

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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## CHAPTER 12

### Military Code

#### MILITIA

##### 2409. Minnesota National Guard.

One who signed the enlistment contract and thereafter attended drill and received pay therefor, acquired the status of a soldier, although he may not have taken the enlistment oath. 174M82, 218NW542.

##### 2425. State and municipal officers and employes not to lose pay while engaged in drill.

Applicable to state naval militia. Op. Atty. Gen., June 18, 1929.

##### 2438. Officers to distribute.

Applicable to naval militia. Op. Atty. Gen., Nov. 13, 1929.

##### 2447. Military camps.

Act authorizing governor and state auditor to convey on behalf of state real estate known as Camp Lakeview. Laws 1931, c. 54.

Laws 1931, c. 223, makes an appropriation for acquisition of land for a field training center at Camp Ripley.

##### 2463. Courts-martial.

Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

The only questions reviewable by habeas corpus are whether the military court has jurisdiction and power to impose the penalty inflicted. 174M82, 218NW542.

##### 2466. Military offenses, how punished.

The fact that one was a member of the naval reserve at the time of enlistment in the National Guard did not render the enlistment void nor relieve him from liability for violations of military law. 174M82, 218NW542.

##### 2480. Officers and men may be arrested, when.

Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

##### 2494. City or village armory commission.

Owatonna Armory may pay portion of expenses incurred in applying tarvia on street, if it so desires, but city may not enforce payment of assessment therefor. Op. Atty. Gen., May 18, 1932.

##### 2513. State aid for maintenance.

See §2517-6, post.

**2517-2. Armory construction authorized.**—In any municipality now or hereafter having an armory which at the time shall have been condemned by lawful authority as unfit or unsafe for use for armory or military purposes, or which shall have been determined by the adjutant general to be unfit, unsafe, or inadequate for armory or military purposes, in which municipality there shall at the time be stationed twenty or more units of the national guard and naval militia, a new armory may be constructed and the cost thereof may be paid as hereinafter provided. (Act Apr. 25, 1931, c. 398, §1; Apr. 20, 1933, c. 332, §2.)

Sec. 1 of Act Apr. 20, 1933, cited, amends the title of Laws 1931, c. 398, to read as follows:  
"An act relating to armories."

**2517-3. Armory building commission created.**—(a) For the purposes herein provided there shall be created a corporation to be known as the Armory Building Commission of such city. The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: the adjutant general, the state auditor, the state treasurer, the senior in rank of the officers of the headquarters, organizations, or units of the national guard and naval

militia stationed in such city, the mayor of such city, and two other representatives of such city chosen by the governing body thereof from their own number or otherwise, who shall serve at the pleasure of such governing body; provided, that in case of the failure of the governing body of such city to choose either or both of such representatives within thirty days after written notice to do so, given by the adjutant general to the presiding officer of such governing body, the other members aforesaid shall compose such commission and corporation; provided further, that if such senior officer of the national guard and naval militia is also an incumbent of any of the other offices aforesaid, the next officer in rank shall serve as a member of such commission and corporation.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such city of the conditions specified in Section 1 of this act, naming the persons authorized to compose such commission and corporation as aforesaid, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than three, shall have power to act as such commission and corporation and to elect such temporary acting officers as may be necessary during the existence of the vacancy.

(c) The adjutant general shall be chairman, the state auditor shall be secretary, and the state treasurer shall be treasurer of such corporation. The treasurer shall give a bond to the corporation, with corporate surety approved by the chairman and secretary, to be filed with the secretary, in the sum of \$50,000.00. The premium on such bond shall be paid by the corporation. Such corporation shall issue no stock. No officer or member of such corporation shall have any personal share or interest in any funds or property of the corporation, or be subject to any personal liability on account of any liability of the corporation. (Act Apr. 25, 1931, c. 398, §2; Apr. 20, 1933, c. 332, §2.)

