

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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



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date any other provision or part hereof. (Act Apr. 25, 1931, c. 398, §11.)

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. (As amended Apr. 23, 1929, c. 296.)

CHAPTER 13 Roads

GENERAL HIGHWAY ACT

§2542. Scope of act.

175M583, 222NW385; note under section 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.

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.

§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.

§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.

§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. 226NW398.

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

§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.

§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.

§2552-1. Town clerks to report miles of highway.—On or before June first, 1931, and on or before June first of every odd-numbered year thereafter, the clerk of each township shall file with the county auditor of his county a verified written statement showing the number of miles of public highways within the township under the supervision and jurisdiction of the town board. (Act Apr. 9, 1931, c. 131, §1.)

§2552-2. County auditor to report to commissioner of highways.—On or before September first, 1931, and on or before September first of each odd-numbered year thereafter, the county auditor of the several counties shall make and file with the commissioner of highways a verified written

statement showing the number of miles of public highways within the county, other than trunk highways, whether under the jurisdiction of the county or the towns therein. (Act Apr. 9, 1931, c. 131, §2.)

§2554. Highway patrolman authorized—compensation. * * *

Subdivision 18. (a) The Commissioner of Highways is hereby authorized to employ and designate not to exceed 70 persons to enforce the provisions of the laws relating to the protection of and the use of trunk highways and the operation of motor and other vehicles thereon, except as to speed of such vehicle, and employes so employed and designated shall for these purposes, but for no other purpose, have the power of peace officers. Employes thus employed and designated shall subscribe an oath and furnish a bond running to the State of Minnesota, said bond to be approved by and filed in the office of the Secretary of State.

(b) All fines collected from persons apprehended or arrested by such employes shall be paid into the state treasury and shall be credited to a separate fund hereby established for that purpose. Out of such fund shall first be paid to counties all costs and expenses incurred by them in the prosecution and punishment of persons so arrested and for which such counties have not been reimbursed by the payment of such costs and expenses by the person prosecuted, and so much of said fund as shall be necessary for the making of such reimbursement is hereby appropriated therefor. Such payment shall be made by the state treasurer upon the claim of the county verified by the county auditor. On the first day of each calendar month the moneys remaining in such fund shall be credited to that part of the trunk highway fund which is set apart for maintenance purpose; and so much of said maintenance fund as shall be necessary for the salaries and maintenance of such employes is hereby appropriated for that purpose.

(c) The salary of such employes shall be fixed and determined in the manner now prescribed by law for employes of the Commissioner of Highways and shall not exceed the sum of \$150.00 per month, except that the supervisor or supervisors of the said employes shall receive such higher salary as may be fixed by said Commissioner of Highways not to exceed \$4,000 per annum for one chief supervisor and not to exceed \$2,400 per annum for each of not to exceed five assistant supervisors. (Laws 1929, c. 355, §1, as amended Mar. 7, 1931, c. 44, §1.)

The amount of traffic on a highway is an element to be considered as bearing upon loss of time and convenience to one whose land is divided by such highway. 171M369, 214NW653.

When a permanent trunk highway is located by the Highway Commissioner the practicable road along the general location is not thereby vacated, but reverts to the control of the county or town board as the case may be. 171M369, 214NW653.

Jury properly permitted to determine acreage involved in determining damages, and verdict held not excessive. 171M369, 214NW653.

Subdivisions 3 and 4 of section 13, ch. 323, L. 1921, are entirely consistent with the provisions of Constitution, article 16. 175M103, 220NW408.

Laws 1925, c. 426 (§§53-1, et seq.) modifies and amends the prior Highway Act to the extent of placing the making of contracts for constructing state highways under the control of the commission of administration and finance. 175M583, 222NW285.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

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. 226NW398.

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

The duties imposed on the Commissioner require the exercise of judgment and discretion and he is not personally liable in absence of corruption or malice. 179M263, 228NW916.

A village which approves the plans of construction by the state highway commissioner of a trunk highway, and authorizes a change of grade according to such plans, makes itself liable for the damage caused abutting property. Op. Atty. Gen., Oct. 15, 1930.

Subd. 18.

Cash deposited as bail by persons arrested by officers of the state motor patrol, and forfeited when they do not appear for trial, should be paid to the state treasurer and not the county treasurer. Op. Atty. Gen., Jan. 27, 1931.

§2554-1. Relinquishment of highway easements.—The governor in behalf of the state may, upon recommendation of the commissioner of highways and upon repayment to the state for deposit in the trunk highway fund of any moneys paid for the acquisition thereof, relinquish and quitclaim to the fee owner or owners any easement or portion thereof owned but no longer needed by the state for trunk highway right of way purposes, or may quitclaim to any person the fee title to any lands owned by the state for trunk highway right of way purposes, but no longer needed for such purposes; provided, however, that whenever less than the entire easement or part of the fee title of any such land owned by the state is to be relinquished and quitclaimed, the amount of moneys so to be repaid or paid to the state shall not be a less proportion of the consideration paid therefor by the state than the proportion of the area or estate of the part so to be relinquished and quitclaimed bears to the area or estate of the entire easement or estate. (Act Apr. 22, 1929, c. 287, §1.)

§2557. Construction and maintenance.

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. 226NW398.

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

Where trunk highway through city was entirely new construction over land not theretofore dedicated as a public street, municipality was under no duty to light and keep it in repair, but the city may construct special improvements, such as sidewalks, curbs, sewers, etc., along, but not within the right of way of the trunk highway. Op. Atty. Gen., Oct. 15, 1930.

§2558-1. Logging railroads across highways.

This act is valid. 174M305, 219NW172.

§2559. State road and bridge fund.—Apportionment * * * *

Subsection 2. On or before the first Tuesday in April of each year, the commissioner of highways, the State Treasurer and the State Auditor shall estimate the probable sum of money that will accrue to the state road and bridge fund during the current year and after first setting aside therefrom an amount not exceeding \$50,000 for a reserve maintenance fund, to be expended as hereinafter provided, shall apportion the balance of the state road and bridge fund among the different counties of the state as herein provided and the Commissioner of Highways shall immediately send a statement of such apportionment to the State Auditor and to the County Auditor of each county, showing the amount apportioned to each county for expenditure during such year. (As amended Feb. 16, 1929, c. 22.)

* * * *

§2560. Designation state aid roads—Revocation.

A city may be reimbursed by a county out of special state aid paid to it by the State for the paving of a State aid road running through the city. Op. Atty. Gen., April 16, 1931.

§2560-1. County boards may acquire land in certain cases.—Whenever in the discretion of the county board of any county it is determined that an easement across additional lands is needed for the purpose of altering an existing state aid or county aid road in cases where the general course of such road is not materially altered the county board shall have power to acquire such easement by purchase or gift or by condemnation in accordance with the provisions of General Statutes 1923, Chapter 41, as amended. (Act Apr. 11, 1929, c. 155.)

§2561. Designation of road on county line a state aid road.—Whenever there is an established road running along or near the common boundary line or lines of two or more counties, the county boards of two or more of such counties may make application to the commissioner of highways for the designation of such road as a state aid road. The commissioner of highways shall then investigate the desirability of such designation, and, if he shall decide that it is desirable so to do, shall so designate such road and determine and fix the part of the cost of the improvement and maintenance thereof to be paid by each of the counties abutting upon and adjoining such road. (As amended Apr. 17, 1929, c. 216.)

§2563. Procedure for constructing, etc.

This section is not applicable to the expenditure of money under Laws 1929, c. 283, post, §§ 2720-88 to 2720-99, relating to distribution of gasoline tax. Op. Atty. Gen., May 1, 1930.

§2564. State aid for roads.—After any county board shall have completed any work on a state aid road for which state aid is claimed, the auditor of such county shall

make a statement to the commissioner of highways showing the location, nature and cost of such work, and shall also submit a detailed report from the county highway engineer in charge showing all such details concerning the same as may be required by the commissioner of highways. On receipt thereof of the said commissioner of highways shall proceed to examine such reports, and if he finds the same satisfactory and that the work has been done in substantial compliance with the plans and specifications therefor, and the contract therefor, if any, he shall certify the same to the state auditor who shall issue a warrant for the state's share thereof as shown by said report, payable to the treasurer of such county, but in no case shall said warrant, with all other warrants, exceed the amounts allotted to such county. Provided that every county which has constructed or improved any state rural highway pursuant to Laws 1911, Chapter 254 [Mason's Minn. St., 1927, §2620-14, note], and has issued its bonds to provide funds for the payment of the cost thereof, which during any year fails to avail itself of any funds allotted to it out of the general state road and bridge fund by the construction, improvement or maintenance of state aid roads, but which shall pay the principal of or interest on such bonds or any part thereof, shall be entitled to receive from the general state road and bridge fund for the benefit of its county road and bridge fund, the same amount as it would have received had the amount so paid been expended for the construction, improvement or maintenance of state aid roads within such county. Whenever any such county shall make any such payment the auditor thereof shall certify the fact of such payment, the date and amount thereof to the state auditor who shall thereupon issue and transmit to the treasurer of such county a warrant for such amount. The proceeds thereof shall be placed in the county road and bridge fund and shall be disbursed in the same manner as other county funds are disbursed but only for the payment of the cost of constructing and maintaining state aid roads.

Provided, that the State Auditor shall not issue any such warrant to said county until the Commissioner of Highways shall certify to said State Auditor that said county is entitled to receive any such payment out of said state-aid road and bridge fund, and for the purpose of furnishing said Commissioner of Highways proper information, the County Auditor of any such county shall certify the fact of such payment, the date and amount thereof, to said Commissioner of Highways in the same manner as to the State Auditor. (As amended Apr. 25, 1931, c. 356.)

§2564-14. Counties may pay bonds in certain cases.—That where a village has heretofore issued and sold, or shall hereafter issue and sell, its bonds to defray the cost of constructing a bridge across a river constituting at such place the boundary line between this state and another state, and the highway of which the portion of said bridge within this state is a part has been or shall be, after the issue of such bonds, made a

state aid road, the county within which such portion of said bridge is located is hereby authorized to appropriate money from its road and bridge fund, not exceeding the sum of \$20,000, to pay said bonds. (Act Mar. 30, 1929, c. 114.)

§2564-15. Bridges over stream forming state boundary—Municipalities may unite.—Counties, towns, cities and villages bordering upon streams of water which form the boundary line of this state may construct and maintain foot and wagon bridges across any such stream the same as if such stream was wholly within the limits of the county, town, city or village constructing the same; and any such local subdivision within which such bridge may be desired may singly or in conjunction with other such subdivisions unite in the construction and maintenance of said bridge with any one or more of the local subdivisions in the adjoining state or province into which any such bridge may extend; provided, that in such construction and maintenance the rights of adjoining states and provinces shall in no wise be infringed. ('07, c. 399, §1.)

Omitted from 1923 and 1927 compilations as not of general application.

§2564-16. Bridges over navigable river forming state boundary—Appropriation by county board of not over one-half cost—Proceedings.—Whenever one-half the resident taxpayers of any county, whose county line is the boundary line of a state, as appears by the last preceding assessment roll of such county, shall petition the board of county commissioners of such county, praying for an appropriation to build a bridge across any navigable river on the line of any such county, when the county line is the boundary line of a state, setting forth therein the location of such bridge as near as may be, its estimated cost and the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to pay for such structure, and the time when it will be completed, such petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named; it shall be the duty of the board of county commissioners to publish a notice in the official paper of the county, once each week for three consecutive weeks, briefly stating the object of such petition and that the same will be heard and considered at the next regular meeting of such board. At the time appointed for the hearing of such petition, the board of county commissioners shall investigate the need for such bridge, and if they find the same to be necessary shall, by resolution duly entered upon the minutes of the board, appropriate towards the building of such bridge, from the county treasury a sum not exceeding one-half of the estimated cost of such bridge to be paid as hereinafter provided; provided, however, the appropriation hereinbefore mentioned shall be upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of the cost of such bridge will be paid; provided, further, that the consent of the general government to span such river shall first have been obtained. ('09, c. 425, §1.)

Omitted from 1923 and 1927 compilations as not of general application.

§2564-17. Same—Committee to confer with neighboring state or municipality, etc.—If the remaining one-half of the cost of such bridge shall be made up by an appropriation from any neighboring state or by a municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three or more, to meet such other municipal agency, confer with its members and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county. ('09, c. 425, §2.)

§2564-18. Same—Bonds, when may be issued—Tax levy.—When one-half or such other proportion as may be, of the cost of such improvement shall be provided for by any municipality within this state, it shall be lawful for such municipal corporation, by a majority vote of the legal voters thereof after ten days' notice, to meet the necessary expense by the issuance of bonds bearing interest not to exceed seven per cent per annum and not to run longer than twenty years after the date of issue, nor to be sold for less than par value, interest payable semi-annually; provided, that the limit of indebtedness of such corporation prescribed in the constitution is not hereby exceeded. In case the limit of indebtedness of such municipality would be thereby exceeded, then it shall be lawful for such municipality to make a sufficient tax levy for general purposes to meet the necessary expenditure in the construction of such bridge, and when the same shall be completed and accepted the share of the cost thereof to be borne by such municipality shall be paid out of the general fund by orders drawn in the usual form and manner. ('09, c. 425, §3.)

§2564-19. Same—Not more than one wagon bridge—Limit of cost.—Not more than one wagon bridge across a navigable river in each county shall be built under this article, and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars. ('09, c. 425, §4.)

§2565. Powers of County Board. * * *

Sub. 2. The county board of any county may appropriate from its road and bridge fund to any town, village, borough or city of the third or fourth class in its county, such sums of money as are available and which it deems advisable to aid such towns, villages, boroughs or cities of the third or fourth class in the construction and maintenance of roads, streets or bridges therein, and such appropriations may be directly expended by the county board, upon such roads, streets or bridges as shall be designated by

the governing body of such towns, villages, boroughs or cities of the third and fourth class; provided, that in counties having a population of two hundred twenty-five thousand (225,000) inhabitants or over, such county aid may be expended in accordance with the provisions of Chapter 164, Laws of 1905, as amended by Chapter 208; Laws of 1909. Provided, further, that no village, borough, or city of the third or fourth class shall receive an appropriation hereunder exceeding 20 per cent of the annual tax levy for road and bridge purposes paid by such village, borough or city of the third or fourth class. (As amended Apr. 13, 1929, c. 179.)

