

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-

thorize the town board to expend through the county board funds of the town for the construction or maintenance of roads within the town. Towns' responsibility in respect to town roads is imposed by law. The town is without power to compel the county to do this work. Dealings between the town and the county are entirely a matter of contract which either may discontinue at will. OAG April 9, 1953 (377-B-10-H).

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).

The town board has such care and supervision of county roads as is prescribed by chapter 163, except in certain counties, and may at its annual town meeting authorize the board to expend funds on roads situated within the town but through the county board. OAG Sept. 22, 1947 (379-C-8-C).

Where a judicial road was established on the line between a town in one county and a town in adjoining county, and the county board established a judicial road, the duty of maintaining the road was upon the towns respectively but the counties in their discretion may appropriate moneys to the towns for any improvement. OAG Sept. 22, 1947 (379-E-8-C).

An appropriation by a town meeting for county aid road purposes may not be used for construction of town roads. OAG March 24, 1950 (380-B-4).

A town board may grant permission to private individuals to maintain a private sewer along a platted street but may not authorize the maintenance of a sewage disposal plant in a public alley. OAG Oct. 31, 1949 (387-G-6).

The town board has power to permit private individuals or corporations to lay water pipes and drains in the public highway in the town. OAG Feb. 26, 1951 (387-G-6).

The town supervisor before doing inspection work on town roads for which a charge may be made should first receive the authorization of the town board acting at a legal meeting thereof; and if in emergency, work is done without such authority, when the bill is presented the board must pass upon the necessity for the work and the value on same and may in its discretion fix the value or reject the claim. OAG July 15, 1947 (437-A-3).

The town board has supervision of town roads and the bridges thereon and has the duty to replace a bridge at the expense of the town, and when damages are awarded to the town upon the establishment of a ditch, the law contemplates that the damages must include the expense of the construction of the bridge plus the cost of perpetual maintenance. OAG March 7, 1947 (642-B-8).

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).

163.02 EXPENDITURES; ROADS IN TOWNS

The town board has such care and supervision of county roads as is prescribed by chapter 163, except in certain counties, and may at its annual town meeting authorize the board to expend funds on roads situated within the town but through the county board. OAG Sept. 22, 1947 (379-C-8-C).

The work necessary to restore a tornado damaged bridge so that the bridge may serve the public is a proper subject for an appropriation by the county board. OAG June 18, 1953 (642-A-12).

163.03 APPROPRIATION

Except that it may light a street for the safety of travel by night, a town not within the classification of section 365.20 or section 368.01 may not provide street lighting or order water or sewer facilities for an unincorporated community located therein. OAG Oct. 20, 1953 (387-G-3).

163.04 TOWN BONDS FOR PAVING

HISTORY. 1899 c 227 s 1, 2; 1913 c 265 s 58; 1921 c 323 s 32.

Where installation of culverts and construction of road grades constitute a permanent improvement within the meaning of section 163.04 is dependent upon all of the facts, if the installation is a part of a plan resulting in hard surfacing the road, it would constitute a permanent improvement. OAG May 25, 1948 (43-B-4).

Procedure for macadamizing or hard-surfacing roads by towns and issuing bonds in certain cases to pay the expense thereof is controlled by section 163.04. OAG March 30, 1949 (43-B-4).

Money cannot be expended by a town for the improvement of land of an adjoining owner but only for the protection of the roads or the improvement thereof. OAG Oct. 15, 1947 (273-B-4).

163.05 TAXATION; ROADS, BRIDGES

HISTORY. • 1921 c 323 s 33; 1951 c 80 s 1; 1951 c 427 s 1.

A road builder who entered into road building contract which was within power of township but which did not comply with statutory provisions governing letting of such contract and who completed road which was approved and accepted by town could recover from town, but could recover no more than amount which town was authorized to pay for road and bridge purposes in year in which road was constructed, although contract greatly exceeded such amount, and cash on hand in road and bridge fund at time contract was entered into was available for application on such contract. *Kotschevar v North Fork Township, Stearns County*, 229 M 234, 39 NW(2d) 103.

Since the enactment of Laws 1913, Chapter 235, Section 40, and Laws 1921, Chapter 323, Section 33, (coded as section 163.05) there is no longer authority in a town to vote a labor tax to be worked out on town roads. OAG June 16, 1951 (422).