**2517-4. Powers of corporation.**—Such corporation, subject to the conditions and limitations herein prescribed, shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and perform the duties prescribed by this act, including the following, which, however, shall not be construed as a limitation upon the general powers hereby conferred, to-wit:

(a) To acquire by lease, purchase, gift, or condemnation proceedings all necessary right, title, and interest in and to the lands required for a site for such new armory and all other real or personal property required for the purposes contemplated by this act, and to hold and dispose of the same, subject to the conditions and limitations herein prescribed; provided, that any such real or personal property or interest therein may be so acquired or accepted subject to any condition which may be imposed thereon by the grantor or donor and agreed to by such corporation not inconsistent with the proper use of such property by the state for armory or military purposes as herein provided.

(b) To exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any property which such corporation is herein authorized to acquire by condemnation; provided, that the

corporation may take possession of any such property so to be acquired at any time after the filing of the petition describing the same in condemnation proceedings; provided further, that this shall not preclude the corporation from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

(c) To construct and equip a new armory in such city upon a site to be secured as herein provided, at a total cost of such corporation for site, building, and equipment not exceeding \$1,500,000.00, to pay therefor out of the funds obtained as hereinafter provided, and to hold, manage, and dispose of such armory, equipment, and site as hereinafter provided.

(d) To sue and be sued.

(e) To contract and be contracted with in any matter connected with any purpose or activity within the powers of such corporation as herein specified; provided, that no officer or member of such corporation shall be personally interested, directly or indirectly, in any contract in which such corporation is interested.

(f) To employ any and all professional or nonprofessional services and all agents, employees, workmen and servants necessary and proper for the purposes and activities of such corporation as authorized or contemplated by this act and to pay for the same out of any portion of the income of the corporation available for such purposes or activities; provided, that the officers and members of such corporation shall receive no compensation therefrom, but may receive their reasonable and necessary expenses incurred in connection with the performance of their duties.

(g) To borrow money and issue bonds for the purposes and in the manner and within the limitations herein specified, and to pledge any and all property and income of such corporation acquired or received as herein provided to secure the payment of such bonds, subject to the conditions and limitations herein prescribed, and to redeem any such bonds if so provided therein or in the mortgage or trust deed accompanying the same.

(h) To use for the following purposes any available moneys received by such corporation from any source as herein provided in excess of those required for the payment of the cost of such armory and for the payment of any bonds issued by the corporation and interest thereon according to the terms of such bonds or of any mortgage or trust deed accompanying the same, to-wit:

- (1) to pay the necessary incidental expenses of carrying on the business and activities of the corporation as herein authorized;
- (2) to pay the cost of operating, maintaining, repairing, and improving such new armory;
- (3) if any further such excess moneys remain, to purchase upon the open market at or above or below the face or par value thereof any bonds issued by the corporation as herein authorized; provided, that any bonds so purchased shall thereupon be cancelled.

(i) To adopt and use a corporate seal.

(j) To adopt all needful by-laws, rules and regulations for the conduct of the business and affairs of such corporation and for the management and use of such armory while under the ownership and control of such corporation as herein provided, not inconsistent with the use of such armory by the state for armory or military purposes. (Act Apr. 25, 1931, c. 398, §3; Apr. 20, 1933, c. 332, §3.)

**2517-5. City shall provide site.**—(a) Any such city desiring to have such new armory constructed hereunder may provide a site therefor as hereinafter provided.

(b) If any such city shall desire to have such new armory constructed on the site of the existing armory, and if such site is approved by the adjutant general as suitable for such new armory, such city may convey by way of gift or sale to such corporation all right, title, and interest owned by such city in

such existing armory and the lands whereon the same is situated and all adjoining lands required for constructing such new armory. Thereupon, in case any such lands or interests therein are owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board of other agency may convey the same by way of gift or sale to such corporation. Such corporation may wreck and remove such existing armory and may sell all or any part thereof and may use any proceeds received therefrom for any authorized purpose or activity of the corporation hereunder.