Act authorizing county board of certain counties to pay actual personal or property damages sustained by reason of negligence of county highway engineer or other county employe in leaving county road in dangerous condition for public travel. Laws 1931, c. 41.

Act authorizing board of county commissioners and county board of education for unorganized territory in certain counties to indemnify employes against liability in operating motor vehicle. Laws 1931, c. 42.

Includes interstate bridges. Op. Atty. Gen., Apr. 11, 1929.

There is no limit upon the amount which a county can appropriate from its road and bridge fund to a town to aid in the construction of roads. Op. Atty. Gen., June 6, 1929.

County board may appropriate moneys from the county road and bridge fund to aid in the construction and maintenance of roads designated as county aid roads under Laws 1929, c. 283. Op. Atty. Gen., Dec. 20, 1929.

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.

Under this section as amended by Laws 1929, c. 179, 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.

Safety isles on University Avenue in St. Paul constitute an integral part of the street itself, and the county may lawfully expend funds to assist in rearranging and remodeling them. Op. Atty. Gen., Feb. 26, 1931.

There is no limit upon the amount which county can appropriate to a town. Op. Atty. Gen., June 6, 1929.

Subd. 5.—Tax Levy.

Cited in connection with holding that Laws 1927, c. 147, is valid. 171M312, 213NW914.

§2565-4. County board may appropriate money to cities in certain cases.—The county board of any county in this state now or hereafter having a population of not less than 225,000 inhabitants nor more than 330,000 inhabitants shall appropriate annually from its Road and Bridge Fund to towns, villages and cities of the third or fourth class in its county, the sum of \$40,000 to aid such towns, villages or cities of the third or fourth class in the construction and maintenance of town roads, streets or bridges therein, and such appropriation shall be apportioned in the following manner, to-wit: 65 per cent thereof equally to each town and 35 per cent thereof to villages and cities of the third or fourth class proportionately according to the as-

essed valuation of all property for taxation, exclusive of money and credits in said villages or cities of the third or fourth class and shall be expended by any such county board under its supervision and control, upon town roads, streets, or bridges as shall be designated by the governing body of any such towns, villages and cities of the third or fourth class therein. (Act Apr. 20, 1931, c. 264, §1.)

§2565-5. All laws and parts of laws inconsistent herewith are repealed. (Act Apr. 20, 1931, c. 264, §2.)

§2565-6. County boards may levy annual tax on unorganized territory for road and bridge purpose not to exceed fifteen mills on the dollar.—The county boards of the several counties in which there may be situated any territory not organized for township purposes are hereby authorized to, and they may in their discretion, annually levy a tax for road and bridge purposes on all the real and personal property in such unorganized territory, exclusive of moneys and credits taxed under the provisions of Chapter 285, Laws 1911, not exceeding, however, fifteen mills on the dollar of the assessed value of such property. Such tax, if levied, shall be additional to the tax which the counties are authorized to levy for county road and bridge purposes. ('15, c. 44, §1.)

Omitted from 1923 and 1927 compilations as being local or special.

§2565-7. Duty of auditor in extending the tax levy.—If any county board deems it desirable to levy such a tax on such property, it may at the time it levies the county taxes, by resolution reciting such fact, determine the amount so to be levied in each congressional township of such unorganized territory for the then current year. It shall be the duty of the auditor to extend such tax so levied upon the tax books of the county, at the same time and in the same manner as other taxes for county purposes are extended, as to property in such unorganized territory, and the same shall be collected and the payment thereof enforced at the same time and in the same manner as other county taxes on such property, and with like penalties for non-payment at the time prescribed by law. ('15, c. 44, §2.)

§2565-8. Collected amount to be set apart as a separate road and bridge fund.—Such tax, when collected, shall be set apart in separate funds in the county treasury; such funds shall be designated in such a manner as to describe each thereof as the road and bridge fund for the congressional township the property of which is so taxed to create such fund. ('15, c. 44, §3.)

§2565-9. Expenditure of road and bridge fund in adjoining townships authorized.—Such fund shall be expended under the direction of the county board for the construction, improvement, maintenance and repair of roads and bridges in the congressional township the property of which was so taxed to create such fund. Provided, however, that such fund, in any county having not less than thirty-five nor more than forty congressional

townships and having an assessed valuation of not less than sixteen million nor more than twenty million dollars, may be expended in any adjoining organized or unorganized township, or portion thereof, upon a petition being presented to the county board, signed by a majority of the resident taxpayers of said unorganized township from which said petition emanates, requesting that all or part of said money so collected in said unorganized township, shall be expended in the adjoining organized or unorganized township, or portion thereof. ('15, c. 44, §4; '19, c. 528, §1.)

The fund authorized by this act must be used in the congressional township, the property of which was taxed to create a fund, §2578 being inapplicable. Op. Atty. Gen., June 18, 1930, over-ruling Op. Atty. Gen., Oct. 8, 1925.

§2565-10. Tax levy.—The tax above provided for may be levied on all or a part of the unorganized territory in any county, provided, however, that no part of such organized territory less than a congressional township shall be so taxed. ('15, c. 44, §5; '19, c. 528, §2.)

§2569. County highway engineer.

Laws 1929, c. 20, §2, fixes salary of engineer at \$2,600, and 9 cents mileage, and not to exceed \$4,000 for clerk hire, in counties with 41 to 43 congressional townships and population of 25,000 to 30,000. As to mileage see §§254-47, 254-48.

Salary of engineer is not limited to \$3,000 but is to be fixed by county board. He may be provided with automobile and assistants. Op. Atty. Gen., Feb. 23, 1929.

County highway engineer has no right, with or without the consent of the county board, to perform services for other municipalities, even though the county receives the compensation therefor. Op. Atty. Gen., Apr. 23, 1929.

Engineer may do no work outside the official duties prescribed by this section and Laws 1929, c. 233, §6, at least during the usual working hours. Op. Atty. Gen., May 23, 1929.

County engineer must assist in construction and maintenance of town roads without charge, if required by county board. Op. Atty. Gen., May 23, 1929.

§2571. Power of town board.

Op. Atty. Gen., Aug. 21, 1929; note under § 2551.

Duties of town supervisors in the general maintenance, repair and improvement of town roads are discretionary. 175M34, 220NW166.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

§2572. Town bonds for paving.

Ordinarily graveling a road is not a "permanent improvement" within this section for which bonds may be issued, but such graveling may be of such a character as to come within the statute. Op. Atty. Gen., May 14, 1930.

§2573. Taxation for road purposes by towns.

Maximum levy for road and bridge purposes is governed by §2573, and not §2060 or §2067. Op. Atty. Gen., Nov. 19, 1929.

Electors may increase levy for town road and bridge purposes at a special meeting duly called. Op. Atty. Gen., June 10, 1931.

Towns no longer have authority to vote a labor tax to be worked out on town roads. Op. Atty. Gen., June 16, 1931.

§2575. Town road overseer.

This section repeals or supersedes §1074 relating to election of road overseer. Op. Atty. Gen., March 18, 1930.

§2577. Expense of township line roads.

Provision as to joinder in expense of constructing bridge applies only in drainage proceedings. 175M243, 221NW3.

§2578. Improvement of ferries by municipalities.

This section is not applicable to the tax authorized to be levied by Laws 1915, c. 44, as amended by Laws 1919, c. 528, set forth herein as §§2565-4 to 2565-8. Op. Atty. Gen., June 18, 1930.

Village of Lyle may lawfully contribute to the cost of improvement and maintenance of a county aid road leading into the village. Op. Atty. Gen., Aug. 22, 1930.

§2581. Establishment of road by judicial proceedings.

Decision denying petition need not be sustained by evidence practically conclusive against the propriety of establishing a road. 176M94, 222NW578.

The power to establish a highway on the line between two counties is vested by statute in the district court. Its final order establishing the highway has the force and effect of a judgment. The county boards cannot nullify the court's action by inaction; they must comply with it. *Hauschild v. C.*, 233NW827. See Dun. Dig. 8474 (68).

County boards of adjoining counties are not authorized by law to lay out a road on the boundary line between them, but they must proceed under this section. Op. Atty. Gen., Feb. 24, 1930.

§2582. Establishment, alteration, or vacation by county boards.

Petition altering existing road between given points held, within jurisdiction of county board though part altered was only in one town. *Nelson v. Nicolle County*, 154M358, 191NW913. See Dun. Dig. 8468.

When a permanent trunk highway is located by the Highway Commissioner the practicable road along the general location is not thereby vacated, but reverts to the control of the county or town board as the case may be. 171M369, 214NW653.

Taxpayer has no right to appeal from action of county board in designating town road as a county aid road pursuant to Laws 1929. Op. Atty. Gen., Aug. 31, 1929.

On petition for change of highway the board has a reasonable discretion in varying the route proposed in the petition and may retain a portion of the road which the petition asks to have changed. Op. Atty. Gen., Feb. 6, 1930.

Subd. 4.

Town road connecting with other town roads can be vacated only by county board. Op. Atty. Gen., Feb. 26, 1929.

§2582-1. Opening and improvement of highways leading to Meandered Lakes.

Whenever a petition signed by fifty freeholders of the county is presented to the county board, wherein it appears that (a) there is a meandered lake or navigable stream running between two meandered bodies of water within the county which is not accessible to the general public by reason of the fact that there is no public highway leading up to the same, and (b) that the establishment and opening of a county road of not more than one mile in length and sixty-six feet in width would connect such lake or navigable stream with a public highway and would afford the general public a means of

access to such lake or stream, it may be the duty of such board, if after an investigation it finds the statement in the petition to be true, to adopt a resolution establishing a public highway not more than one mile long nor sixty-six feet wide, at some location to be designated by it, so as to connect such lake or stream with some previously established and traveled highway, and to that end the several county boards shall have power to acquire any land, or any easement or interest therein deemed necessary, including the right to acquire the fee of the land to the width of the road only at the point where the road meets the lake by purchase, gift or condemnation proceedings. (Act Apr. 9, 1929, c. 142.)

§2583. Establishment, alteration or vacation.

In proceeding before town board to establish a road in part over lands held by the Government in trust for certain Indians to whom the land has been allotted, a property owner not interested in such lands cannot question the jurisdiction of the board, in view of Mason's U. S. Code, title 25, §311. 175M168, 220NW419.

When a person having easement to travel over a strip of ground improves it as a road it does not follow that he is to be paid damages when such strip of land is included in a public road. 175M168, 220NW419.

The 20 day term for filing final order under subd. 6, begins to run from date of hearing. Op. Atty. Gen., July 23, 1929.

Town board has right to make settlement with landowners for damages without making final order, but this is limited to cases where road is established on petition and hearing. Op. Atty. Gen., July 23, 1929.

Procedure by town board for vacation of town road, stated. Op. Atty. Gen., Jan. 30, 1930.

Where petition to town board for vacation of town road was denied merely because it did not contain the requisite number of signers, there was no denial of the petition on its merits, and a new petition may be filed within one year. Op. Atty. Gen., Apr. 3, 1930.

Where town road was established along a section line and it is not probable that the road will be constructed in the near future, no action on the part of the town board is necessary to entitle land owners to continue to use the land until the road is actually constructed. Op. Atty. Gen., May 13, 1931.

Subd. 1.

Op. Atty. Gen., Feb. 26, 1929; note under § 2582.

Subd. (6).

Requirement for filing award of damages within five days is directory, and not mandatory, and failure to file within five days does not invalidate proceedings. Op. Atty. Gen., Aug. 7, 1930.

Subd. 8.

173M572, 218NW115, note under §2585.

§2584. Dedication of land for road.

Common law dedication, see §2590.

§2585. Cartways. * * *

Sub. 1. Any town board may establish a cartway two rods wide and not more than three rods wide on petition of not less than five voters, freeholders of such town. All their proceedings shall be the same as provided in this act establishing town roads. The cost and expense thereof and the damage awarded for lands taken therefor, shall be paid by the town, as in the case of town roads, and a record of such cartway

shall be filed with the town clerk; provided, that, when a road or cartway is established which will not be a continuous road from one highway to another not more than one-half of the damages to the land through which it passes may be assessed against the person or persons benefited thereby. (As amended Apr. 24, 1929, c. 336.)

Subd. 1 is amended by Laws 1929, c. 336.

That two persons who were especially accommodated by cartway signed an agreement to open and maintain the same at their own expense did not tend to show collusion on part of town board. 173M448, 217NW499.

Evidence held to show that taking of land for cartway was for a public use and town board had jurisdiction. 173M448, 217NW499.

Evidence held not to support finding that town board acted arbitrarily. 173M448, 217NW499.

A cartway established under subdivision one is a public highway and not a private road, and it matters not that the principal benefit inures to one individual. The question as to whether the cartway should be established is one of policy legislative in its nature. Adverse judgment in a prior proceeding under Subdivision 2, did not make the matter res adjudicata after passage of one year. Action of town board was not arbitrary simply because one member thereof had, prior to the hearing, acquired full knowledge as to conditions. 173M572, 218NW115.

A claim that there was no public necessity for the cartway does not go to the jurisdiction of the town board but presents a question for that board to determine. 175M395, 221NW527.

Where a petition asks for the laying out of a public highway and cartway two rods wide, the proceeding must be considered under this section. 175M395, 221NW527.

Taxpayer participating in proceedings, held estopped to assert that notices were defective. 181M192, 231NW924. See Dun. Dig. 3217.

On improvement of a cartway established under this section it is not rendered a road four rods wide by dedication under §2590. Op. Atty. Gen., May 21, 1930.

If a cartway is established, under subdivision 2, for the benefit of one person, the amount of damages must be paid by that person. Op. Atty. Gen., Mar. 10, 1931.

Subd. 2.

"Damages" does not include the expense of constructing the cartway, but merely damages which are awarded for the taking of the land involved. Op. Atty. Gen., Mar. 12, 1931.

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.

§2587. Roads on town line.

Two towns may agree to maintain jointly a bridge upon a part of the road assigned to one of them. 175M243, 221NW3.

Evidence held not to sustain a finding that an agreement was made for joint maintenance of a bridge. 175M243, 221NW3.

Where a bridge on a town line road is washed out, the question whether the two towns shall contribute to the expense of replacing the bridge depends on the agreement by which the two towns divided the road for purpose of maintenance. Op. Atty. Gen., July 3, 1930.

Where townships agree upon maintenance of a township line road, and state takes over a portion of the road maintained by one of the townships, the division must stand as it was before the taking over of the road by the state, in the absence of a new agreement between the townships, especially where the road is on a county line. Op. Atty. Gen., May 5, 1931.

