of temporarily displacing a city's power lines and cables, a church would have the right to move a building over a street which is a trunk highway. OAG Oct. 19, 1950 (624-C-14).

160.37 REMOVAL OF SNOW

HISTORY. 1921 c 323 s 77; 1941 c 276 s 1; 1949 c 468 s 1.

The city of West St. Paul has no legal right to plow private driveways for snow removal for the use and benefit of the owner or occupant and charge therefor. OAG Nov. 29, 1951 (377-A-11).

Roads constructed in that part of Cass county included in the Chippewa National Forest by the federal government are not state, county, or town roads within the meaning of section 160.01, and the state and its political subdivisions are without authority to remove snow from said road under the provisions of section 160.37. OAG Jan. 11, 1952 (337-A-11).

A town board may contract with the county for snow removal on a town road as authorized by the provisions of this section. OAG Feb. 7, 1952 (377-A-11).

The town board is not authorized to contract with the county for the use of county equipment for removal of snow upon private property within the town. OAG Jan. 8, 1953 (377-A-11).

The county is not required by law to remove snow without charge from the ordinary city street. OAG March 12, 1951 (396-A-2).

160.39 CONTRACTS FOR ROADS

Where a contract is let and performed in good faith without compliance with the statutory provisions governing the letting of contracts by a town board, the town is liable for the benefits actually received and the cash on hand in the road and bridge fund at the time the contract to construct the road was entered into was available for application on the contract. *Kotschevar v North Fork Town*, 229 M 234, 39 NW(2d) 107.

Where a preliminary agreement with a contractor was awarded during the course of the work so as to bring the costs thereof above \$500, the provisions of section 160.39 apply. Where the contractor performed work for a township in building town roads under a contract involving an expenditure in excess of \$500 and there had been no plans or specifications or bids or written contract, and no bond was provided, the township would nevertheless be liable to the contractor for the reasonable value of benefits received. OAG Sept. 22, 1950 (707-B-5).

The letting of contracts for town roads must comply with all of the requirements under section 164.22. OAG April 14, 1952 (707-A-14).

Any contract of a town involving an expenditure of \$1,000 or more requires advertisement for bids. OAG April 6, 1953 (707-A-14).

Notwithstanding a contract was invalid because of failure to comply with the provisions of sections 160.39, 164.22, 365.37 and 365.43 relative to competitive bidding in the awarding of contracts, if both parties acted in good faith, recovery may be had by the contractor to the extent that the municipality has accepted of and benefited by the labor and material used in carrying out the contract. OAG May 6, 1947 (707-A-14).

Where a town enters into a contract relating to roads where the contract involves an expenditure of more than \$100, payments must be called for. OAG June 7, 1948 (707-A-14).

160.41 TRUNK HIGHWAYS IN CITIES AND VILLAGES; CONSTRUCTION, MAINTENANCE

HISTORY. 1921 c 323 s 16; 1933 c 440 s 4; 1939 c 225 s 1; 1949 c 313 s 1.

A right of action against a municipality is a matter of legislative favor and may be withheld, granted absolutely or granted on condition. In the use of its highways,

streets, and sidewalks a municipal corporation as a general rule is not liable for injuries to persons or property resulting from its adoption of an improper plan of a highway, street, or sidewalk construction when the defects in the plan are due to mere error in the exercise of bona fide judgment, subject to the following: (a) liability for damage resulting from a defect in the original plan for which there was no reasonable necessity and which is so obviously dangerous that no reasonably prudent man would approve its adoption; or (b) a liability for damages resulting from a defect in the original plan where such defect is embodied in the construction work and is permitted to remain after the municipality, while still in control of its streets and sidewalks, has reasonable notice that it is a source of danger; or (c) a liability for damages resulting from its negligence in the execution of the plan where the construction is under the control and supervision of the city; or (d) a liability for damages resulting from its negligence in the maintenance and repair of the highway, street, or sidewalk after the construction work has been completed. *Paul v Faricy*, 228 M 264, 37 NW(2d) 247.

An intention by the state to authorize a right of action against a municipality for negligent construction and maintenance of streets is inferred when a chartered municipality is given full power of control of streets and highways within its corporate limits. *Paul v Faricy*, 228 M 264, 37 NW(2d) 427.