(c) If such city shall not desire to have such new armory constructed on the site of the existing armory, or if such site shall not be approved by the adjutant general as herein provided, such city desiring to have such new armory constructed may secure by purchase, gift, or condemnation, and may convey to such corporation another site for such new armory approved as suitable therefor by the adjutant general. In case such site or any part thereof or interest therein is owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board or other agency may convey the same by way of gift or sale to such corporation without charge.

(d) In case any person or corporation except such city or board of park commissioners or other governmental agency hereinbefore referred to shall own any lands required for such site, whether provided under subdivision (b) or subdivision (c) of this section, or any interest in any such lands which would interfere with the use thereof by the state for armory or military purposes, such city or such board of park commissioners or other governmental agency may acquire such lands or interest by purchase, gift, or condemnation and may convey the same by way of gift or sale to such corporation; provided, that notwithstanding any such outstanding ownership or interest, such corporation may, in its discretion, with the approval of the adjutant general accept a conveyance of such lands and interests in lands for such site as may be owned or controlled by such city, board of park commissioners, or other governmental agency, and may acquire by purchase, gift, or condemnation any further lands or interests in lands that may be required for such site.

(e) The governing body of such city and such board of park commissioners and any other governmental agency concerned shall have power to exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any lands or interests in lands authorized to be acquired as aforesaid.

(f) In the event that the state of Minnesota shall own any lands or interest in lands included in the site of such existing armory and required for the site for such new armory, such lands or interest therein shall be leased by the state to such corporation for a period of not exceeding 40 years for the purposes contemplated by this act, without any consideration other than the use of such property by the state for armory or military purposes as herein provided and the provisions hereof for the conveyance to the state of the new armory building and the site thereof. The adjutant general shall have power to execute such lease to such corporation in the name of the state. Provided, that such corporation shall have no power to mortgage or encumber any lands or interest so leased to it by the state except to the extent of such leasehold interest and subject to the conditions and limitations herein prescribed.

(g) In case any land acquired for armory site purposes hereunder has been donated to such corporation by such city or by any other governmental agency except the state, and in case such land or any part thereof shall thereafter not be used or shall

cease to be used for armory purposes for a continuous period of more than five years, not including the period of any war or other emergency in which the armed forces of the state may be engaged, the title to such unused land or part thereof shall thereupon pass, revert and be vested as follows: An undivided one-half thereof in the state and an undivided one-half thereof in such city or other governmental agency which donated the same, subject to any encumbrances that may have been lawfully placed thereon by such corporation or otherwise. (Act Apr. 25, 1931, c. 398, §4; Apr. 20, 1933, c. 332, §4.)

**2517-6. Funds for construction of armory—tax levy.**—(a) The funds to be used by such corporation for the purposes of this act may be obtained as hereinafter provided.

(b) Such city desiring to have such new armory constructed hereunder may by resolution of its governing body irrevocably provide for levying and collecting annually for a specified period, not exceeding 40 years, a tax upon all taxable property therein of such amount as such governing body may determine, not exceeding five-tenths of a mill. The proceeds of such levy as collected shall be paid to such corporation for the purposes herein prescribed. Such city shall have power to make such tax levies and payments and to bind itself thereto by such resolution of its governing body. The provisions of such resolution may be made conditional upon the giving of an agreement by the adjutant general as authorized in subdivision (d) of this section. The obligations of such city to levy, collect, and pay over such taxes shall not be deemed or construed to constitute an indebtedness of such city within the meaning of any provision of law or of its charter limiting its total or net indebtedness, and such taxes may be levied and collected without regard to any statutory or charter provision limiting the amount or rate of taxes which such city is otherwise authorized to levy. The payment of the proceeds of such taxes up to an amount equal to the sum of \$250 per year, or such other amount as may hereafter be prescribed by law, for each company or other unit of the national guard or naval militia stationed in such city shall be deemed sufficient appropriation and payment by such city to authorize the payments to be made by the state annually for armory maintenance and equipment under the provisions of Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, such payments to be made to such corporation and applied as herein provided. (As amended Apr. 20, 1933, c. 332, §5.)

