

subdivision 2, the lawful speed limits where no speed limits exist are: (1) 30 miles per hour in any municipality; (2) 60 miles per hour in other locations during the daytime; (3) 50 miles per hour in such other locations during the nighttime. Speed must be reduced when approaching and in crossing a street intersection, railway crossing, going around a curve, approaching a hillcrest, traveling along a narrow or winding road, and when special hazards exist with respect to pedestrians, traffic, weather, or other highway conditions. Any speed in excess of the statutory limitations is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful. OAG Oct. 3, 1953 (989-A-24).

Fines collected by a town for violations of a town ordinance regulating traffic should be paid into the town treasury unless the apprehension or arrest of the violator was made by a state highway patrolman, in which case section 161.03 would apply and moneys collected would be paid into the state treasury whether the apprehension or arrest was under local ordinance or state law. OAG July 7, 1950 (989-B-4).

161.033 AGREEMENTS, TRANSFER OF ROAD MATERIALS

HISTORY. 1951 c 75 s 1.

161.034 TRUNK HIGHWAYS ACROSS BODIES OF WATER

HISTORY. 1953 c 405 s 1, 2.

161.06 Repealed, 1947 c 391 s 4.

161.061 RELINQUISHMENT OF HIGHWAY EASEMENTS

HISTORY. 1947 c 391 s 1-3; 1949 c 89 s 1.

Public lands acquired for highway use may not be quitclaimed or relinquished under the provisions of section 161.061. OAG Jan. 17, 1949 (229-G-1).

Section 161.061 prescribes the exclusive and only method for conveying lands no longer used for trunk highway purposes. The only other alternate course of procedure is for persons interested to obtain the enactment by the legislature of a law authorizing the conveyance of land on terms prescribed in the bill. OAG July 7, 1953 (229-I-1).

CHAPTER 162

COUNTY ROADS

162.01 COUNTY BOARD, POWERS

HISTORY. 1921 c 323 s 24; 1923 c 439 s 4; 1929 c 179 s 1; 1941 c 29 s 1; 1945 c 591 s 1; 1947 c 115 s 1; 1947 c 434 s 1-3; 1949 c 402 s 1; 1951 c 120 s 1; 1951 c 523 s 1; 1951 c 548 s 1, 2; 1951 c 589 s 2; 1953 c 444 s 1, 2; 1953 c 707 s 1.

NOTE: Subdivision 6 repealed, 1951 c 120 s 1; subdivision 7 is obsolete; subdivision 8 is superseded by last sentence of subdivision 5.

In an action against a county and its commissioners as individuals to recover for injuries sustained by reason of the claimed negligence of an employee in the maintenance of a county aid road, demurrers to the complaint were properly sustained. In the maintenance of public highways the duties of the county commissioners are purely public ones owing to the state, and failure to perform such duties will not give rise to a cause of action in favor of an individual unless such duties be ministerial only. A public officer is not responsible for the torts of his subordinates employed by him in the discharge of his official duties. Respondent superior does not apply. *Hitchcock v County of Sherburne*, 227 M 132, 34 NW(2d) 342.

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

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).

Taxable valuation means the value at which property subject to taxation is valued for the purposes of taxation. In making the computation the county board should take the value of the real and personal property upon which the tax is computed rather than the true and full value. The personal property of power and light plants having a fixed status in a municipality is listed and assessed where situated. If any personal property owned by the power and light company does not have a fixed status in a city or village, it should be listed with and assessed by the commissioner of taxation in the county where situated and assessed at the percentage of full and true value as fixed by law. To this will be added the value of money and credits for the year 1942. OAG July 29, 1948 (519-D).

The maximum that Hennepin county may annually levy for road and bridge purposes is specified in Laws 1947, Chapter 434, which provides that such levy shall not exceed ten mills on the dollar of the taxable valuation of the county. OAG Sept. 23, 1948 (519-K).

The county, acting through its board of supervisors, may only do lawfully that which it is empowered to do under the statutes. No statutory authority exists under which the county of Rice may expend county funds for drainage purposes, or co-operate with the city of Faribault by making such expenditure. The county has no authority to contribute toward the erection of a bridge within a city. To meet the desired end, proceedings may be instituted under the drainage act, Laws 1947, Chapter 143. Or, if the facts permit it, may proceed under section 296.37. OAG April 11, 1950 (642-B-1).