Local improvements made pursuant to section 160.41 and under agreement with the commissioner of highways is paid out of available village funds. The commissioner is without authority to postpone payment from the village until assessments are made against the property benefited. OAG Aug. 29, 1946 (396-C-17).

Village street improvements may be made pursuant to a contract with the commissioner of highways, and the village may pay its share of the cost out of any available funds, and may under certain conditions assess abutting property. OAG March 1, 1949 (396-G-15), OAG June 23, 1953 (396-G-15).

Where a city of the fourth class governed by a home rule charter ordered street improvement and assessed the abutting property owner proportionately for the amount of the costs and thereafter the state trunk highway fund paid one-half of the cost, the amount to be paid by the property owner under the assessment should be proportionately reduced, and if the assessment has not been paid by them they should receive a 75 percent credit on such assessment. If they have paid they should be reimbursed for their overpayment. Section 167.12 is not applicable. OAG Dec. 7, 1949 (396-C-17).

This section authorizes cities to enter into contracts with the commissioner of highways for construction and improvement of highways within municipality forming a part of trunk highway system. Rights of abutting property owners in existing grade, growing trees and shrubbery upon untraveled portion of highway and existing means of access, constitute property rights which may not be taken away or destroyed without due process and payment of just compensation. OAG May 26, 1950 (397-C-17).

Private individuals or corporations have no right to construct highway improvements without the permission of the governing public authorities. The public authorities may permit them to do so and statutes and municipal ordinances sometimes grant property owners the right to make such improvements at their own expense. This would not apply where a municipality undertakes to place curbs and sidewalks along a trunk highway and assess the cost thereof to benefited property. OAG May 21, 1953 (229-A-11).

A town is authorized to expend money on a trunk highway under an agreement with the commissioner of highways based upon the provision of section 160.41, subdivision 1, and need not pay for curbs and gutters on such highways unless they are necessary and essential as part of the drainage of the trunk highway as provided for in the agreement under subdivision 1. OAG Aug. 31, 1953 (229-H-11).

160.43 DESIGNATION OF STATE AID ROADS; REVOCATION

HISTORY. . 1921 c 323 s 19; 1949 c 672 s 1-5; 1951 c 513 s 1.

If a "stub road" is a town road the duty of maintenance falls on the town. If the stub is a county road, the duty of maintenance also falls upon the town. If the stub is part of a state aid road the county provides proper maintenance and county funds may be expended. Under the provisions of section 162.01, the county board in its discretion may appropriate money from its road and bridge fund to any town for use in maintenance of roads therein. OAG Oct. 4, 1949 (377-A-11).

The county has the duty of improving and maintaining state aid and county aid roads. A village cannot be compelled to contribute to the cost thereof; but under the provisions of sections 429.30 and 429.31, the village may contribute to cost of state aid and county aid roads. OAG June 2, 1950 (377-B-8).

Where a state aid road has been duly designated and no part thereof is within any village, borough, or city, it may be abandoned or changed by joint action of the county board and the commissioner of highways. OAG May 21, 1952 (379-C-11).

After a street has been designated as a state aid road and such designation is approved by the village council, it is a state aid road. The county board has the general supervision of such state aid road on the village street and the duty to maintain and improve the road rests with the county and not with the village. The village cannot require the county to do the things in respect to maintenance which the village council considers prudent. All discretion in respect to construction and maintenance is vested in the county board. OAG April 9, 1952 (396-C-15).

160.431 EXTENSION THROUGH MUNICIPALITIES

HISTORY. 1949 c 672 s 6.

Section 160.431, subdivision 4, authorizes agreements between a county and a village for the maintenance of a state aid road by a village. When a village under such agreement installs sewer lines or water mains and as a result thereof there are defects in the highway, any liability for damages to a private party by reason thereof would be that of the village and not of the county. Where the maintenance of a state aid road is the sole obligation of the county, the county would not as a general rule be liable for negligent maintenance. It may be held liable for damages resulting in what is equivalent to the taking of property from the owner thereof. OAG Feb. 18, 1952 (379-C-11).

160.432 Repealed, 1949 c 672 s 7.

160.433 EXTENSION OF COUNTY AID ROADS

HISTORY. 1951 c 589 s 3.

160.44 EASEMENT, ACQUISITION BY COUNTY BOARD

HISTORY. 1929 c 155 s 1; 1953 c 513 s 1.