(c) The annual payments by the state for armory maintenance and equipment authorized by Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, shall be paid to such corporation and applied as herein provided. (As amended, Apr. 20, 1933, c. 332, §5.)

(d) In addition to the payments by the state under subdivision (c) of this section, the adjutant general is hereby authorized to pay to such corporation out of any moneys which may from time to time be appropriated to and for his department and not appropriated or set apart for any other specific purpose a sum not more than \$35,000 per year, and may bind himself and his successors in office by agreement with such corporation to make such payments in a specified amount or amounts out of such appropriations for a period of not more than forty years.

(e) Upon completion of such new armory such corporation shall lease the same to the state through the adjutant general, until such armory and site shall be conveyed to the state as hereinafter provided. Such lease shall be made upon such terms and conditions as shall secure to the state the full and complete use of such armory for armory and military purposes so far as may be required for the headquarters, organizations, and units of the national guard and naval militia stationed in such city, and

upon such other terms and conditions not inconsistent therewith as may be agreed upon; provided, that except for such use of such property for armory and military purposes which shall be secured to the state as aforesaid, such lease shall be subject to any incumbrance placed upon the property to secure the payment of any bonds issued as herein provided. No further consideration for such lease shall be required than the payments to be made by the state as provided by subdivisions (c) and (d) and this section. Otherwise, and so far as it is not inconsistent with the terms and conditions of such lease to the state and so far as will not interfere with the use by the state of such property for armory or military purposes, such corporation may lease, rent, or otherwise make use of such new armory building or any part thereof for such purposes and upon such terms as such corporation may deem proper, and may use the rents and profits therefrom for the purposes herein provided. (Act Apr. 25, 1931, c. 398, §5; Apr. 20, 1933, c. 332, §5.)

**2517-7. Corporation may issue bonds.**—(a) In anticipation of the receipt of such corporation of the tax proceeds, appropriations, rents, and profits specified in Section 5 hereof, and of income from any other source, and for the purpose of securing funds as needed for payment of the cost of such new armory and other purposes herein authorized, such corporation is hereby authorized to issue its bonds in an aggregate principal amount not exceeding \$1,500,000.00, bearing interest at a rate not to exceed five per cent per annum, payable semi-annually.

(b) Such bonds shall be of such date, denominations, place of payment, form, and details as may be determined by such corporation not inconsistent with the provisions of this act. Such bonds shall mature serially, the first installment to fall due in not more than five years and the last in not more than forty years from their date, and no annual maturing installment shall exceed by two and one-half times the amount of the smallest annual maturing installment; provided, that the amount of such installments of principal may be such that the increase thereof from year to year shall approximately equal the decrease from year to year in the interest on the bonds remaining unpaid.

(c) Such bonds shall be signed by the adjutant general, attested by the state auditor, and countersigned by the state treasurer, in their respective positions as chairman, secretary, and treasurer ex officio of such corporation, and the interest coupons to be there-to attached shall be executed and authenticated by the printed, engraved, or lithographed facsimile signatures of such chairman and secretary.

(d) Such bonds shall be sold by such corporation upon such notice and upon such terms and at such times as the corporation shall deem best. Such bonds shall not be deemed or construed to be debts of the State of Minnesota or of the municipality in which such armory is situated, nor to impose any personal liability upon any member of such corporation, but shall be payable solely out of the income to be received by such corporation as specified in this act. Bonds legally issued pursuant to this act may be purchased by the State board of Investment for the Permanent School Fund, Permanent University Fund, Swamp Land Fund, Internal Improvement Land Fund, or any other trust fund of the State of Minnesota, or for any other fund administered by such board, and shall be deemed authorized securities within the provisions of Mason's Minnesota Statutes of 1927, Section 7714, and laws amendatory thereof and supplemental thereto, and shall be proper for the investment of capital, surplus or deposits of any savings bank or trust company, and for the investment of funds of any insurance company, and for the investment of any sinking funds held by any public or municipal corporation, and may be pledged by any bank or trust company as security for the deposit of

public moneys therein in lieu of surety bonds. Such bonds shall be deemed and treated as instrumentalities of a public governmental agency, and as such shall be exempt from taxation. (Act Apr. 25, 1931, c. 398, §6; Apr. 20, 1933, c. 332, §6.)