§2590. Dedication by user.

Evidence held to justify finding of a public road by common-law dedication. 236NW706. See Dun. Dig. 2655(41).

This section is not applicable to the opening of a road four rods wide along the route of a cartway established by an order of the town board making it two rods wide. Op. Atty. Gen., May 21, 1930.

§2592. Alteration of road.

Order of board establishing alteration of road vacates the unused part of the old road after lapse of two years. *Nelson v. Nicollet County*, 154M358, 191NW913. See Dun. Dig. 8467.

When a permanent trunk highway is located by the Highway Commissioner the practicable road along the general location is not thereby vacated, but reverts to the control of the county or town board as the case may be. 171M369, 214NW653.

On petition for change of highway the board has a reasonable discretion in varying the route proposed in the petition and may retain a portion of the road which the petition asks to have changed. Op. Atty. Gen., Feb. 6, 1930.

§2595. Contracts for bridges and roads.

Township could not let a valid contract for work on bridge where price exceeded \$500, unless plans and specifications were on file with the town clerk when bids were called for, and there could not be a recovery, on a quantum meruit or otherwise, where there was also no bond filed on execution of the contract. 172M 259, 214NW888.

This section is applicable to the construction of county aid roads. Op. Atty. Gen., May 1, 1930.

Where a town, without advertisement for bids, and without formal contract, accepted the offer of a contractor to improve a road, the contract was illegal, but there was a contract for services within the \$500.00 limitation. Op. Atty. Gen., May 19, 1930.

Great inconvenience to the public from the collapse of a bridge will not warrant a county in dispensing with the statutory requirement of three weeks' publication and reception of bids under this section. Op. Atty. Gen., June 19, 1931.

§2600. Drainage of roads.

Towns in the improvement and maintenance of public highways are without authority substantially to change or interfere with the operation of duly established drainage systems. 174 M317, 219NW158.

§2606. Reconstruction, repair, etc., notices, tax levies, etc.

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

It is duty of town to construct and maintain approaches to a bridge constructed on a county road under this section. Op. Atty. Gen., Aug. 21, 1929.

§2607. Impassable roads—Complaint by freeholders.—Sub. 1. Whenever a complaint in writing to the county board of the county reciting that a described road in or on the line of a town therein is neglected by the town charged by law with its maintenance and repair, or that a legally established road in or on the line of the town has not been constructed or opened, when the cost of opening and constructing such legally established road shall not exceed the sum of \$1000.00 per mile, and that by reason of such neglect such road is not reasonably passable, and which said complaint is signed by five or more freeholders of said town or of an adjoining town in said county, the county board shall by resolution fix a time and place when and where it will consider the complaint, and thereupon the county auditor shall mail a copy of the complaint, together with a notice of the time and place when and where the county board will meet to consider the com-

plaint, to the town clerk of the town, and shall also notify the persons signing the complaint of the time and place of such meeting. At the designated time and place the county board shall consider such complaint and hear and consider such testimony as may be offered by the officers of the town, or the persons filing the complaint, relative to the truth of the matters therein set forth. The chairman of the board or the presiding officer thereof may administer oaths to witnesses and require them to testify under oath. (Amended Act Feb. 19, 1929, c. 24, §1, which is further amended by Act Mar. 6, 1931, c. 40.) * * *

Subd. 1 of this section is amended by Laws 1929, c. 24, which in turn is amended by Laws 1931, c. 40.

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.

§2608. Seeding along highways.

One not injured by obstruction in a manner different from injury to general public cannot sue. 229NW583.

§2609. Hedges and trees.—Sub. (1) The town boards of supervisors, as to town and county roads, outside the corporate limits of cities and villages, the county boards as to state aid and county aid roads, and the commissioner of highways as to trunk highways, are hereby given the right and power to determine upon the necessity and order the cutting down of hedges and trees within the road limits after having given ten days' written notice to the owner or owners of the abutting land, and an opportunity to be heard. Provided, that trees, other than willow trees shall not be so cut down unless such trees, or hedges, or either of them, interfere with keeping the surface of the road in good order, or cause the snow to drift onto or accumulate upon said road in quantities that materially obstruct travel. The said boards and commissioner, respectively, shall also have power to properly mark or light dangerous places on the public highways, and take such measures as may be necessary to protect travel thereon. (As amended Apr. 24, 1929, c. 329; Apr. 13, 1931, c. 153.)

Sub. (2) When the respective board or the commissioner of highways shall determine that such cutting down of hedges or trees within the limits of such roads is necessary, or that same would aid materially in keeping such roads in repair or free from snow, it shall notify the owner or owners of the abutting lands by written notice of such decision, and order the trees or hedges cut down within thirty days after such notice. If the said owner or owners fail or refuse to comply with such notice and order within the time specified, the said board or commissioner of highways shall have the power to cause such trees or hedges to be cut down. The timber and wood of such trees shall belong to the said owner or owners of the abutting land; provided, they pay the expense of cutting down said trees or hedges and remove the same from the roadside within said

thirty days. If such timber or wood is not removed within said time, the board or commissioner of highways, as the case may be, shall have the power to sell or dispose of the same or destroy it if it cannot be sold, and if sold, shall pay the proceeds thereof to the owner or owners of the abutting lands after deducting the costs of such cutting and sale.

Sub. (3) The town boards of supervisors and the county boards are hereby granted the further right and power to appropriate and pay out of their respective road and bridge fund, or from any other fund available, the cost of cutting down such trees and hedges and the removal or destruction of the same, if done at public expense, and the cost of marking or lighting dangerous places on said highways.

Sub. (4) Any person aggrieved by any determination or order of a town board of supervisors ordering or refusing to order the cutting down or removal of such hedges or trees may appeal therefrom within thirty days after the filing of such order or determination to the district court of the county, by filing with the clerk of such court a bond in the sum of not less than two hundred and fifty dollars (\$250.00), approved by the judge or by the court commissioner or auditor of such county, conditioned to pay all costs arising from such appeal in case the determination or order is sustained, and by service upon the chairman of the town board of a notice of appeal stating briefly the grounds of appeal and signed by the party appealing or his attorney and filing same with proof of service with the clerk of court of said county. Such appeal shall be entered upon the calendar for trial at the next general term of the court occurring more than twenty days after the appeal is perfected. Such appeal and matter shall be tried de novo in such court and either party shall be entitled to a jury trial upon demand. (As amended Apr. 24, 1929, c. 329; Apr. 13, 1931, c. 153.)

Discretion of town board declaring necessity for cutting down hedges and trees, cannot be controlled by mandamus. 177M372, 225NW296.

Following Powell v. Township of Carlos, 177 M372, 225NW296, and construing c. 329, Laws 1929, it is held that a court may not control the exercise of the discretion of the town board in determining what hedges and trees should be cut down within the road limits of a township highway. Wagner v. T., 235NW27. See Dun. Dig. 8455.

County board is without power to order removal of trees and hedges from judicial highways, such power resting in town board. Op. Atty. Gen., Feb. 11, 1929.

But of course county in constructing highway may remove obstructions that interfere. Op. Atty. Gen., Feb. 28, 1929.

Moorhead city ordinance respecting trees and grass plots along the public streets, and the cutting of weeds and grass, held faulty as to compelling a man to cut grass on a street or alley. Op. Atty. Gen., Apr. 10, 1931.

This section applies only to the removal of trees from the right of way of an existing road, and has no application to the establishment of town roads under section 2583; and town board in the latter case may remove the trees, giving the timber to the abutting owner without making any charge for the cutting. Op. Atty. Gen., June 18, 1931.

§2610. Tunnels under roads.—Every owner of land on both sides of a public road

may tunnel under such road to permit stock to pass from one side to the other, but he shall, at his own expense, construct such tunnel so as not to endanger the public in the use of the such road. Before constructing such tunnel, the land owner shall obtain from the town board of the town in which it is located, if the road is a town road, or from the county board of the county in which it is located, if the road is a county or state aid or county aid road, or from the commission of highways, if the road is a trunk highway, an approval of the place, the kind of tunnel, and the manner of its construction. Bridges over tunnels shall be not less than sixteen feet wide, properly protected with railings, and constructed of such materials as shall be agreed upon by the respective board or commissioner of highways, as the case may be, and if, within one year after the construction of such bridge, the board or commissioner of highways, as the case may be, shall deem it or its appurtenances insecure, it may cause the same to be put in the proper condition at the expense of its owner, and, whenever said board or commissioner of highways shall deem the tunnel out of repair, it may cause the necessary repairs to be made at the expense of such owner. In either case the reasonable cost of such repairs shall be certified to the county auditor and by him assessed upon the land in the same manner as the road taxes. Provided, that when any such public road is not on a section or sectional subdivision line, the owner of the lands on both sides of such road shall be permitted to construct an appropriate tunnel to be approved as aforesaid, which tunnel the owner shall maintain at his own expense for the first year and which shall be thereafter maintained by the town, county, or state, as the case may be. Provided further that whenever the board of county commissioners of any county, as to any county state aid or county aid road therein, or the town board of any town, as to any town road therein, shall determine that the construction of such a tunnel is necessary for the safety and welfare of the public, such board may cause such tunnel to be constructed and maintained at the expense of the county or town, as the case may be, or may contract with the abutting land owners for the equitable division of the cost of construction and maintenance thereof between such land owners and the county or town. (As amended Apr. 13, 1931, c. 147, §1.)

Under street. 179M495, 229NW794.

County cannot expend public funds to construct a cattle pass under a highway for owner of lands on both sides of highway. Op. Atty. Gen., May 28, 1929.

§2612. Town and county boards to construct culverts.

This section is not applicable to a highway constructed along the banks of an established drain, and the town is not required to construct bridges over the drain to give access to the highway. Op. Atty. Gen., July 19, 1930.

§2613. Condemnation of gravel beds.

A purchase of a quarter section of land in separate twenty acre tracts for use by the county to supply gravel would violate this section. Op. Atty. Gen., April 25, 1931.

§2615. Obstruction of or damage to highways.

The construction and maintenance of a logging railroad across a highway under Mason's Minn. Stat., 1927, §2558-1 etc., is not an unlawful obstruction under this section. 174M305, 219NW172.

In action to recover damages by one stumbling or tripping on door mat lying on sidewalk in front of defendant's property, it was proper to receive in evidence ordinances of the city making it unlawful to obstruct or incumber sidewalks. *McCartney v. St. Paul*, 181M555, 233NW465. See Dun. Dig. 6845, 6976.

In action for injuries in tripping over door mat in front of defendant's property, jury had right to draw from the evidence the inference that the mat was either but there by defendant or that he permitted it to remain there, though there was no direct evidence. *McCartney v. St. Paul*, 181M555, 233NW465. See Dun. Dig. 3447, 6845, 7042.

In action for injuries to motorist, colliding with unguarded concrete mixer placed in road to guard a partially newly constructed culvert, evidence held sufficient to sustain finding of negligence of defendant. *Wicker v. N.*, 235NW 630. See Dun. Dig. 4179(92).

§2616. Moving buildings over roads.

Power company held not liable for injury to employee who climbed to the top of a road-building machine and came in contact with a power wire. 178M604, 228NW332.

§2619. Repeal.

Laws 1913, c. 235, §91, and Laws 1921, c. 323, repealed Laws 1913, c. 75. Op. Atty. Gen., June 18, 1931.

§2620-1. Certain counties to improve roads outside of county.—That in any county of this state now or hereafter having a total assessed valuation of all its taxable property as fixed by the State Tax Commission of more than \$220,000,000, and less than \$375,000,000 exclusive of moneys and credits, and an area of less than 5,000 square miles, the board of county commissioners shall have authority to appropriate and expend upon any road, highway or bridge located upon or immediately adjacent to the boundary line between any city of the first class and any other city or village within such county, such sum or sums of money from the county road and bridge fund as said board shall deem proper for building, repairing or otherwise improving any road or highway, including the construction and repairing of any bridge thereon. (As amended Apr. 15, 1929, c. 189, §2.)

Sec. 1 of Act Apr. 15, 1929, c. 189, amends the title to Chapter 255, General Laws 1925 to read as follows: "An act authorizing the board of county commissioners of counties of this state having a total assessed valuation of more than \$220,000,000, and less than \$375,000,000, exclusive of money and credits, and the area of less than 5,000 square miles, to appropriate and expend money from the county road and bridge fund upon any road, highway or bridge located upon or immediately adjacent to the boundary line between any city of the first class and any other city or village within such county, and to acquire by purchase or condemnation right-of-way therefor."

§2620-2. Same—Appropriations by county boards.—In the event said board of county commissioners shall determine to grade, pave or otherwise improve any road or highway, or construct or repair any bridge upon or immediately adjacent to the boundary line between any city of the first class and any other city or village within such

county, and it shall be deemed that such improvement of such road, highway or bridge can be more economically and better done by having the work of such improvement done by any such city of the first class such board of county commissioners is hereby authorized to appropriate and pay to any such city of the first class such amount of money as it shall deem necessary to be expended by the county for such purpose in such city or in the city or village adjoining; provided that if any such road, highway or bridge so improved is upon a boundary line between any city or village and a city of the first class operating under a home rule charter within such county, and such road, highway or bridge is partly within such city of the first class, the amount so appropriated by said county shall not exceed one-half the cost of any such improvement as estimated by the county highway engineer of any such county. (As amended Apr. 15, 1929, c. 189, §2.)

§2620-3. Same—Appropriations in special fund.—Said amount so appropriated and paid to any such city of the first class shall be set apart in a fund for the improvement of any such road, highway or bridge, or may be paid to any fund raised or to be raised under any proceeding authorized by the charter of any such city for improvement of any such road, highway or bridge, and shall be expended from such fund in the same manner as other funds therein. (As amended Apr. 15, 1929, c. 189, §3.)

§2620-4. Same—Appropriations not invalid.—Such appropriation shall not be declared invalid because the same shall be more or less than one-half the total cost of such improvement as finally determined. (As amended Apr. 15, 1929, c. 189, §4.)

§2620-4½. Acquisition of right of way.—Any county board coming within the provisions of this act shall have authority in the name of the county to purchase or condemn lands for the right-of-way of such road, highway or bridge under the provisions of Chapter 41, General Statutes 1923. (Act Apr. 15, 1929, c. 189, §5.)

§2620-5. Funding and payment of outstanding indebtedness.