162.02 COUNTY ROAD AND BRIDGE FUND, APPROPRIATIONS FOR BRIDGES

A county is not liable for negligence in improving a town road under an arrangement with the town pursuant to authorization under sections 163.02 and 163.03, under which the improvement was to be paid in part with county funds and in part with town funds where the improvement by the county was mandatory on its part so far as it was to be paid with county funds and discretionary so far as it was to be done with town funds. *Mace v Ramsey County*, 231 M 151, 42.NW(2d) 567.

It is the mandatory duty of the county board to appropriate to a city within its statutory limits money to defray the cost or aid in defraying the cost of the improvement of a bridge even though the bridge is on a street not included in any of the county roads. OAG March 1, 1951 (642-A-12).

The use of the words "improve" and "improvement" justifies the conclusion that the cost of building or improving a bridge in a municipality is the duty of the county board under section 162.02 if the work to be done is to restore the bridge in question so that it will serve a public purpose. OAG June 18, 1953 (642-A-12).

162.03, 162.031, 162.032 Local Ramsey county.

162.04 UNORGANIZED TERRITORY; ANNUAL TAX LEVY, ROADS AND BRIDGES

HISTORY. 1915 c 44 s 1; 1947 c 344 s 1; 1953 c 179 s 1.

Road and bridge funds raised by taxation in an unorganized congressional township must be spent therein and not in other unorganized congressional townships or organized towns. OAG June 17, 1952 (380-A-8).

162.07 EXPENDITURES IN OTHER TOWNSHIPS

HISTORY. 1915 c 44 s 4; 1919 c 528 s 1; Ex1937 c 30.

Road and bridge funds raised by taxation in an unorganized congressional township must be spent therein and not in other unorganized congressional townships or organized towns. OAG June 17, 1952 (380-A-8).

162.11 COUNTY HIGHWAY ENGINEER

HISTORY. 1921 c 323 s 29; 1937 c 232 s 1; 1941 c 462; 1945 c 90 s 1, 2; 1953 c 374 s 1; 1953 c 509 s 1.

The county board may direct its county engineer to make a survey of all township roads and village streets under their respective supervision and control within the county, and pay the costs and expense incurred in connection therewith, in the same manner and out of the same fund from which the county engineer and other county officers are paid. The facts and data so obtained are made available to the commission created by the authority of Laws 1953, Chapter 692. OAG Dec. 18, 1953 (107-B-16).

The county board is without authority to retroactively increase the county highway engineer's salary. To do so would be a gratuity which is forbidden by law. OAG June 23, 1953 (122-B-6).

In the absence of tenure provisions relating to county employees, the appointing authority may grant a leave of absence; but if such leave is granted, there is no assurance that the employee will be returned to his position upon his return from leave. OAG Aug. 24, 1951 (125-A-33).

162.13-162.17 Repealed, 1951 c 192 s 1.

162.18 PAYMENT OF LABOR

HISTORY. 1921 c 323 s 30; 1923 c 167; 1947 c 109 s 1; 1947 c 203 s 1; 1949 c 653 s 1; 1951 c 429 s 1.

A county having a population of less than 75,000 may construct, improve, and repair public roads by day labor, may pay repair claims and claims for the use of equipment without the bills being first audited and allowed by the county board. OAG July 27, 1950 (107-B-4).

In the matter of repair of public roads contracts involving expenditures of more than \$1,000 is governed by the provisions of section 375.21. Section 162.18 does not modify the provisions of section 375.21 but sets out the procedure when the payroll system is employed. Section 162.18, subdivision 8, does not authorize the county to rent equipment for the construction and repair of highways in an amount exceeding \$1,000 without complying with the requirements of section 375.21. OAG June 25, 1952 (707-D-2).

162.20 ROAD ESTABLISHED BY JUDICIAL PROCEEDINGS

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

Dedication on a plat does not establish a county road. Approval of a plat by the county board is discretionary. If a town road is established by dedication the town may choose its own time to occupy the street as a town road. OAG March 7, 1951 (379-A-2).

162.21 ESTABLISHMENT, ALTERATION, VACATION

HISTORY. 1921 c 323 s 42; 1923 c 439 s 7; 1927 c 227 s 2; 1949 c 284 s 1.

Where the revised statutes relating to establishment, alteration and vacation of county roads was subject to a variety of interpretations and was not clear and un-

ambiguous, the court was justified in resorting to a prior statute to discover the legislative intent. In the instant case the board of county commissioners had power to reestablish a new county road, which, though running into more than one town, was not a connecting link between two existing roads. *Welscher v Myhre*, 231 M 33, 42 NW(2d) 311.

When land taken for road purposes is encumbered by a building thereon, the building may be removed as a part of the job of making the road. OAG May 17, 1951 (377-A-5).