**2517-8. May give mortgage on armory and site.**—To secure the prompt and full payment of such bonds and interest thereon such corporation may mortgage such armory building and/or the site thereof, and may pledge the income or any part thereof receivable by such corporation under this act to any trustee under such provisions that upon default in the payment of the principal or of interest on any such bonds all of such bonds may be declared due and payable, and such mortgage foreclosed in like manner as other mortgages are foreclosed in this state, subject to the provisions of this act. The purchaser at any sale upon such foreclosure shall acquire the right of possession and the right to operate such building under such terms and conditions as may be specified in said mortgage and not inconsistent with the use of the property by the state for armory and military purposes, such possession and right of operation to continue until the full principal and interest on such bonds or the amount bid upon such foreclosure sale shall have been paid out of the net rents and profits received from such operation or out of moneys otherwise provided as set forth in Section 5 [§2517-6] hereof. Such mortgage or deed of trust may contain any other provisions not inconsistent with the provisions of this act or with the use of such building by the state for armory or military purposes as are customarily included for the benefit and protection of the parties to such instruments, including provisions for the insurance thereof, appointment of a receiver in the event of a default by the mortgagor, exemption of the members of such corporation from any personal liability, and other such provisions. Nothing contained in such mortgage shall be deemed or construed to constitute a liability of the State of Minnesota or of such city or any department, board or commission thereof, nor to impose any personal liability upon any member of such corporation. Such mortgage or deed of trust may be recorded in the office of the appropriate register of deeds without the payment of any mortgage registry tax. (Act Apr. 25, 1931, c. 398, §7.)

**2517-9. Property to be conveyed to state.**—Upon payment of all indebtedness incurred by such corporation hereunder, including the full principal and interest of all bonds issued by such corporation as herein provided, such corporation shall transfer and convey such armory building and the site thereof to the State of Minnesota for military purposes, and shall pay over to the state any unexpended moneys then held by such corporation, which moneys shall be appropriated to the adjutant general for the maintenance, repair, and improvement of such armory. (Act Apr. 25, 1931, c. 398, §8.)

**2517-10. Limit of indebtedness.**—Such corporation shall never be subject to an indebtedness in excess of \$1,500,000.00, nor shall it incur any indebtedness except as authorized herein. (Act Apr. 25, 1931, c. 398, §9; Apr. 20, 1933, c. 332, §7.)

**2517-11. Books to be examined by state comptroller.**—The books and affairs of such corporation shall be subject to examination by the state comptroller. (Act Apr. 25, 1931, c. 398, §10.)

**2517-12. Provisions separable.**—This act shall be held unconstitutional only in the event that some major provisions thereof are found unconstitutional and invalid which would make the act unworkable. Should any minor provisions of this act be held unconstitutional it shall in no way affect or invalidate any other provision or part thereof. (Act Apr. 25, 1931, c. 398, §11.)

**2517-13. Construction in municipalities having national guard units—definition—Application of act.**—In any municipality of this state in which there

shall at the time be stationed one or more units of the national guard or naval militia, and in which the adjutant general shall deem it necessary or expedient to construct an armory, an armory may be constructed and the cost thereof may be paid as hereinafter provided. The term "municipality" as used herein shall include cities of every class, villages, and boroughs. The provisions of this section and the following sections of this act shall be construed as supplemental to the preceding sections, and not as repealing or superseding the same or any part thereof. (Laws 1931, c. 398, §12, as added by Act Apr. 20, 1933, c. 332, §8.)

**2517-14. Corporation created—Commission.**—(a) For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line of the national guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than three, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. (Added as §13 to Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8.)