Act (2620-5 to 2620-13) does not violate Const. Art. 4, §§33, 34, being remedial in character and intended to provide temporary relief for an unusual condition. 17M312, 213NW914.

§2620-9. County board to determine amount necessary.—Such county board shall annually, at its meeting on the second Monday in July, 1927, and at its meeting on the first Monday in January in each succeeding year, determine the amount of funds which will be available during the current year for road and bridge purposes, from the proceeds of the tax levy lawfully made therefor in the preceding year and from state aid and from other sources known to be due and payable into the county treasury for such purposes during such year, and shall thereupon, at such meeting, make and spread on its minutes a definite budget of the expenditures made and to be made and indebtedness incurred and to be incurred for road and bridge

purposes during such year, which expenditures and indebtedness shall in no case exceed the aggregate amount of revenues so determined to be available for such year, providing, however, that in counties having an area of 2500 square miles and an assessed valuation of more than \$10,000,000.00 and less than \$30,000,000.00, exclusive of moneys and credits when any item of new road machinery, which will be available over a period of years, is purchased on bids, costing \$4,000 and less than \$6,000, that the payment thereof may, by the issuance of two warrants, be spread over a period of two years, one half of the aggregate amount as represented by one warrant to be charged to and paid out of the funds determined and available in the year such item is purchased and the balance as represented by the second warrant to be charged to and paid out of the funds determined and available for the following year, and provided further that if the cost of the such item of road machinery is in excess of \$6,000, that the payment thereof may, by the issuance of three warrants, be spread over a period of three years, one third of the aggregate amount, as represented by one warrant, to be paid out of the funds determined and available for the year in which said item is purchased, one third of said aggregate amount as represented by the second warrant to be paid out of and charged to the funds available and determined for the following year and the balance of one third of the aggregate, as represented by the third warrant, to be paid out of and charged to the funds determined available for the second year following the date of such purchase; provided, further that the total cost of all road machinery purchased under this act shall not exceed the sum of \$75,000, and that no warrants not payable in the year of their issue shall be issued subsequent to January 1, 1933. Such budget shall first allot, and there shall be first payable out of the receipts for such year, so much of the road and bridge floating indebtedness of the county, including amounts borrowed from any other fund or funds, as is not retired by the bond issue hereinbefore authorized, together with interest thereon. There shall then be allotted not less than one-fifth of the anticipated current tax collections annually for maintenance and not less than one-twenty-fifth of the anticipated current tax collections annually for an emergency fund, and what remains may be allotted to be expended on new construction for the year, which allotment shall include the payment of any amount remaining to be paid on outstanding construction contracts, completed or uncompleted. As nearly as may be, a specific program of new construction shall then be determined upon the amount to be expended on each item determined and allotted; and no change in such program shall be made, nor additional expenditures made or indebtedness incurred, which shall cause to be diverted to other purposes any part of the amount herein required to be allotted for payment of outstanding indebtedness, and for maintenance and emergency funds, nor which shall cause the expenditures made or indebtedness incurred by the county for all the purposes aforesaid in any year to exceed the total revenues of the county determined, as

aforesaid, to be available for such year. The emergency fund may be used to pay for extraordinary repairs or replacements occasioned by emergency which could not be anticipated when the budget was made. (As amended Apr. 25, 1931, c. 337, §1.)

§2620-16. Same—Pending actions not affected.

LOCAL AND SPECIAL ACTS

Laws 1929, c. 145, vacates road established by Sp. Laws 1879, c. 247.

Counties containing first class city in which is located more than 96% of taxable property according to assessed valuation authorized to expend from road and bridge fund money for installation of stop and go signs on city streets. Laws 1929, c. 284.

Safety isles on University Avenue in St. Paul constitute an integral part of the street itself, and the county may lawfully expend funds to assist in rearranging and remodeling them. Op. Atty. Gen., Feb. 26, 1931.

1931 c. 41, authorizes county board in counties having over 200,000 inhabitants, and area of over 5,000 square miles, to adjust claims for injuries.

Laws 1931, c. 59, authorizes counties with population of not less than 28,000, and not more than 28,500, to build and rebuild bridges costing less than \$300 on certain roads. The act is repealed and re-enacted by Laws 1931, c. 87, and made to apply to bridges costing "more than \$300."

Laws 1931, c. 297, authorizes counties having assessed valuation of over \$350,000,000 and bonded indebtedness of not over \$6,000,000 to improve roads and bridges to establish connection between trunk highways which are more than ten miles apart.

GENERAL PROVISIONS APPLICABLE TO ALL ROADS

§2641-17. Same—tax levy.

Laws 1929, c. 116, authorizes counties with bonded debt of not to exceed \$7,500,000, and assessed valuation of not less than \$200,000,000, 96% of which is in cities, to issue bonds or certificates of indebtedness not exceeding \$6,000,000, for roads, streets, bridges and parkways.

The evidence supports the finding that money paid to the city of St. Paul by Ramsey County was an advancement, and not an outright payment of part of the cost of a street improvement. Assessment of Benefits, Etc., 233NW861. See Dun. Dig. 2242(27).

§2652. Counties to be reimbursed, etc.

Laws 1929, c. 412, authorizes issue of bonds by the state to take up maturing county bonds during the years 1930, 1931, 1932.

Act authorizing issuance and sale of trunk highway bonds under art. 16, §4 of the constitution. Laws 1931, c. 113.

Act relating to reimbursement of counties for moneys expended by them subsequent to Sept. 1, 1924, in permanently improving trunk highways. Laws 1931, c. 168.

§2660-1. Reimbursement of counties by state, etc.

Similar acts were passed at the 46th and 47th sessions. See Laws 1929, c. 122 and Laws 1931, c. 67.

§2660-2. Same—purpose of and restrictions on reimbursement.

Counties may not be reimbursed for the cost of acquiring rights-of-way, except where additional land is acquired as incidental and essential to the particular permanent improvement for which reimbursement is claimed. Op. Atty. Gen., June 11, 1931.

§2662-1. Trunk Highway No. 72 established.—There is hereby added to the trunk highway system and created and established

an additional route, to be known as Route No. 72, which shall begin at a point on Route No. 4 northeasterly of Bemidji and extend thence in a northerly direction to a point on Route No. 11 easterly of Beaudette, affording Bemidji, Waskish, Beaudette, and intervening and adjacent communities, a reasonable means of communication each with the other and other places within the state. (As amended Mar. 26, 1929, c. 86.)

§2662-3. The Capitol Highway established.

—The following route between the City of St. Paul and the south boundary of the State of Minnesota is hereby named and designated "The Capitol Highway," to-wit:

Beginning at the intersection of University Avenue, and Highway No. 62, in Anoka County, thence southerly along University Avenue through Minneapolis, and thence southerly along University Avenue and Robert Street through St. Paul, thence southerly along South Robert Street through West St. Paul to a point at or near the northeast quarter-corner of Section 19, Township 27, Range 22, thence southeasterly and southerly to a point at or near the southeast corner of Section 35, Township 113, Range 19, thence southerly, traversing in part the line between Rice and Goodhue Counties, to Trunk Highway No. 21, thence southeasterly on said Highway to Trunk Highway No. 56, thence southerly on Trunk Highway No. 56 through Dodge Center to Trunk Highway No. 9, thence east on Trunk Highway No. 9 to the northeast corner of Section 2, Township 102, Range 17; thence in a southeasterly direction along Mower County State Aid Road "A" to a point on the Iowa State line at or near the center of Section 34, Township 101, Range 14. (As amended Apr. 9, 1931, c. 126, §1).

LOCAL AND TEMPORARY ACTS

Act 1915, c. 44, as amended by Laws 1919, c. 528, mentioned in note is set forth herein as §§2565-4 to 2565-8.

Laws 1909, c. 435 (G. S. 1913, §2594) is no longer in force. Op. Atty. Gen., Nov. 5, 1930.

Laws 1931, c. 111, limits scope of Laws 1915, c. 44, as amended by Laws 1919, c. 528.

Laws 1931, c. 113, authorizes issuance of state bonds to amount of \$10,000,000 in 1931, and a like amount in 1932.

Laws 1923, c. 129, §1, relating to roads to meandered lakes, was amended by Laws 1929, c. 142.

MOTOR VEHICLES

§2672. Definitions.—Wherever in this act the following terms are used they shall be construed to have the meaning herein ascribed to them:

"Application for Registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.

Trucks used for transporting things other than passengers shall be classified and taxed as follows:

Class T shall include all trucks used for transporting agricultural, horticultural, dairy, and other farm products from the place of production to the point of shipment, sale or consumption, and shall pay a tax of 2.4% on the base value. Trucks registered in this

class may be employed in hauling from the place of delivery of the products specified herein a return load of supplies required for use or consumption on the farm of the owner of the truck.

Class Y shall include all trucks, trailers and semi-trailers used in the business of transporting goods for compensation as common carriers over any public highway in this state between fixed termini or over a regular route, and shall pay a tax of 10% on the base value.

Class X shall include all trucks, trailers, or semi-trailers not included under Class T or Class Y, and shall pay a tax of 3.4% of the base value.

"Commercial Passenger Transportation" shall mean the carriage of passengers for hire between points not wholly within the limits of the same city, village or borough, or of two or more contiguous cities, provided that local bus lines carrying passengers from a railroad station from or to places in the vicinity thereof shall not be construed to be engaged in commercial passenger transportation.

"Highway." Any public thoroughfare for vehicles, including streets in cities, villages and boroughs.

"Motor Vehicles." Any self-propelled vehicle not operated exclusively upon railroad tracks, and any vehicle propelled or drawn by a self-propelled vehicle.

"Owner." Any person, firm, association or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period greater than 30 days.

"Tractor." Any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently.

"Trailer." Any vehicle designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.

"Semi-trailer." A vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight or that of its load rests upon and is carried by the towing vehicle.

"Truck." Any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform, rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passenger.

"Registrar." The registrar of motor vehicles designed in this act.

"Sworn Statement." Any statement required by or made pursuant to the provisions of this act, made under oath administered by an officer authorized to administer oaths.

"Dealer." Any person, firm or corporation regularly engaged in the business of manufacturing, or selling, purchasing and generally dealing in new and unused motor vehicles having an established place of business for the sale, trade and display of new and

unused motor vehicles and having in its, his or their possession new and unused motor vehicles for the purpose of sale or trade. (As amended by Laws 1929, c. 432, which is amended Apr. 20, 1931, c. 217, §1.)

283US57, 51SCR354, aff'g 180M241, 230NW572.

The tax imposed hereunder is a lieu tax, and is a property tax including an inseparable element of privilege tax. 173M72, 216NW542.

Refund of motor vehicle registration tax paid. 173M98, 216NW541.

This act is valid as applied to soldier stationed on federal military reservation and who owns and drives an automobile for his own purposes on the highways of the state outside the reservation. 180M241, 230NW572.

§2673. Exemptions.—Vehicles owned and used solely in the transaction of official business by representatives of foreign powers, by the federal government, the State or any political sub-division thereof, shall be exempt from the provisions of this act requiring payment of tax or registration fees, but all such vehicles except those owned by the Federal Government, municipal fire apparatus, police patrols and ambulances, the general appearance of which is unmistakable, shall be registered as herein required and shall display number plates furnished by the registrar at cost; but the exemption herein provided shall not apply to any vehicle unless the name of the State Department or the political sub-division owning such vehicle shall be plainly printed on both sides thereof. Tractors used solely for agricultural purposes, for drawing threshing machinery or for road work other than hauling material, implements of husbandry temporarily moved upon the highway, road rollers and small trailers of less than 1,000 pounds capacity used only with pleasure vehicles on occasional trips shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this act. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines, feed grinders and corn shellers temporarily attached to them, shall be subject to the registration tax as herein provided, but the machine so attached shall not be subject to this tax but shall be listed for taxation as personal property as provided by law. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines or corn shellers permanently attached to them shall not be subject to the registration tax as herein provided, but shall be listed for taxation as personal property as provided by law. (As amended Mar. 6, 1931, c. 39, §1.)

Sec. 2 of Laws 1931, c. 39, makes act effective on its passage.

283US57, 51SCR354, aff'g 180M241, 230NW572.

Automobile owned by soldier stationed at Fort Snelling and used for his own purposes on the highways of the state outside the reservation, held subject to tax. 180M241, 230NW572.

§2673-2. Taxation of motor vehicles.—Motor vehicles using the public highways of this state and owned by companies whose property in this state is taxed on the basis of gross earnings shall be registered and taxed as provided for the registration and taxation of motor vehicles by Laws 1921, Chapter 461 [Mason's Minn. St., 1927, §§2672 to 2699],

as now or hereafter amended. (Act Apr. 24, 1929, c. 361, §1.)

Laws 1929, c. 361, impliedly amending Mason's Minn. Stat. §2268, and excluding from the gross earnings tax the license tax on vehicles used on the highways, is unconstitutional. 180M268, 230NW815.

§2673-3. Gross earnings tax not to apply.—The tax on basis of gross earnings paid by any such company shall be in lieu of all other taxes upon its property as now provided by law, except motor vehicles using the public highways of this state. (Act Apr. 24, 1929, c. 361, §2.)

§2674. Rate of tax.—(a) Motor vehicles, except as set forth in section 2 hereof, using the public streets or highways in the State of Minnesota shall be taxed in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village as provided by law, and shall be privileged to use the public streets and highways, on the basis and at the rates for each calendar year as follows:

Motor vehicles for carrying passengers and hearses 2-4/10% of value.

Provided that the minimum tax on all passenger motor vehicles under 2,000 pounds weight except as hereinafter provided shall be \$10.00 and the minimum tax on all passenger motor vehicles 2,000 pounds and over in weight shall be \$12.50.

Trucks, trailers and semi-trailers upon the classification and in accordance with the provisions contained in section 2672, as amended by Chapter 165, Laws 1927.

Two-wheel trailers of less than 1,000 pounds capacity, used only with pleasure vehicles, and not employed in the transportation of passengers or goods for hire, shall not be subject to taxation as motor vehicles.

Tractors 2-4/10% of value.