County roads may be established under the authority of section 162.21 but must not extend into the platted portion of the village. Streets are controlled by the village officers. OAG Jan. 6, 1950 (377-A-6).

The county board may appropriate and expend such sums of money from the county road and bridge fund as it deems advisable for the purpose of vacating a county road and may pay damages to a person damaged by such vacation. This is to be established by agreement between the owner and the county board, which agreement should appear on the minutes of the meeting and a release should be filed with the county auditor. OAG June 12, 1952 (377-A-15).

A street dedicated to public use on a plat of property not within the corporate limits of any incorporated place does not become a county road. OAG March 7, 1951 (379-A-2).

Where a proposed road would be a connecting link between an established highway and a public park or monument, a petition may be addressed to the county board under subdivision 4, even though the road extends into more than one town, and terminates at the park, and does not connect with any other established road. OAG Dec. 18, 1947 (379-C-2).

Roads lying on the line between counties established by judicial proceedings are county roads. The county boards are given general supervision over such roads with power to appropriate funds to improve same. OAG Sept. 22, 1947 (379-C-8-C).

While the county may appropriate such sums as it deems advisable for the purpose of improving county roads, the duty rests upon the town board to maintain and keep in repairs that part of the county road passing through the town. Oct. 31, 1946 (377-B-3); OAG Sept. 22, 1947 (379-E-8-C).

The county may go beyond its right of way limits to back slope along county roads. OAG March 25, 1948 (624-C-14).

162.22 HIGHWAYS LEADING TO MEANDERED LAKES

HISTORY. 1923 c 129 s 1; 1929 c 142.

162.24 IMPASSABLE ROADS

HISTORY. 1921 c 323 s 67; 1923 c 439 s 13; 1929 c 24 s 1; 1931 c 30 s 1; 1949 c 30 s 1.

Section 162.24 provides a method by which the county board may proceed in such cases where the town neglects to maintain the road, which it is the town's duty to maintain. OAG Aug. 27, 1946 (377-B-3).

The object of section 162.24 is to compel the town to keep public roads in passable condition when the county board recognized that the road was impassable, but the amount the board could spend was limited under statutory limitation. OAG Sept. 6, 1950 (377-B-10-8).

Proceedings by the county board to compel repair of an impassable road must be in strict accordance with the provisions of the statute. OAG Oct. 14, 1952 (377-B-10-H).

Where a town road becomes impassable the county board may repair the damage and charge the amount to the township and a tax may be laid on the township

residents for the amount so paid, but the amount under no circumstances may exceed 2 percent of the taxable valuation of the property in the township. OAG July 13, 1953 (377-B-10-H).

Where it is reported to the county board that a road is impassable and the board finds the complaint well founded, it adopts a resolution directing the town board to do the work necessary to put the road in passable condition, the expense to be kept within the two-mill limit. Even though the road may be the dividing line between two townships, the resolution must be directed to each town separately. If a town neglects to put the road in condition the county board has the power to keep such work to be done and to pay therefor from the county road and bridge fund within the statutory limitations. OAG Aug. 8, 1949 (379-C-8-C).

Procedure for reconstruction or repair of bridges on a town road are governed by sections 160.01, 162.24, and 164.28. OAG Oct. 18, 1950 (642-A-12).

162.25-162.36 Omitted, local.

162.46-162.54 Omitted, local.

CHAPTER 163

TOWN ROADS

163.01 POWER OF TOWN BOARD OVER ROADS

HISTORY. 1873 c 5 s 1, 2; 1913 c 235 s 38, 39; 1915 c 116 s 8; 1921 c 323 s 31; 1923 c 439 s 6; 1927 c 151 s 1; 1953 c 279 s 1.

A county is not liable for negligence in improving a town road under an arrangement with the town pursuant to authorization under sections 163.02 and 163.03, under which the improvement was to be paid in part with county funds and in part with town funds where making the improvement by the county was mandatory on its part so far as it was to be paid with county funds and discretionary so far as it was to be done with town funds. *Mace v Ramsey County*, 231 M 151, 42 NW(2d) 567.

Money 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).

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 town board may expend road and bridge funds for the maintenance of a duly established cartway if, in their discretion, the public interest requires such expenditure. The electors at the annual town meeting, based upon a proper petition, may allocate funds to maintenance of a cartway. OAG June 2, 1948 (377-B-1).

It is the town's obligation to construct, maintain, and improve roads within the town boundaries. Under the provisions of section 163.02, the town meeting may au-