Where the town board determines that an emergency exists sufficient to authorize levying an additional tax, over and above the tax voted at the annual meeting, such tax may be laid the year of the emergency or it may be levied some subsequent year. OAG March 8, 1948 (519-K).

The electors of a town at a special town meeting duly and regularly held may adopt a resolution levying an additional amount for road and bridge purposes. A special town meeting may be called by giving notice, as provided in section 212.04 and it has the powers authorized by section 212.03. OAG July 12, 1951 (519-K).

163.08 LIGHTING OF HIGHWAYS

The governmental powers of towns are limited. There is no specific statute authorizing the town board to install street lights, but where it is necessary for the safety of travel upon the highway at night, or if fire protection is provided, lighting of the streets may be provided as an aid to fire protection and there are various reasons why street lighting might be a necessary expense irrespective of the lack of statutory authorization. If the annual town meeting shall vote authority to the town board to install street lights, and if the annual meeting votes a tax to pay the expense thereof, the town board has authority to install street lighting equipment. OAG Feb. 9, 1948 (396-F-2, 434-B-15).

163.10 IMPROVEMENTS WITHIN OR WITHOUT BOUNDARIES

HISTORY. 1913 c 235 s 6; 1915 c 116 s 1½; 1921 c 323 s 38; 1923 c 374; 1943 c 530 s 1.

A city of the fourth class may give financial aid to improve and maintain roads leading from and extending beyond its boundaries. OAG Feb. 15, 1952 (59-A-22).

The town board may appropriate and expend a reasonable sum to improve and maintain a cartway beyond its boundaries and leading into the town. OAG Sept. 25, 1952 (377-B-1).

Section 163.17 relating to the division of costs of construction and maintenance of a town line road, has no application to a portion of a town road which is not on a town line. A town, though served by a town road lying wholly in another town and in another county, has no mandatory obligation with reference to the maintenance thereof. See section 163.10. OAG Oct. 7, 1953 (379-C-8-I).

State aid road No. 17, between 51st Street and 54th Street, is the boundary between the city of Minneapolis and the village of Edina, and on another part of the road the street divides Edina from a portion of the county of Hennepin outside the limits of Minneapolis. The condition of the road being dangerous, and the city and village having agreed upon the division of cost, and the county board without specific authority made an agreement with the village of Edina to share the cost of construction jointly between the county and the village, the county when funds become available may adopt and ratify the agreement previously made for sharing the cost of construction with the village because the agreement was ultra vires in a secondary sense only. OAG June 1, 1953 (379-C-11).

163.13 ESTABLISHMENT, ALTERATION, OR VACATION

Where land was dedicated for road purposes "for enough to get a good track," such description was insufficient to establish a four rod road and the town should proceed to establish a road in the legal way. OAG June 7, 1948 (377-A-4).

The procedure for vacating a town road forming a part of the common boundary between Minnesota and South Dakota and established under section 163.17, is governed by the procedure set forth in section 163.13 unless facts exist requiring the petition to conform to the provisions of section 163.19. OAG April 22, 1948 (377-A-15).

In the vacation of a town road the statutory requirements must be carefully followed. OAG June 22, 1953 (377-A-15).

A petition for a parkway which failed to describe the lands and parkway was invalid and the town board was without power to act upon the petition. OAG Nov. 6, 1951 (377-B-1).

The word "recording" found in section 163.13, subdivision 6, means recording with the town clerk and not with the register of deeds. OAG May 1, 1950 (377-B-10).

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).

The filing of a petition properly signed by voters as required by section 163.13 is jurisdictional and the town board cannot act on a petition to lay out and establish a road in the town unless the procedure complies with statute. OAG Sept. 15, 1949 (379-C-13-E).

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).

Upon the vacation of the town road where the town merely has a road easement therein the title vests in the abutting owner. Under the provisions of section 160.01, subdivision 6, a bridge constitutes a part of a highway. Whether title to the bridge forming a part of the vacated road remains in the town or vests in the abutting

owner is an open question. The town should incorporate in and make a part of its vacation proceedings, including the final order, a proviso and condition to the effect that the title to the bridge is reserved in the town with the right to remove or otherwise dispose of the same. OAG March 30, 1950 (642-B-4).