Provided that the minimum tax on all trucks and tractors of 1 ton and under manufacturers' rated carrying or hauling capacity shall be \$15.00 except that the minimum tax on trucks converted from passenger vehicles, on which the minimum was \$12.00 or \$15.00 shall pay the same tax as would the vehicle before being converted and the minimum tax on all trucks and tractors of over 1 ton and under 2 tons manufacturers' rated carrying or hauling capacity shall be \$20.00 and the minimum tax on all trucks and tractors of 2 ton or over and under three tons manufacturers' rated carrying or hauling capacity shall be \$30.00 and the minimum tax on all trucks and tractors of 3 tons or over and under 4 tons manufacturers' rated carrying or hauling capacity shall be \$60.00 and the minimum tax on all trucks and tractors of 4 tons and over and under 5 tons manufacturers' rated carrying or hauling capacity shall be \$85.00 and the minimum tax on all trucks and tractors of 5 tons and over and under 6 tons manufacturers' rated carrying or hauling capacity shall be \$125.00 and the minimum tax on all trucks and tractors of 6 tons and over manufacturers' rated carrying or hauling capacity shall be \$150.00 and the minimum tax on trailers and semi-trailers shall

be \$2.00 for each ton or fraction thereof of such capacity.

Busses and carriers of passengers for hire engaged in commercial passenger transportation, other than taxicabs and vehicles engaged in livery business. 10% of value, provided that the minimum tax on all commercial passenger busses of over fifteen passenger seating capacity shall be three hundred fifty dollars (\$350.00), and on those of fifteen and less and over five passenger seating capacity, other than taxicabs and vehicles engaged in livery business shall be two hundred fifty dollars (\$250.00).

Motorcycles without side car. \$3.00.
Motorcycles side car additional. \$2.00.

Motor vehicles specially equipped for operation over snow and used exclusively for such purpose. \$3.00 if weighing one ton or less, and an additional \$2.00 for each additional ton or fraction thereof.

Value until the end of the first calendar year of vehicle life, construing the year of the model designation as the first year of such life shall be construed to mean the "base price for taxation" as hereinafter defined.

For the purpose of fixing a base price for taxation from which depreciation in value at a fixed percentum per annum can be computed, such price is defined as follows:

The base price for taxation of a motor vehicle of which a similar or corresponding model, as defined in section 21 of this act, was being manufactured on October 1 preceding the year for which the tax is levied, shall be the manufacturers' list price of such similar or corresponding model in effect on such October 1. The base price for taxation of a motor vehicle of which no such similar or corresponding model was manufactured until after such October 1 shall be the manufacturers' list price at the factory when the vehicle taxed was first manufactured. The base price for taxation of a motor vehicle of which no such similar or corresponding model has been manufactured since a time prior to such October 1 shall be the price fixed by the registrar as a reasonable manufacturers' list price at the factory on such October 1 if such vehicle has been then manufactured at prevailing costs.

Value during each succeeding year of vehicle life shall be construed to mean such base price for taxation, less ten per cent for the second year, less twenty per cent for the third year, less thirty per cent for the fourth year, less forty per cent for the fifth year, less fifty per cent for the sixth year, less seventy per cent for the eighth year, less eighty per cent for the ninth year, and less ninety per cent for the tenth and each subsequent year. The tax on any motor vehicle after the tenth year of its life as herein defined shall not exceed the prescribed minimum for vehicles of that class.

When a motor vehicle shall become first subject to taxation between June 30 and October 1, the tax for the remainder of the calendar year shall be one-half the tax for a whole year.

When a motor vehicle shall become first subject to taxation after September 30 and

on or before December 31, the tax for the remainder of the calendar year shall be one-fourth the tax for a whole year. (As amended by Laws 1929, c. 330, which is amended Apr. 15, 1931, c. 167.)

(b) Motor Vehicles not subject to taxation as provided in the foregoing section, but subject to taxation as personal property within the State of Minnesota, shall be assessed and valued at 33½ per cent of the true and full value thereof and to be taxed at the rate and in the manner provided by law for the taxation of ordinary personal property; provided, that, if the person against whom any tax has been levied on the ad valorem basis because of any motor vehicle shall, during the calendar year for which such tax is levied, be also taxed under the provisions of this act, then and in that event, upon proper showing, the Minnesota Tax Commission shall grant to the person against whom said ad valorem tax was levied, such reduction or abatement of assessed valuation or taxes as was occasioned by the so-called ad valorem tax imposed, and provided further that, if said ad valorem tax upon any automobile has been assessed against a dealer in new and unused motor vehicles, and the tax imposed by this act for the required period is thereafter paid by the owner, then and in that event, upon proper showing, the Minnesota Tax Commission, upon the application of said dealer, shall grant to such dealer against whom said ad valorem tax was levied such reduction or abatement of assessed valuation or taxes as was occasioned by the so-called ad valorem tax imposed. (As amended Mar. 14, 1931, c. 58.)

* * *

Citizen and resident of the state must pay motor vehicle tax therein, although he spends the major portion of the year with his car in another state. 176M183, 222NW918.

New and unused motor vehicles in hands of a dealer on May 1, which are not sold or used during the year, are not subject to the motor vehicle tax, but are taxable as personal property upon the basis of 33½ per cent of actual value. 178M300, 227NW43.

Such vehicles, when sold after May 1, become subject to the motor vehicle tax, but the dealer, by paying the motor vehicle tax thereon and adding the amount to the price, does not become entitled to a reduction of abatement of his assessed ad valorem tax under subd. (b). 178M300, 227NW43.

(f).

City of Sleepy Eye has no authority to require a license of an auto transportation company to use its streets. Op. Atty. Gen., Oct. 13, 1930.

§2674-1. Companies, etc., paying gross earnings taxes required to pay motor vehicle taxes.

This act is unconstitutional. 173M72, 216NW542.

§2675. Motor vehicles to be registered—etc.

The Motor Vehicle Registration Tax Law, held valid and applicable to vehicles owned by members of the military forces of the United States residing on the Fort Snelling military reservation and using the highways of the state for their personal business and pleasure. 283U557, 51SCR354, aff'g 180M281, 230NW572. See Dun. Dig. 4167a, 9576d.

Wife was not liable for negligence of her husband in driving a car registered in her name. Cewe v. S., 233NW805. See Dun. Dig. 5834b.

The tax must be paid in cash and a county contractor who has failed to pay the tax cannot assign to the state a portion of the compensation due him from the county. Op. Atty. Gen., July 22, 1930.

§2677. Registrar shall issue registration certificate.

The judgment in replevin for a return was right because there was no proper proof of ownership of the automobile taken from the possession of the defendant, who did not claim under the vendee in the conditional sales contract. 181M477, 233NW18. See Dun. Dig. 8652.

§2679. Registrar to register only on proof of ownership.

181M477, 233NW18; note under §2677.

§2682. Refunds.—After the tax upon any motor vehicle shall have been paid for any year, refund shall be made only for errors made in computing the tax or fees and for the error on the part of an owner who may in error have registered a motor vehicle that was not before, nor at the time of such registration, nor at any time thereafter during the current past year, subject to such tax in this state. Such refundment shall be made from any funds in possession of the registrar and shall be deducted from his monthly report to the state auditor. A detailed report of such refundment shall accompany the report. The former owner of a transferred vehicle by an assignment in writing indorsed upon his registration certificate and delivered to the registrar within the time provided herein may sell and assign to the new owner thereof the right to have the tax paid by him accredited to such new owner who duly registers such vehicle. Any owner whose vehicle shall be destroyed or permanently removed from the state, shall be entitled to deduct from any tax which shall become thereafter due during the same year from such owner upon another vehicle one-half the annual tax theretofore paid on such vehicle, if the motor vehicle is permanently destroyed or removed from the state before July 1 and one-quarter of the annual tax theretofore paid on such vehicle if it is permanently destroyed or removed from the state after June 30 but before October 1. No refund, however, shall be made if the vehicle is not permanently destroyed or removed from the state until after September 30.

If in registering a motor vehicle from the tax on which the registrant may justly claim an allowance of a tax previously paid by him in the same year upon another motor vehicle, destroyed or permanently removed from the state after such payment, the registrant shall fail to take advantage of this provision for such reduction, he shall be entitled to a cash refund in the amount of the allowance which he might have been allowed if he had applied for it at the time of the registration of such second vehicle, and the registrar may make such refund in accordance with the provisions of this section. (As amended Apr. 16, 1931, c. 174.)

Express Company paying its property tax upon the gross earning basis held entitled to refund of motor vehicle tax paid. 173M98, 216 NW541.

§2684. Passenger motor vehicles from other states.

283US57, 51SCR354, aff'g 180M241, 230NW572.

Citizen and resident of the state must pay motor vehicle tax therein, although he spends the major portion of the year with his car in another state. 176M183, 222NW918.

Does not apply to member of military force at Fort Snelling owning and operating an automobile for his own purposes on the highways of the state outside the reservation. 180M241, 230NW572.

§2684-1. Reciprocal permission to non-resident auto owners.—Any citizen of any state, District of Columbia or Canadian province, who owns and is duly licensed under the laws of his own state or country to operate a motor vehicle upon the highways thereof, may also operate such motor vehicle personally or by his authorized driver upon the streets and highways of townships, boroughs, villages, and cities in this state, subject to the following conditions and limitations:

First. Upon condition that any citizen of this state, who owns and is fully licensed under the laws of this state to operate a motor vehicle upon the highways thereof, shall also be privileged to operate such motor vehicles tax free upon the streets and highways of such state or Canadian province under conditions substantially as favorable to any such Minnesota citizens as the conditions herein specified for the operation in this state of the motor vehicle of any similarly situated citizen and resident of such state or Canadian province.

Second. Upon condition that any such motor vehicle so operated in this State by any such non-resident at all times shall carry and display all license number plates or like insignia required by the laws of the home state or country of said non-resident.

Third. Upon condition that such non-resident motor vehicle owner shall first file with the registrar of motor vehicles in this State an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such motor vehicle, and the number of cylinders of the motor engine. Said written instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the state of Minnesota shall always be subject to all the laws, ordinances, rules, and regulations applicable to like operation thereof by a citizen and resident of the state of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation, in the same number as a Minnesota citizen and resident owner and operator of a like

motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceedings, legal process and other notices or papers may be served upon the undersigned owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the undersigned owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the state of Minnesota." (As amended Apr. 20, 1931, c. 220, §1.)

The judgment in replevin for a return was right because there was no proper proof of ownership of the automobile taken from the possession of the defendant, who did not claim under the vendee in the conditional sales contract. 181M477, 233NW18. See Dun. Dig. §652.

§2684-2. Registrar of motor vehicles to issue permit.—As soon as any non-resident motor vehicle owner entitled to the privileges herein extended shall have complied with the provisions hereof the registrar of motor vehicles shall issue to him a certificate stating that he is entitled to operate such motor vehicle within this state for and during such time as he continues to own such motor vehicle with license to operate the same in his own state or country; but subject nevertheless, to suspension, revocation, or cancellation for any cause that would justify similar action with respect to any motor vehicle license or registration issued to any citizen or resident of this state. For each such certificate the registrar of motor vehicles shall charge one dollar, which shall be paid into the state treasury and credited to the general revenue fund. Within ten days from the date when any change shall have been made in the ownership, or foreign license or number plates; of any motor vehicle operating in this state under a certificate as above provided, said certificate shall be surrendered to the registrar of motor vehicles and such change shall be noted thereon, or a new certificate issued under the same conditions as the original, and a like charge of one dollar shall be collected in either case. Such certificate shall be prima facie evidence that the motor vehicle therein described may be lawfully operated in this state.

Any foreign motor vehicle operating at any time without such certificate shall be subject to seizure and the driver thereof to arrest by any law enforcing officer of this state; and upon conviction of such driver for operating in this state without license, such motor vehicle may be sold in the same manner as on execution sale for debt and the proceeds may be applied to satisfy any penalty or fine imposed and to pay any costs or expenses incurred in connection with such arrest, seizure, and sale. But this provision shall not apply to any foreign motor vehicle operated for a limited time in this state under Section 13 of Chapter 461, Laws 1921 (as amended by Chapter 418, Laws 1923, as amended by Chapter 299, Laws 1925) [§2684], or any similar provisions of law

hereafter enacted. (As amended Apr. 20, 1931, c. 220, §2.)

§2684-3. Penalties for fraudulent registration.—Any person who files any statement or written instrument hereinabove required, knowing that the same is false or fraudulent in whole or in part, shall be guilty of a felony; and such felony shall be deemed to have been committed at the time when and place where such false or fraudulent statement was filed in this state. (As amended Apr. 20, 1931, c. 220, §3.)

§2684-4. Registrar to promulgate rules.—The registrar of motor vehicles may promulgate such rules and regulations, from time to time, as may be reasonably necessary to accomplish the purpose of this Act. (As amended Apr. 20, 1931, c. 220, §4.)

§2684-5. Act to be subordinate to treaties.—The provisions of this enactment relating to motor vehicle traffic between Minnesota and Canadian provinces shall be subordinate to all the laws, treaties, agreements, and policies of the respective national governments primarily controlling said international boundary line; and all privileges extended by this Act to Canadian motor vehicle owners shall be deemed abridged accordingly, and shall not be substantially greater than the privileges available to similarly situated Minnesota motor vehicle owners operating across said international boundary line. (As amended Apr. 20, 1931, c. 220, §5.)

§2684-6. Operative in states and Canadian Provinces.—This Act shall be operative as to any state, and as to any Canadian province within the limits permitted by paramount law or authority, whenever substantially similar or equal privileges shall be there made available to Minnesota motor vehicle owners similarly situated in this state. Upon the happening of any such event, the registrar of motor vehicles of this state, at his discretion and with the approval of the attorney general, may issue a proclamation setting forth such facts for the guidance of law enforcement officers and for the information of the public. A like proclamation of opposite import may be similarly issued whenever any such state or Canadian province thereafter withdraws from, or otherwise ceases to be party to, such reciprocal arrangement. (As amended Apr. 20, 1931, c. 220, §6.)

§2684-7. Application.—This act shall not apply to a motor vehicle owned by a citizen of any state or province temporarily residing in this state while regularly employed therein under contract for a term of six months or more, nor to motor vehicles engaged in commercial transportation over regular routes and between fixed termini nor to trucks entering the state of Minnesota for the purpose of doing intra-state hauling. (As amended by Laws 1929, c. 363, §1, which is again amended Apr. 20, 1931, c. 220, §7.)

§2684-8. Service of process on non-residents.

The provision of this section as to service of process is not unconstitutional as denying due process of law, but the provision limiting the right to continuances is discriminatory against

non-residents, and is invalid but the invalidity of the latter provision does not affect the rest of the section. *Jones v. Paxton*, (DC-Minn)27 F(2d)364.