**2517-15. Same—powers of corporation and municipalities—laws applicable—definitions—limitation on cost—indebtedness.**—For the purpose of constructing armories as provided in Section 12 of this act, the corporation referred to in Section 13 of this act shall have like powers and privileges and be subject to like duties and obligations as are by this act vested in or imposed upon the corporation referred to in Section 2 of this act. Every municipality in which an armory may be constructed as provided in Section 12 of this act, and every governing body of and every other governmental agency in every such municipality, shall have like powers and privileges and be subject to like duties and obligations as are by this act vested in or imposed upon the respective cities, governing bodies, and other governmental agencies referred to in Sections 1 to 11 of this act, inclusive. All the provisions of this act relating to the construction of armories in the cities referred to in Section 1 of this act and to all other matters connected therewith, shall, so far as applicable, and not otherwise provided herein, apply to the construction of armories in the municipalities referred to in Section 12 of this act to all other matters connected therewith, and for such purposes the term "city" as used in Sections 1 to 11, inclusive, of this act shall be construed to refer to the municipalities referred to in Section 12 of this act, and the terms "commission" and "corporation" as used in Sections 1 to 11, inclusive, of this act, shall be construed to refer to the commission and corporation referred to in Section 13 of this act; provided, however, as follows:

(a) The total cost to the corporation of each armory constructed as provided in Section 12 of this act, including the site, building, and equipment, shall not exceed \$75,000.00 for each unit of the national guard or naval militia to be quartered therein, and the total amount of bonds issued on account of each such armory shall not exceed the amount of such cost.

(b) The total amount which the adjutant general may pay under the provisions of subdivision (c) of Section 5 of this act on account of any armory constructed as provided by Section 12 of this act shall not exceed \$2,000.00 for each unit of the national guard or naval militia quartered in such armory

(c) The corporation created under Section 13 of this act shall never be subject to an indebtedness on account of any armory constructed as provided by

Section 12 of this act in excess of the cost of such armory as provided by this section, nor to a total indebtedness in excess of the aggregate cost of all armories so constructed. (Added as §14 to Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8.)

Act Apr. 20, 1933, cited, adds sections 12, 13 and 14 to Act 1931, c. 398. The enacting part provides that the words "this act" shall be deemed to refer to the amended act as amended.

#### NAVAL MILITIA

**2520. Naval Militia not to exceed eight companies.**—The Naval Militia shall consist of not to exceed eight divisions or companies and a squadron of air service, organized into such number of battalions as the tactical situation may require. ('99, c. 355; '05, c. 34, §1; '09, c. 389, §1; G. S. '13, §2473; '15, c. 353, §1; Apr. 23, 1929, c. 296.)

## CHAPTER 13 Roads

### GENERAL HIGHWAY ACT

#### 2542. Scope of act.

175M583, 222NW385; note under §2554.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226NW398.

Followed in *Foss v. M.*, 178M430, 227NW357.

State cannot reimburse county out of trunk highway fund amount expended for right of way for new road built by county and later designated and taken over by state as trunk highway. *State v. Babcock*, 186M132, 242NW474. See Dun. Dig. 8452.

There is no statutory provision by which one town can compel another to maintain its half of a town line road where there has been no agreement for the division of the road for purpose of maintenance, the only remedy being application to the county board under §2607. Op. Atty. Gen., June 27, 1930.

#### 3. "County roads."

Order that portion of road within county should be set aside by the county for "opening and maintenance" simply had the effect of imposing upon the county the duty of opening the road, and upon the towns through which the road passes the duty of maintaining same. Op. Atty. Gen., Mar. 27, 1931.

#### 4. "Town roads."

Petitioner for whose primary benefit a cartway is established cannot treat it as a strictly private way, and cannot keep the public off it. Op. Atty. Gen., June 10, 1931.

Town board has control over all town roads, including bridge culverts. Op. Atty. Gen., June 13, 1933.

#### 2543. "Road" and "Highway" defined.

Includes part of interstate bridge. Op. Atty. Gen., Apr. 11, 1929.

Op. Atty. Gen., July 19, 1930; note under §2552.