163.14 DEDICATION OF LAND FOR ROAD

HISTORY. 1899 c 221; 1913 c 235 s 56; 1917 c 479 s 1; 1921 c 323 s 44.

The undisputed evidence that the public had used plaintiff's property as a public highway in its present location since 1916, and in an adjoining location since 1897, the plaintiff's predecessors had provided and plaintiff had continued to maintain, a short detour therefrom through a gate during wet weather; the plaintiff and his predecessors had at no time plowed or cultivated the land covered thereby; and that at all times such use had been with the full knowledge and consent of plaintiff and his predecessors as owners of such property, compels a finding that the property had been dedicated by the owners thereof as a public highway and accepted as such by the public so as to accomplish a commonlaw dedication thereof. *Mueller v Drobny*, 225 M 338, 31 NW(2d) 40.

163.15 CARTWAYS

Where an action is taken involving a proceeding of the county board in connection with the establishment of a cartway where there is an assessment and an award of damages or any other act of the county board in connection with the establishment of a cartway, the county attorney must appear and represent the county. OAG Nov. 26, 1952 (121-B-18).

The petitioner whose petition conforms to the statute is entitled to an order from the town board granting the petition; and the cartway being duly established, the board may expend road or bridge fund in same manner as on town roads provided the public interest so requires. OAG March 25, 1947 (377-B-1).

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).

Section 160.19 applies only to roads established by user and has no application to cartways established by town boards. Cartways established under town boards under section 163.15 are two rods wide. OAG Feb. 10, 1949 (377-B-1).

The town board may establish a cartway upon a petition of not less than five freeholder voters and the town shall on petition of the owner of a tract of land of not less than five acres establish a cartway if the owner has no access to his land except over the land of others. The town board may but is not required to establish a cartway to give school children access to the schoolhouse. OAG March 3, 1950 (377-B-1).

The duty of the town board does not end when an order has been made establishing a cartway. It is the duty of the board thereafter to construct and maintain such cartway. OAG May 1, 1950 (377-B-1).

In a petition to the town board to establish a cartway a proper description of the lands affected is jurisdictional. The town board is without power to act unless there is a proper description of the lands affected. The proper width of the cartway is a matter of fact to be determined by the town board. OAG Nov. 6, 1951 (377-B-1).

When a petition for the establishment of a cartway meets the statutory requirements of section 163.15, it is the duty of the town board to establish a cartway, the costs thereof to be paid as provided in said section. OAG Nov. 15, 1951 (377-B-1).

A cartway to connect with a state highway and located on the town line of four towns may be obtained by following the provisions of sections 163.15 and 163.17. It may also be obtained if the proceedings are under sections 166.01 to 166.06. The latter provision is preferable. All four towns must join in the petition. OAG Sept. 19, 1952 (377-B-1).

Proceedings to establish a cartway under the provisions of section 163.15 are governed by section 163.13. If the cartway lies entirely within one town but if the cartway is on the town line, proceedings should conform to section 163.17. OAG Oct. 16, 1952 (377-B-1).

A cartway may be established for a landowner not having access to a public road except over the land of another. Whether such landowner has access is a question of fact for the town board to determine. The town board has no authority to pay for a right of way for a private road or to improve a private road. Procedure for the establishment of a town road is governed by section 163.13. OAG April 10, 1953 (377-B-7).

A landowner is entitled to receive fair and reasonable compensation for the damages which he sustained by reason of the establishment of a road across his property. The damages must be assessed and awarded before the road is open, worked, or used. There is no provision for assessing benefits in case the benefits exceed the damages. OAG Feb. 28, 1951 (377-B-10-D).

Where statutory conditions exist and the route named in the petition is a proper one, it is a mandatory duty of a town board to establish a cartway on a landowner's petition; but the board, in the public interest, may use its discretion in varying the route provided it adheres to the termini as stated in the petition and follows the general course. OAG Sept. 12, 1947 (379-E-8-C).

Two members of a town board constitute a quorum. A hearing on a petition to establish a cartway may be continued by a majority of the board. The chairman alone is not vested with authority to conduct or adjourn a meeting of the board. OAG Oct. 30, 1952 (437-A-12).