This section is constitutional, and the word "process" is construed as including a summons, and the duties imposed upon the plaintiff may be performed by those who act for him, although there must be a strict compliance with the statutes. 177M90, 224NW694.

This section is constitutional. 181M4, 231NW 714.

§2686. Manufacturers and dealers numbers.—(a) The Registrar of Motor Vehicles

is hereby authorized and empowered to issue licenses to dealers in motor vehicles as above defined. Applicants shall make application for such license, and for the renewal thereof, to said Registrar in writing, and shall submit such information as said Registrar may require, and upon blanks provided by the Registrar for such purpose. Upon proof satisfactory to the Registrar that the applicant is a dealer in motor vehicles as defined herein, said Registrar shall license such dealer for the remainder of the calendar year, and issue a certificate of license therefor as the Registrar may provide upon which shall be placed a distinguishing number of identification of such dealer. The applications for such license, and applications for the renewal thereof, shall be accompanied by the sum of \$20.00 which shall be paid into the State Treasury and credited to the General Revenue Fund. Such license, unless sooner revoked as hereinafter provided, shall be renewed by the Registrar annually upon application by the dealer and upon the making of all listings, registrations, notices and reports required by the Registrar, and upon the payment of all taxes, fees, and arrears due from such dealer.

(b) Such license may be revoked by the Registrar of Motor Vehicles upon proof satisfactory to him of either of the following:

(1) Violation of any of the provisions of Sections 2672 to 2683 inclusive, and of Sections 2685 to 2694 inclusive, Mason's Minnesota Statutes of 1927.

(2) Violation of or refusal to comply with the requests and order of the Motor Vehicle Registrar.

(3) Failure to make or provide to the Registrar all listings, notices and reports required by him.

(4) Failure to pay the Registrar all taxes, fees and arrears due from and by such dealer.

(5) Failure to duly apply for renewal of license provided for herein.

(6) Revocation of previous license, of which the records of the Registrar relating thereto shall be prima facie evidence of such previous revocation.

(7) The fact that the licensee has ceased to engage in the business of a dealer as above defined. Exception: The operation of the business of a dealer as above defined by the administrator or executor of a licensed dealer in hereby exempted from the provisions of this sub-section.

(c) The Registrar shall issue to every dealer, upon a request from such dealer licensed as provided in sub-section (a) hereof, one pair of number plates displaying a gen-

eral distinguishing number upon the payment of \$5.00 to the Registrar of Motor Vehicles. The Registrar shall also issue to such dealer such additional pairs of such number plates as said dealer may request, upon the payment by such dealer to the Registrar of the sum of \$5.00 for each additional pair. Motor vehicles, new or used, bearing such number plates owned by such dealer, may be driven upon the streets and highways of this state by such dealer, or any employee of such dealer. Motor Vehicles, new or used, owned by such dealer and bearing such number plates, may be driven upon the streets and highways for demonstration purposes by any prospective buyer thereof for a period of forty-eight hours. Any motor truck, new or used, owned by such dealer and bearing said dealer's number plates may be driven upon the streets and highways of this state, for demonstration purposes by any prospective buyer for a period of seven days. Upon the delivery of such motor vehicle or motor truck, new or used, to said prospective buyer for said demonstration purposes, said dealer shall deliver to said prospective buyer a card or certificate giving the name and address of said dealer, the name and address of such prospective buyer, and the date and hour of such delivery. Such card or certificate shall be in such form as the Registrar may provide to the dealer for such purpose, and shall be carried by such prospective buyer while driving said motor vehicle or motor truck.

(d) Every licensed dealer in motor vehicles, as above defined, may make application upon a blank provided by the Registrar for that purpose for a general distinguishing number for use upon all new motor vehicles being transported from the dealer's source of supply, or other place of storage, to his place of business, or to another place of storage, or from one dealer to another. A general distinguishing number shall be assigned by the Registrar to such dealer for such purpose, and the registrar shall then issue to said dealer such number of pairs of such plates as the dealer may request, upon the payment by said dealer to said Registrar of the sum of \$2.00 per pair. Such plates shall be known as "in transit" plates. The Registrar may issue such "in transit" plates, upon the payment of the sum of \$2.00 to said Registrar, to dealers duly licensed in States or Provinces bordering upon the State of Minnesota upon information furnished him in such manner as he may prescribe, and which satisfies him that persons or companies applying therefor are duly licensed dealers under the laws of such States or Province.

(e) Procedure for Revocation. The Registrar of Motor Vehicles, upon his own motion or upon the complaint of another, shall prepare and cause to be served upon the dealer complained of, a written notice or complaint setting forth, in substance, the dealer to appear at the time and place fixed therein before said Registrar or authorized deputy, and show cause why his license should not be revoked.

The Registrar shall, at the time and place fixed in said notice proceed to hear and determine the matter on its merits. If the said Registrar shall find the existence of any of

the causes for revocation as set forth in Section (b) above, and shall determine that said dealer's license should be revoked, he shall make a written order to that effect, and a copy of such order shall be served upon such dealer in the manner provided by law for the service of summons in a civil action. Upon such revocation, such dealer shall immediately return to the Registrar all number plates, including "in transit" plates, in his possession.

(f) Procedure for Appeal. Any party or person aggrieved by such order of revocation may appeal therefrom to any District Court of the state within fifteen days after the service of a copy of such order upon the dealer complained of by the service of a written notice of appeal upon said Registrar. The person serving such notice of appeal shall, within five days after the service thereof, file the same, with proof of service thereof, with the Clerk of the Court to which such appeal is taken, and thereupon said District Court shall have jurisdiction over said appeal and the same shall be entered upon the records of said District Court and shall be tried therein according to the rules relating to the trial of civil actions insofar as the same are applicable. The complainant before the Registrar, if there was one, otherwise the Registrar of Motor Vehicles, shall be designated as the "Complainant," and the dealer complained of shall be designated as the "Defendant." No further pleadings than those filed before the Registrar shall be necessary. The findings of fact of the Registrar shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said Court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable it shall be vacated and set aside. Such appeal shall not stay or supersede the order appealed from unless the Court, upon an examination of said order and the return made on said appeal, and after giving the defendant notice and opportunity to be heard, shall so direct. When no appeal is taken from such order, the parties affected thereby shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall thereafter be no trial of the merits or re-examination of the facts by any district court to which application may be made from a writ to enforce the same.

(g) Any party to an appeal or other proceeding in the District Court under the provisions of this Act may appeal from the final judgment, or from any final order therein, to the Supreme Court in the same cases and manner as in civil action. (As amended Apr. 20, 1931, c. 217, §2.)

§2686-1. Inconsistent acts repealed.—All acts, or parts of acts, inconsistent herewith, are hereby repealed, except it is expressly understood Section 2695, Mason's Statutes of 1927, providing for penalties for violation of the Motor Vehicle Registration law shall also apply to Sections 2672 and 2686, Ma-

son's Statutes of 1927 as hereby amended. (Act Apr. 20, 1931, c. 217, §3.)

§2686-2. Provisions separable.—The various provisions of this Act shall be severable and if any part or provision shall be held to be invalid, it shall not be held to invalidate any other part or provision hereof. (Act Apr. 20, 1931, c. 217, §4.)

§2686-3. Effective January 1, 1932.—This act shall take effect and be in force from and after January 1st, 1932, except the provisions of sub-section (d) of Section 2 relating to "in transit" plates which shall be in force and effect from and after its passage. (Act Apr. 20, 1931, c. 217, §5.)

§2689. Transfer of ownership—Procedure—Fees—Penalties for non-registration.—Every owner or transferor of a motor vehicle who fails or delays for more than seven days to surrender the registration certificate and existing number plates as herein provided, before he shall be entitled to sell and assign his right to have the tax paid by him credited to the transferee as herein provided, shall pay to the registrar a fee of 25 cents for each day (not exceeding four days), of such delay, and if such delay shall continue for 30 days thereafter, then one dollar per month for each month or fraction thereof (not exceeding four months), of such delay; and every owner or person charged with the duty to register a motor vehicle or pay any tax hereunder who fails or delays for more than seven days to register the same or pay such taxes as herein provided shall, before he shall be entitled to complete his registration as herein provided, pay to the registrar, a like fee. A filing with, or delivery to, the registrar of any application, notice, certificate or plates as required by this act shall be construed to be within the requirements of this act if made to the registrar or his deputy at an office maintained therefor, or if deposited in the mail or with a carrier by express with postage or carriage charges prepaid, and properly addressed to the registrar within seven days after the transfer of ownership or other occurrence upon which this act provides for such filing or delivery. (As amended by Laws 1929, c. 330, §2, which is amended Feb. 17, 1931, c. 17, §1.)

Sec. 2 of Act Feb. 17, 1931, c. 17, provides that the act shall take effect from and after its passage.

§2691. Registrar to file statement of delinquents with clerk of court.—As soon as practicable after the first day of April in each year, the registrar shall prepare a list containing the names of owners of motor vehicles previously registered and upon which the tax for the current year has not been paid and concerning which there is not satisfactory report explaining such nonpayment, and demand payment from each by letter. When deemed necessary, and for the purpose of obtaining more complete information concerning the probable success of enforcement proceedings as to those who do not respond to such notice, the registrar may assign to one or more employees in the motor vehicle department the duty of personal investigation in such counties in which the information at

hand, is not sufficient to enable him to determine whether payment of the tax due from any owner named in the list can be enforced, and the reasonable traveling expenses of these investigators shall be paid as department maintenance.

The preliminary investigation and reports herein prescribed are intended to enable the registrar to exclude from the delinquent list to be prepared and presented in accordance with the next succeeding paragraph the names of owners who cannot be found or whose vehicles are stolen, destroyed by the elements, or dismantled before the first day of the current year and to include therein only the names of delinquents from whom payment can probably be enforced.

Failure to comply with any of these provisions shall not affect the validity of the tax or the means of enforcement, nor shall the tax on any vehicle omitted from the delinquent list according to the provisions of this section be waived or the enforcement thereof impaired if at a later date application is made for re-registration and it is discovered that taxes are due in arrears.

The registrar on the second Monday in July next after any tax herein provided for shall become delinquent and on or before the tenth secular day of each subsequent month of the year shall certify to and file with the clerk of the district court of the proper county, a statement of delinquent taxes imposed under the provisions of this act, and not excluded therefrom as uncollectible, and such certified statement so filed shall be prima facie evidence of the correctness of the tax or taxes therein stated to be delinquent. Immediately upon receipt of this list the clerk shall mail written notice to each owner whose name appears therein, in form to be prescribed by the registrar, stating in substance that the list has been filed and that, as indicated thereon, there is imposed against him a tax in the amount stated due from such addressed owner and demanding immediate payment thereof. On or before the tenth secular day next after the filing of this list, any owner whose name is included in such certified statement may file with the clerk of said court an answer verified as pleadings in civil actions, setting forth his defense or objections to the tax or penalty against him.

The notice herein required to be mailed by the clerk to the respective owners is intended as an aid to securing payment of the motor vehicle tax and failure to send such notice or the failure of the registered owner to receive it shall not affect the tax or impair proceedings for its enforcement. On the reverse side of the clerk's notice shall be a blank form of answer which the owner may make and return to the clerk stating any defense he may have to proceedings for the enforcement of the payment of the tax indicated therein, but if this blank form does not fully provide for the conditions of any particular case the answer need not follow the form, but shall clearly refer to the tax or penalty intended to be contested, and shall set forth in concise language the facts constituting the defense or objection of the owner to such tax or penalty.

The clerk shall submit to the county attorney the answers received with such particular information affecting each case as he shall have received in response to his notice or otherwise, and the county attorney therefrom and from such other information as the clerk shall submit therewith, and from such information as he may otherwise obtain, shall report in writing by mail to the registrar the names of owners on the delinquent list filed with the clerk from whom, in his judgment, payment of the indicated motor vehicle tax cannot be collected. Upon receipt of such report the registrar may strike from the delinquent list the names of all persons against whom, in his judgment based upon the information he has at hand, payment of the indicated tax cannot be enforced, and shall report such eliminated names to the clerk, who shall also strike them from the delinquent list on file in his office and dismiss the proceedings against the owner whose name is thus eliminated. In all other cases the issues raised by such answer shall stand for trial at any term of the court in such county in session when the time to file answer shall expire, or at the next general or special term appointed to be held in such county; and, if no such term be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxpayer resides shall prosecute the same. At the term at which such proceedings come on for trial they shall take precedence over all other business before the court. The court shall without delay and summarily hear and determine the objections or defense made by the answers and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs.

The sheriff, clerk of court, and county attorney shall confer concerning the items on the list where no answer has been made and if in their best judgment the owners can be found then upon the fifteenth secular day next after the filing of such certified statement, the said clerk shall issue his warrants to the sheriff of the county as to all taxes and penalties embraced in the certified statement, except those to which answer has been filed, directing him to proceed to collect the same. If such taxes are not paid upon demand, the sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, with a penalty of ten per cent and all accruing costs, together with twenty-five cents from each delinquent taxpayer as compensation to said clerk. Immediately after making distress the sheriff shall give at least ten days' posted notice in the town or district where the property is taken, stating that the property, or so much thereof as will be sufficient to pay the taxes for which it is distrained, with penalties, and the costs of distress and sale, will be sold at public vendue at a place and time therein designated, which time shall not be less than ten days after such taking. If such taxes

and penalties and accrued costs are not paid before the day designated, the sheriff or his deputy shall proceed to sell the property pursuant to the notice.

If the sheriff is unable, for want of goods and chattels whereon to levy to collect by distress or otherwise the taxes or any part thereof assessed under the provisions of this act, he shall file with the clerk of the court within sixty days following the receipts of such warrants a list of such delinquent taxes, with an affidavit of himself, or the deputy sheriff entrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels from which to collect such taxes and is unable to collect the same. He shall note in the margin of such list the place to which any delinquent taxpayer may have removed, with the date of his removal, if he is able to ascertain the fact. At the time of the filing such list he shall also return all the warrants with endorsements thereon showing his doings in the premises, and the clerk shall file and preserve the same. On the receipt of such warrants from the sheriff, the clerk shall confer again with the sheriff and county attorney as to the collectibility of the items that are still not clearly uncollectable. They shall then add their recommendations to the report by the sheriff of his findings and the clerk shall transmit their report thereon to the registrar, who shall by comparison of such list with the records in his office ascertain whether or not all motor vehicles taxes reported by him to the clerks as delinquent, except those included in such list, have been paid into the office of the registrar.