Where road extending into two counties over bridge across river, forming boundary between counties, was designated as a state aid road by both counties, each county is chargeable for the maintenance of that portion of the bridge within its territorial limits and no more, though county may expend money, if it desires, in the maintenance of bridge or road in another county. Op. Atty. Gen., Aug. 18, 1930.

#### 2544. Width of Roads.

Land taken for a public cartway is taken for a public purpose although the one to whose land the cartway extends has other access to a public highway. 175M395, 221NW527.

Judicial road on county line remained open for entire width, though only part of width was constructed. Op. Atty. Gen., June 21, 1933.

#### 2546. Railroad bridge over highway.

Negligence of railroad in failing to comply with this statute held not the proximate cause of death of automobilist. 171M486, 214NW763.

A railroad company owes common-law duty to provide overhead or underground crossing when reasonably necessary for public travel upon a highway. *Murphy v. G.*, 248NW715. See Dun. Dig. 8120.

A railroad company which constructs an overhead bridge in accordance with statute, with a center pier which is approved by highway commissioner, does not have duty of caring for a reflector placed upon said pier to warn a traveler on highway. *Murphy v. G.*, 248NW715. See Dun. Dig. 8120, 8121.

Whether driver of automobile striking middle pier of railroad bridge on which there was a defective reflector was guilty of contributory negligence, held for jury. *Murphy v. G.*, 248NW715. See Dun. Dig. 8169.

#### 2549. Trunk highways.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226NW398.

Followed in *Foss v. M.*, 178M430, 227NW357.

State's ownership of easement for highway purposes is a sufficient title to support an application for an injunction. *State v. Nelson*, 248NW751. See Dun. Dig. 4155, 4157, 4180.

#### 2551. County roads.

A town board may not appropriate or expend moneys for the maintenance of a county aid road. Op. Atty. Gen., Aug. 21, 1929.

It is duty of town to construct and maintain approaches to bridge constructed under §2606. Op. Atty. Gen., Aug. 21, 1929.

County is not liable for injuries arising from collision of automobile with tree which blew down in the highway, or for the negligence of a snowplow driver in backing into an automobile. Op. Atty. Gen., Feb. 6, 1930.

Order that portion of road within county should be set aside by the county for "opening and maintenance" simply had the effect of imposing upon the county the duty of opening the road, and upon the towns through which the road passes the duty of maintaining same. Op. Atty. Gen., Mar. 27, 1931.

If county board contemplates construction of a gravel road, such road will not be considered as having been constructed until gravel has been applied, but county need not gravel where petition is only for laying out of a road. Op. Atty. Gen., Aug. 11, 1932.

#### 2552. Town roads.

Op. Atty. Gen., May 23, 1929; note under §2569.

There is no statutory provision by which one town can compel another to maintain its half of a town line road where there has been no agreement for the division of the road for purpose of maintenance, the only remedy being application to the county board under §2607. Op. Atty. Gen., June 27, 1930.

If the town board, acting in good faith, replaces a culvert or bridge 14 ft. wide by a cement culvert 48 inches in diameter, the members of the board are not personally liable for injury to surrounding property by insufficiency of the drainage, but the town may be liable in damages for any injury resulting. Op. Atty. Gen., July 19, 1930.

Where county board advertised for bids for graveling a highway as a county road, when it was in fact a town road, it was without authority to proceed with the contract, and was not liable to the contractor for refusing to execute the contract. Op. Atty. Gen., Sept. 8, 1930.

Where county board has designated a county aid road and electors of town have voted the amount required of them, county board cannot thereafter withdraw. Op. Atty. Gen., May 11, 1931.

County constructing a county aid road in a township was liable for death of farmer in adjoining field caused by blasting stump, if its officers or agents were negligent. Op. Atty. Gen., Sept. 26, 1932.

Side road in abandoned village is a town or county road and town may remove fence erected thereon. Op. Atty. Gen., Apr. 28, 1933.

Town board has control over all town roads including bridge culverts. Op. Atty. Gen., June 13, 1933.