The town board is the only authority delegated by law to establish a cartway. When a cartway is established compensation is paid to the landowners who are damaged and the amount of the damage is determined at that time. This damage includes the necessary amount of money which must be expended for the building of fences by the persons whose land is taken for the cartway. The public is not required to build or maintain these fences. The cartway when established is a public highway which no person has a right to obstruct by building fences or otherwise. OAG Dec. 8, 1952 (631-K).

163.16 LANDS DEDICATED AS ROAD OR STREET; IMPROVEMENT

Where the landowner plats a tract into blocks and lots separated by streets but has not recorded such plats in the office of the register of deeds the grant of an easement in a deed does not constitute a dedication to public use of the spaces shown as streets. OAG Oct. 15, 1952 (18-D).

A town may acquire a road easement by dedication but a town holding easements in lands dedicated to it for highway purposes in trust may not convey the same to a village, otherwise the land may revert. OAG May 7, 1951 (377-A-4).

163.17 ROADS ON TOWN LINE

HISTORY. 1921 c 323 s 47; 1953 c 524 s 1.

The procedure for vacating a town road forming a part of the common boundary between Minnesota and South Dakota and established under section 163.17, is governed by the procedure set forth in section 163.13 unless facts exist requiring the petition to conform to the provisions of section 163.19. OAG April 22, 1948 (377-A-15).

A cartway to connect with a state highway and located on the town line of four towns may be obtained by following the provisions of sections 163.15 and 163.17. It may also be obtained if the proceedings are under sections 166.01 to 166.06. The latter provision is preferable. All four towns must join in the petition. OAG Sept. 19, 1952 (377-B-1).

Where a town board receives a petition to establish a town road to be located between the town and an adjoining town, the town boards of each town acting

together determine the petition in the manner outlined in section 163.17. OAG Sept. 12, 1947 (379-E-8-C).

Where a town line road was established by two towns, each town is required to maintain that portion of the road agreed upon. OAG Sept. 18, 1951 (379-C-8-C).

Where a road is built on a town line the cost of maintenance of the road shall be divided by the towns on an equitable basis. Generally, the expense is divided equally. This is true of the care and repair of a bridge which is a part of the road. If one of the towns has repaired the bridge they may proceed by civil action against the other town for contribution; and if the repairs have not been made it would be prudent to proceed under the provisions of section 164.28. OAG Dec. 21, 1948 (642-A-12).

Where a town road is on a line between two townships the cost of constructing and maintaining any bridge or culvert on such road, made necessary by the improvement of a public drainage ditch, is borne jointly and in equal shares by the townships involved. OAG May 14, 1952 (642-A-12).

163.18 DEFINITIONS

When a road is established by user, it has the same standing as a road established by statutory proceedings. OAG May 10, 1949 (377-A-15).

163.19 ALTER, VACATE, OR ABANDON ROADS

If a person desires to change an established cartway, the matter should be presented to the town board as in a new petition. The rights of the respective property owners to enter their lands from the cartway, as newly established and constructed is not a problem of the town board. Application may be made to the court. OAG Nov. 9, 1953 (377-B-1).

CHAPTER 164

BRIDGES ON ROADS

164.01 INTERSTATE BRIDGES

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).

164.18 BRIDGE BONDS

A petition to the county board asking the board to issue bridge bonds and sell must be made by 25 or more voters of the county. The voters must be freeholders. In order that the board may take action granting the petition, there must be no outstanding road and bridge bonds issued as such. The petitioners must be voters in the county. The petition should conform to the statute and refer to a particular bridge in such language that the bridge may be identified. OAG April 20, 1949 (37-B-7).

164.19 BRIDGE DESTROYED BY FLOOD OR CYCLONE

HISTORY. 1911 c 161 s 1, 2; 1947 c 49 s 1; 1953 c 526 s 1.

Where a bridge upon destruction has been replaced by an eight-foot box culvert the question whether or not the culvert is in fact a bridge is one of fact. The holdings of the court for the most part are to the effect that the culvert is not a bridge. The state highway commission considers a ten-foot box culvert to be a bridge. There is no holding of the supreme court of Minnesota on the subject. Whether or not it is