The registrar may then strike from the list as uncollectible all those items concerning which he agrees with the recommendations of the county attorney, sheriff, and clerk of court.

As to all delinquent motor vehicle taxes not collected by distress and sale as herein provided, and for which the registrar is of the opinion that the state can and should proceed to judgment, the registrar shall promptly file with the clerk of the district court of the proper county a revised certified statement showing the names of the owners to be delinquent and the amount of tax and penalties owed by each. Within ten days thereafter the clerk shall issue a citation to each delinquent named in the revised list, stating the amount of the tax and penalties requiring such delinquent to appear on the first day of the next general or special term of the district court in the county, appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay such tax and penalty. The citation shall be delivered for service to the sheriff of the county where such person may reside or be. If such person after service of citation, fails to pay such tax, penalty and costs to the sheriff before the first day of the term, as aforesaid, or on said day to show cause as aforesaid, the court shall direct judgment against him for the amount of such tax, penalty and costs. When the sheriff is unable to serve the citation he shall return the same

to the clerk with his return thereto attached to that effect and thereupon, or, if the court decides that service of such citation made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation requiring such delinquent to appear on the first day of the next general or special term to be held not less than thirty days thereafter in the county, and show cause as aforesaid, and if he fails to pay or to show cause the court shall direct judgment as aforesaid. Whenever the sheriff has been unable to serve any citation theretofore made or attempted to be made, or the issuance thereof by the clerk was illegal, the clerk shall issue another like citation requiring such delinquent to appear as in the case last provided and with like effect; provided, that all citations other than the first shall be issued only upon the request of the county attorney.

When the person to whom the citation is issued is not a resident of the state so that personal service thereof cannot be made, the citation may be served by publication thereof and by attachment as provided by law in a civil action against non-resident defendants, upon affidavit of the county attorney, but no bond on such attachment or entry of judgment shall be required. The citation shall be prima facie evidence of the correctness of the tax or taxes therein stated to be delinquent. No omission of any of the things by law required in relation to such taxes or anything required by any officer to be done prior to the issuance of such citation shall be a defense or objections to such taxes, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting and that such taxes have been unfairly or unequally assessed; and in such case but no other the court may reduce the amount of such taxes and give judgment accordingly. It shall, however, always be a defense to such taxes that the same have been paid or that the property, because of which the same were assessed, was not subject to taxation.

In all counties in which the compensation of the clerk of the district court is not paid by fixed annual salary in lieu of other compensation, he shall be paid the following fees for services performed under the requirements of this act: For each notice to delinquent owners required under this act twenty-five cents to be collected from said such delinquent owner; for each affidavit prepared by and taken before him in attempted justification or excuse by the owner for nonpayment of tax listed against him fifty cents, to be paid by the owner for whom it is prepared; for each warrant issued to the sheriff against a delinquent owner twenty-five cents; for each citation twenty-five cents; and in contested cases such additional fees as are allowed to the clerk by law in civil actions. All such fees and costs shall be entered, taxed and made a part of the judgment and be paid to said clerk when and as collected. Any delinquent owner who pays the tax after the clerk's notice has been sent to him or submits affidavit in attempt at justification or excuse for nonpayment shall, before the proceedings can be dismissed, pay such of the

aforesaid clerk's fees as have been earned by the clerk for service to him.

Execution shall be issued upon the judgment at the request of the county attorney and shall state that the judgment was obtained for delinquent motor vehicle taxes, and no property shall be exempt from seizure thereunder, and such execution may be renewed and reissued in the same manner as provided by law in case of executions upon judgments in civil actions.

The sheriff or his deputy shall be allowed the same fees for collecting such taxes and for making distress and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat to the place of making distress, unless such distress is made by his deputy, in which case the same shall be computed from the resident of the deputy. Such fees shall be added to the tax and collected by the sheriff. If any of such fees cannot be collected by the sheriff, they may be audited and paid by the registrar from any funds in his possession on duly itemized and verified claims filed with him by such sheriff and any sums so paid by said registrar as sheriff's fees shall be deducted from his monthly report to the state auditor. A detailed report of such refundments shall accompany said report.

If the sheriff shall refuse or neglect to collect any tax levied under the provisions of this act where the same is collectible, or to file a delinquent list and affidavit as herein provided, he shall be held for the whole amount of such taxes collected, and the same shall be deducted from any bills presented by him to and allowed by the county board, and the amount thereof shall be transmitted to the registrar as herein provided for.

Every judgment for motor vehicle taxes shall be docketed and thereafter become a lien upon the real property of the debtor in the county within which the judgment was rendered to the same extent as other judgments for the recovery of money, and may be docketed in other counties in like manner and with like effect. Whenever a judgment shall hereafter be entered and docketed for the recovery of taxes herein provided for, the same shall bear interest until paid at the rate of 6% per annum. Upon payment to the registrar of any motor vehicle tax for which judgment has been obtained, together with the fees, costs and interest due, the registrar shall deliver a certificate of such fact to the clerk who shall file the same and satisfy the judgment upon the margin on the record thereof, stating the date of payment, and shall note the satisfaction upon the docket. Out of said sum so collected on any such judgment, the registrar shall remit to the clerk of said court and the sheriff of the proper county any unpaid fees due either of said officers under the provisions of this act. (As amended Apr. 24, 1929, c. 335.)

Subdivision 12 applies to every county in the state in which the clerk is entitled to compensation by way of fees of any kind in addition to an annual salary. Op. Atty. Gen., July 17, 1929.

§2692. Manufacturers to file statement.—Every manufacturer of a motor vehicle sold

or offered for sale within this state, either by the manufacturer, distributor, dealer or any other person, shall, on or before the first day of October in each year, file in the office of the registrar a sworn statement showing the various models manufactured by him, and the retail list price, rated carrying capacity and manufacturer's shipping weight of each model being manufactured October 1 of that year; and shall also file with the registrar, in such form as manufacturers usually use for advertising, complete specifications of the construction of each model that has been manufactured by him. Upon each change in such price, carrying capacity or weight, and upon the manufacture of each new model thereafter, such manufacturer shall in like manner file a new statement setting forth such change. Models shall be deemed similar if substantially alike and of the same make. Models shall be deemed to be corresponding models, for the purpose of taxation under Section 3 of this act, if of the same make and having approximately the same weight and type of body and chassis and the same style and size of motor. The registrar may refuse to register any new or first hand vehicle in this state unless the manufacturer thereof has furnished to the registrar the sworn statement herein provided, for the model of the motor vehicle that is offered for registration. Such list price, rated carrying capacity and listed weight of the vehicle, as set forth in the manufacturer's statement shall be the price, weight or carrying capacity on which the tax of a motor vehicle shall be computed under section 3 of this act unless grossly at variance with fact. In all instances in which there have been added to a complete vehicle additional parts, equipment or accessories not included in the factory list price upon which the tax is computed in accordance with the requirements of section 3 of this act, the reasonable cost thereof, if amounting in the aggregate to more than \$50, shall be added to the list price upon which the tax is computed. Such added parts, equipment or accessories to the extent in value of \$50 shall be exempt from taxation. The registrar shall have authority to fix the value, carrying capacity and weight of any rebuilt or foreign car or any car on which a record of the list price, carrying capacity or weight is not available in his office. (As amended Apr. 24, 1929, c. 330, §3.)

§2695. Violations—penalties.

See §2686-1 making this section applicable to §2672, 2685, as amended.

§2705. Lights—Mufflers—Road rules—[Repealed].

Evidence held to support finding that there was negligence in parking without lights and that one running into parked vehicle was not contributorily negligent. 171M366, 214NW55.

The court erred in charging that a motor vehicle left standing on a highway after it has been disabled is not operated thereon so as to require it to have lights lit after dark, as prescribed by this section, but such error held not prejudicial where the only issue was as to whether plaintiff, who was assisting the owner of the disabled car but who was not responsible for the condition of the light, was guilty of contributory negligence in going in front of the car at the time he was injured by collision of

defendant's car from the rear. 172M493, 215NW 861.

§2708. Parking and driving rules—[Repealed].

172M493, 215NW861; n. §2705.

§2709. New rates of speed for motor vehicles in congested districts—[Repealed].

One recklessly killing another while driving an automobile while intoxicated could be convicted of murder in the third degree. 171M414, 214NW280.

§2711. Local regulations prohibited—Exceptions—[Repealed].

City is liable for injuries caused by dangerous conditions in roadway in park used as way from one public highway to another. 172M76, 214NW774.

§2712. Board of automobile examiners, etc.

Superseded by §§2712-1 to 2712-8.

§2712-1. Chauffeurs licenses.—No person shall drive a motor vehicle as a chauffeur upon any public highway in this state unless he be licensed by the secretary of state as provided in this act, except that a non-resident chauffeur, registered under the provisions of the law of the county, state, territory or district of his residence, operating such motor vehicle temporarily within this state not more than 60 days in any one year, and while wearing the badge assigned to him as such chauffeur in the county, state, territory or district of his residence, operating such motor vehicle temporarily within this state not more than 60 days in any one year, and while wearing the badge assigned to him as such chauffeur in the county, state, territory or district of his residence, shall be exempt from such license requirements. No person, whether licensed or not, who is an habitual user of narcotics or who is under the influence of intoxicating liquors or narcotics, shall drive any vehicle upon any highway.

The term chauffeur, as used in this act, shall mean and shall include every person who is employed for the principal purpose of operating a motor vehicle belonging to another, and every person, including the owner, who drives a motor vehicle while it is in use as a carrier of persons or property for hire. (Act Apr. 26, 1929, c. 433, §1.)

§2712-2. Licensing of chauffeurs.—The secretary of state shall establish a chauffeurs' license division in the motor vehicle department of his office for the purpose of ascertaining and determining the qualifications of applicants for chauffeurs' licenses, and shall conduct examinations of applicants for such license at such times and places as he shall designate, and shall issue licenses only to such applicants as shall be found to have a practical knowledge of the construction, mechanism and operation of motor vehicles and a sufficient knowledge of the traffic laws of this state, and other needful qualifications, to enable him to drive with safety, and he may appoint such examiners and other employees as may be necessary in the conduct of the license division so established. Any deputy registrar of motor vehicles may be appointed by the secretary of state to conduct chauffeurs' examinations and any dep-

uty registrar not serving on a stated salary when so appointed shall be allowed and paid fifty cents (\$0.50) for each examinee for the first examination given to such examinee by him under such appointment to be paid by the secretary of state out of the same fund and in the same manner that salaries are paid to other employes serving in the chauffeurs' license division of the Motor Vehicle Department, such payment to be in addition to the fees allowed to such deputy as provided by law for registering motor vehicles. (As amended by Laws 1929, c. 433, §2, which is amended Apr. 18, 1931, c. 196.)

§2712-3. Shall provide badges.—The secretary of state shall provide every person licensed hereunder with a suitable badge to be worn by him attached conspicuously upon the outside of his clothing at all times while he is engaged in service as a chauffeur, and no licensed chauffeur shall voluntarily permit another person to possess and use the badge so provided, nor shall any person, while driving or operating a motor vehicle, use any license or badge belonging to another. (Act Apr. 26, 1929, c. 433, §3.)

§2712-4. Shall expire on December 31 of each year.—All chauffeurs' licenses issued hereunder shall expire at midnight on December 31 of the year for which it is issued, but may be renewed without examination upon such evidence as shall satisfy the secretary of state that the licensee is qualified to continue as a chauffeur, but no renewal of a license issued before November 1, in any year shall be granted unless application for such renewal is made during the month of November of the year for which the license was issued. (Act Apr. 26, 1929, c. 433, §4.)

§2712-5. Applications and examinations.—Applications for examination and license hereunder shall be in writing upon such forms and shall contain such needed information as the secretary of state may prescribe, and shall be accompanied by the payment of an examination and license fee of one dollar and fifty cents, except that the fee for a renewal license shall be one dollar. The state treasurer shall maintain a separate fund known as a chauffeurs' license fund, in which all fees so received shall be credited, and the amount necessary for payment of salaries and expenses in connection with this act is hereby appropriated. No fees that have been paid into this fund shall be refunded, but the secretary of state in his discretion, upon proper application within three months thereafter, may grant one re-examination without additional fee to a person who has been refused a license on a previous application. Any balance remaining in this fund at the end of the calendar year, after the payment of employees' salaries and other expenses of the license division shall be transferred to and deposited in the general fund. (Act Apr. 26, 1929, c. 433, §5.)

§2712-6. Violations and penalties.—Upon conviction of a licensed chauffeur of a violation of any provision of this act or of a violation of any provision of the uniform highway traffic act, the court in which such

conviction is had may order that such chauffeur's license be revoked forthwith, and may require such chauffeur to surrender to the court his chauffeur's badge, and when so surrendered shall return it to the secretary of state with a report of its proceedings, including the order of revocation.

For sufficient cause upon complaint and after a hearing, the secretary of state may revoke the license of any chauffeur who, in the judgment of the secretary of state, should not be permitted to continue as a licensed chauffeur. (Act Apr. 26, 1929, c. 433, §6.)

§2712-7. Violation a misdemeanor.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 26, 1929, c. 433, §7.)

§2712-8. Inconsistent acts repealed.—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 26, 1929, c. 433, §8.)

§2717-1. Unauthorized driving, etc., of automobiles—Punishment.

179M167, 228NW605.

§2719. [Repealed].

Repealed Apr. 25, 1931, c. 377.

§2720. [Repealed].

Repealed Apr. 25, 1931, c. 377.

UNIFORM HIGHWAY TRAFFIC ACT

TITLE I.—DEFINITION OF TERMS

§2720-1. Definitions. * * *

(v) "Truck." Any motor vehicle designed and used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passenger. (As amended Apr. 26, 1929, c. 407, §1.)

(m).

Where owner lets vehicle and driver for hire, the hirer is liable for the negligence of the driver if he has exclusive control over him, but he may have control of the driver for certain purposes and the owner may retain control over him for other purposes. 175M438, 221NW716.

TITLE II.—OPERATION OF VEHICLES
RULES OF THE ROAD

§2720-2. Age of operators, etc., Persons under influence of intoxicating liquors or narcotics.

Whether defendant prosecuted for manslaughter was driving while intoxicated, held for jury. 179M1, 228NW171.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. State v. Hughes, 233NW874. See Dun. Dig. 4167b, 4165.