160.46 MAINTENANCE OF STATE AID ROADS

If a "stub road" is a town road the duty of maintenance falls on the town. If the stub is a county road, the duty of maintenance also falls upon the town. If the stub is a part of a state aid road the county provides proper maintenance and county funds may be expended. Under the provisions of section 162.01, the county board in its discretion may appropriate money from its road and bridge fund to any town for use in maintenance of roads therein. OAG Oct. 4, 1949 (377-A-11).

The county has the duty of improving and maintaining state aid and county aid roads. A village cannot be compelled to contribute to the cost thereof; but under the provisions of sections 429.30 and 429.31, the village may contribute to cost of state aid and county aid roads. OAG June 2, 1950 (377-B-8).

A county may expend road and bridge funds for the maintenance of a state aid parkway. OAG Feb. 27, 1952 (107-B-16).

160.61 INTEMPERATE DRIVERS

In an action to recover damages for the wrongful death of plaintiff's decedent, which occurred when an automobile driven by decedent collided with a grain box on defendant's approaching truck on a tarvia-paved trunk highway at night, the casual relationship between defendant truck driver's violation of section 169.61 in failing to dim the truck headlights when meeting decedent's car, and the collision, presented a jury issue. *Olson v Olson*, 236 M 363, 55 NW(2d) 706.

160.65 ADDITIONAL TRUNK HIGHWAYS

HISTORY. 1923 c 358 s 1; 1929 c 86 s 1; 1933 c 440 s 1; 1943 c 324 s 1; 1943 c 399 s 1; 1945 c 249 s 1; 1949 c 663 s 2; 1951 c 448 s 2; 1953 c 177 s 1; 1953 c 300 s 2, 3.

The legislature may change the statutory layout of a trunk highway and such change would have the effect of vacating the order of the commissioner of highways designating a temporary trunk highway. OAG March 26, 1947 (229-D-7).

The power to determine the exact location of the proposed Route 218 "near Pinecreek" is vested in the state highway commissioner. He is prohibited from deviating from the proposed terminal but if he considers all the circumstances and peculiar surroundings and decides upon a location that will best accommodate the public, he in no way violates the true meaning of the word "near." OAG Nov. 7, 1949 (229-D-15).

Trunk highway routes cannot be extended beyond the termini set by the Constitution or statute creating them. Additional trunk highways can only be added by the legislature, proceeding in accordance with Article XVI, Section 1, of the Constitution. OAG Nov. 30, 1953 (229-D-17).

160.685 Obsolete.

160.81 REGISTERED PROFESSIONAL ENGINEERS; EMPLOYMENT AS CONSULTANTS

HISTORY. 1951 c 498 s 1.

CHAPTER 161

DEPARTMENT OF HIGHWAYS

161.02 COMMISSIONER OF HIGHWAYS

HISTORY. 1905 c 163 s 1, 2; 1911 c 33; 1913 c 235 s 9; 1917 c 119 s 6; 1919 c 67 s 1; 1921 c 323 s 12; 1937 c 262 s 1-3; 1949 c 739 s 2; 1951 c 713 s 15.

161.03 POWERS OF COMMISSIONER OF HIGHWAYS

HISTORY. 1921 c 323 s 13; 1923 c 439; 1925 c 341; 1927 c 227 s 3; 1929 c 355 s 1; 1931 c 44 s 1; 1933 c 440 s 3, 5; 1935 c 42 s 1; 1935 c 63 s 1, 2; 1935 c 304; Ex1936 c 17 s 1; 1937 c 30 s 1; 1937 c 131 s 1; 1937 c 262 s 4, 5; 1937 c 490 s 1; 1939 c 277; 1939 c 313; 1939 c 400; 1941 c 175; 1941 c 345 s 1-5; 1941 c 369; 1941 c 456 s 1-4; 1943 c 3 s 1; 1943 c 90 s 1; 1943 c 315 s 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 s 1, 2; 1945 c 422 s 1; 1945 c 516 s 1; 1947 c 105 s 1; 1947 c 582 s 1; 1949 c 395 s 1; 1951 c 50 s 1; 1951 c 179 s 1; 1951 c 264 s 1-3; 1951 c 554 s 1, 2.

Claims against the state. 32 MLR 539.

Applicability of the federal statute of limitations when the liability is measured by the state law. 35 MLR 590.