The headnote in the session laws was not a part of the law as passed, and this section forbids minors under 15 years to drive vehicles. Op. Atty. Gen., May 27, 1931.

§2720-3. Careless or heedless or dangerous driving.

I. In general.

Injury to pedestrian upon sidewalk. 177M 42, 224NW255.

Injury to pedestrian walking on shoulder of highway. 178M382, 227NW207.

Driver of car, held not negligent as to a child who coasted from a terrace at the side of the street. Phillips v. H., 179M108, 228NW350.

Negligence as to boy on bicycle, held not shown. 179M578, 229NW881.

It is not due care to depend on the exercise of care by another when such care is accompanied by danger. 181M492, 233NW239. See Dun. Dig. 7022.

Allegation that driver negligently ran car upon and against plaintiff is a sufficient charge of actionable negligence, in the absence of any motion to make the complaint more definite and certain. Saunders v. Y., 233NW599. See Dun. Dig. 4166(42), 7058(25), 7718(15).

Wife was not liable for negligence of her husband in driving a car registered in her name. Cewe v. S., 233NW805. See Dun. Dig. 5834b.

2. Injury to guest or other occupant.

Evidence held to show negligence of driver of automobile causing injury to guest riding with him, 181M338, 232NW344. See Dun. Dig. 6975a.

The defendant did not recklessly operate his auto within Iowa Code 1927, §5026-b1, making a driver liable when his reckless operation causes injury to his guest, and the court rightly directed a verdict in his favor. Marquart v. M., 181M504, 233NW309. See Dun. Dig. 6975a.

3. Respondent superior.

Evidence, held to show that tank wagon, in which plaintiff was riding when injured, was being operated in the interest of the owner. Plaintiff's contributory negligence was a question for the jury. 181M245, 232NW38. See Dun. Dig. 5840, 7033.

Act of defendant's employee in inviting person to ride in car, held outside scope of employment and employer was not liable for injury to person so invited. 181M366, 232NW626. See Dun. Dig. 5843.

The evidence sustains findings of court that driver of automobile was a servant, but that, at the time of the accident involved, the car was not being operated in the course, nor within the scope, of his employment. 181M437, 232NW790. See Dun. Dig. 5833, 5834.

Where driver of another's car had departed from the scope of her employment for purposes personal to herself when a collision occurred, owner was not liable. Lund v. O., 237NW188. See Dun. Dig. 5833, 5843.

4. Contributory negligence.

Guest in automobile, held not contributorily negligent. Waggoner v. G., 180M391, 231NW10 (2).

Person stepping into highway from vehicle without looking for passing vehicles, held contributorily negligent. 181M41, 231NW242.

Automobile driver, held guilty of contributory negligence in colliding with street car. 180M505, 231NW246.

A child of eight and one-half years cannot be held negligent as a matter of law. 181M 376, 232NW630. See Dun. Dig. 7029.

Contributory negligence of child nine years old. 181M386, 232NW712. See Dun. Dig. 7029.

5. Pleading.

Complaint held not to limit charge of negligence against automobile driver to failure to give warning. 181M506, 233NW237. See Dun. Dig. 7058.

6. Evidence.

Evidence sustained finding that driving of motor car so as to project over edge of bridge sidewalk and strike pedestrian was negligence. 178M353, 227NW203.

Evidence held to sustain finding of negligence as to pedestrian crossing street at point not an intersection. 181M376, 232NW630. See Dun. Dig. 4167n.

It was not error to receive in evidence photographs for limited purpose of showing width of street and location of objects at place of accident which had remained unchanged, although some of photographs incidentally showed a guard constructed since accident. 181M450, 232NW795. See Dun. Dig. 3237a, 3260, 7055.

Verdict against plaintiff struck by bus while making "U" turn, held unassailable. 181M554, 233NW316. See Dun. Dig. 4164c.

In actions by husband and wife for injuries suffered in automobile accident, verdict for defendants held supported by evidence. *Arvidson v. S.*, 237NW12.

Evidence held not to support a verdict and judgment for a defendant, in an automobile collision case, who was driving in a dense fog, on the wrong side of a trunk highway, from twenty to thirty miles an hour, without slackening of speed, headlights on, or other precaution to avoid accident. *Salera v. S.*, 237NW180. See Dun. Dig. 41670.

7. Res ipsa loquitur.

In action for death of passenger in automobile, where defendant's explanation was open to repudiation, it was not error to submit the rule of res ipsa loquitur. 181M506, 233NW237. See Dun. Dig. 7044.

8. Questions for jury.

Contributory negligence of pedestrian held for jury. 173M138, 216NW605.

In a triangular automobile collision, negligence held for jury. 176M383, 223NW603.

Negligence with respect to driving automobile over intersection in blinding snowstorm, held for jury. 179M332, 229NW341.

Contributory negligence of motorcyclist at intersection, held for jury. 179M123, 228NW752.

Negligence and contributory negligence of persons involved in collision at intersection, held for jury. 179M332, 229NW341.

Negligence and contributory negligence in case of injury to pedestrian, held for jury. 179M528, 229NW784.

Negligence in letting out clutch while occupant of automobile was alighting, held for jury. 180M433, 230NW888.

Whether independent contractor using his own automobile in transporting his own tools and those of his employer was acting as an employee of the latter, held a question for the jury. 181M240, 232NW43. See Dun. Dig. 5841.

Whether automobile driver standing in street jacking up his car was guilty of contributory negligence, held for jury. 181M259, 232NW264. See Dun. Dig. 4167n, 7033.

Negligence of driver of automobile as to pedestrian in street at intersection, held question for jury. 181M386, 232NW712. See Dun. Dig. 4167n.

Whether employee of defendant was acting in the scope of his employment when causing an injury through the negligent driving of an automobile, held for jury. 181M386, 232NW712. See Dun. Dig. 5841.

Contributing negligence of pedestrian struck by motorist while crossing street at other than cross walk held for jury. *Heikkinen v. C.*, 235NW879. See Dun. Dig. 4167n.

Negligence of motorist striking pedestrian between cross walks held for jury. *Heikkinen v. C.*, 235NW879. See Dun. Dig. 4167n.

Whether driver of automobile turning over on a highway and injuring guests was negligent held for jury. *Martin v. S.*, 236NW312. See Dun. Dig. 4167b.

9. Instructions.

Instruction, held insufficient to present issue of contributory negligence, 180M395, 230NW895.

Instruction that contributory negligence contributing "in the slightest degree to the injury" is erroneous. 181M180, 232NW3. See Dun. Dig. 7015.

In action by pedestrian against automobile driver, charge as to proximate cause held sufficient. 181M506, 233NW237. See Dun. Dig. 6999.

There was no error in giving the jury the statutory rules of the road, including those requiring adequate lights and brakes, even though there was no specific claim of their violation. 181M492, 233NW239. See Dun. Dig. 9781(35).

Instructions as to the relative statutory rights of a pedestrian and an automobile driver between street intersections were free from error. *Heikkinen v. C.*, 235NW879. See Dun. Dig. 4167n.

§2720-4. Speed of vehicles on highways.—

* * * *

(b) Operating a vehicle at speeds exceeding those hereinafter specified shall be prima facie evidence that the operator of said vehicle is driving the same at a speed greater than is reasonable and proper as defined in sub-division (a) of this section:

(1) Fifteen miles an hour when approaching within fifty feet of a grade crossing of any steam, electric or street railway when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last two hundred feet of his approach to such crossing he does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet in each direction from such crossing;

(2) Fifteen miles an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours;

(3) Fifteen miles an hour when approaching within fifty feet and in crossing an intersection of highways when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty feet of his approach to such intersection, he does not have a clear and unobstructed view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet from such intersection.

(4) Fifteen miles an hour in going around curves or along a grade upon highway when the driver's view is obstructed within a distance of one hundred feet along such highway in the direction in which he is proceeding;

(5) Twenty miles an hour on any highway where the same passes through closely built-up portions of any municipality or where the traffic is congested, when traffic on such highways is controlled at intersections by traffic officers or traffic control devices;

(6) Fifteen miles an hour on all other highways where the same pass through the closely built-up portion of any municipality or where the traffic is congested;

(7) Twenty miles an hour on any highway where the same passes through the residence portion of any municipality;

(8) Forty-five miles an hour under all other conditions. (As amended Apr. 11, 1929, c. 158.)

Subd. (b) of this section is amended by Laws 1929, c. 158.

172M591, 216NW537.

Collision of automobile and pedestrian on highway. 174M577, 219NW912.

Statute merely creates a rebuttable presumption of fact. 175M449, 221NW715.

Plaintiff was not bound to anticipate that truck driver would be negligent. 175M449, 221NW715.

Testimony as to speed of truck approaching witness was admissible, its weight being for the jury. 175M449, 221NW715.

Where no defect in brakes had been charged, it was not important that court refused to permit defendant's driver to testify that brakes were in good condition after the accident. 175M449, 221NW715.

Guest in automobile held not guilty of contributory negligence as matter of law in remaining in car driven at a dangerous rate. 177M95, 224NW462.

Negligence in striking towed car on icy street held jury question. *Barnhardt v. H.*, 173 M400, 227NW356.

Whether plaintiff traveling 35 miles per hour at night was guilty of contributory negligence in running into unlighted truck parked on the highway, held for jury. 180M252, 230NW776.

Prima facie effect of similar South Dakota law construed. *Berlin v. K.*, 236NW307. See Dun. Dig. 8821, 8937a(99), 8956.

§2720-8. Vehicles operated by peace officers, etc.

Fireman on fire truck and driver were not engaged in "joint enterprise" and negligence of driver was not imputed to such fireman. Right of way rule under §23, c. 416, Laws 1925, was not intended to and did not apply to fire apparatus. 173M265, 217NW130.

§2720-9. Keeping to the right.

Whether truck was on wrong side of road at intersection, held for jury. 175M449, 221NW715.

Guest in automobile having no share in its control at the time being, was not engaged in a "joint enterprise." 177M249, 225NW98.

Negligence of automobile driver traveling in sleet and rain at 35 miles per hour and injuring guest when hitting a depression, and contributory negligence of guest, held for jury. 177M249, 225NW98.

An emergency may excuse compliance with this section. 180M163, 230NW580.

Negligence, held for jury, and evidence, held to sustain verdict for plaintiff. 181M4, 231NW 714.

Driver on righthand side of street backing his car into the curb for parking, held not violating this section. 181M259, 232NW264. See Dun. Dig. 4164a.

Evidence held to show that defendant's automobile was proceeding on the wrong side of the highway and that his negligence in that respect was the proximate cause of injury to plaintiff. 18M400, 232NW710. See Dun. Dig. 4164a.

It was not error to refuse defendant's request for an instruction that he had a right to assume that the driver of an approaching car would give him half of the road. 181M492, 233NW 239. See Dun. Dig. 7022.

Evidence sustained finding of negligence in rounding sharp turn on left side at high speed. *Honkomp v. M.*, 234NW638. See Dun. Dig. 4167g.

The evidence sustains a finding that driver of an automobile was traveling on wrong side of street and that his so doing was the proximate cause of an injury to a minor child. *Peterson v. M.*, 235NW15. See Dun. Dig. 4164a.

Salera v. S., 237NW180; note under §2720-3.

§2720-10. Driving to right at crossing.

Right of automobilist to assume this section would be obeyed. *Krueger v. S.*, 178M619, 227 NW50.

Evidence held to show that defendant's automobile was proceeding on the wrong side of the highway and that his negligence in that respect was the proximate cause of injury to plaintiff. 181M400, 232NW710. See Dun. Dig. 4164a.

§2720-11. Passing in opposite directions.

Negligence and contributory negligence in collision by cars traveling in opposite directions, question of fact and not of law. 176M 619, 224NW256.

Horseback rider struck by an automobile on wrong side of road in course of repair, held guilty of contributory negligence as matter of law. 177M523, 225NW651.

This section may be departed from in an emergency. 180M163, 230NW580.

Evidence held to show that defendant's auto-

mobile was proceeding on the wrong side of the highway and that his negligence in that respect was the proximate cause of injury to plaintiff. 181M400, 232NW710. See Dun. Dig. 4164a.

§2720-13. Overtaking and passing, etc.

(b).

Whether the passing of another car on a curve contributed as a proximate cause to injuries of a guest in the car being passed held for jury. *Dux v. R.*, 235NW383. See Dun. Dig. 4167g.

§2720-14. Overtaken vehicle to give, etc.

Automobilist attempting to pass truck between the truck and a streetcar traveling in the opposite direction held guilty of contributory negligence as a matter of law. *Reddy v. R.*, 233NW853. See Dun. Dig. 4164a.

It is not due care to rely on the anticipated conduct of others when such reliance is attended by obvious danger. *Reddy v. R.*, 233NW 853. See Dun. Dig. 6970(83), (84).

In the absence of evidence that he knew of plaintiff's danger, a defendant cannot be charged with willful negligence. *Reddy v. R.*, 233NW853. See Dun. Dig. 7036.

§2720-15. Distance between vehicle following another.

In a triangular automobile collision, negligence held for jury. 176M383, 233NW603.

§2720-16. Turning to right at intersections—Traffic control devices.

172M591, 216NW537.

Evidence held to sustain recovery of damages in automobile collision. 176M83, 222NW 580.

Automobilist making left turn and colliding with automobile coming from his right, held guilty of contributory negligence. 176M299, 233 NW145.

§2720-17. Starting, stopping, or turning—Signals.

172M591, 216NW537.

Negligence in turning after extending arm, and negligence of defendant coming up from rear in automobile, held to present question for jury. 179M86, 228NW347.

Evidence held to support verdict in favor of automobile driver, who, while making a left turn, was struck from the rear by an approaching automobile resulting in injury to person riding in the rear car. 181M275, 232NW326. See Dun. Dig. 4167f.

Evidence held to sustain finding of negligence by truck driver in turning into path of vehicle approaching from the rear, and to negative existence of emergency excusing conduct. 181M406, 232NW715. See Dun. Dig. 4164c.

§2720-18. Right of way between vehicles, street cars and pedestrians.

Plaintiff violating right of way law, held guilty of contributory negligence. 47F(2d)281. See Dun. Dig. 4164e.

Prior to passage of this law automobilists and pedestrians had equal rights at street intersections. 172M134, 215NW193.

One driving a vehicle and approaching a trunk highway where her view is obstructed must have her car under control, and in view of the right of way statute must watch out for cars coming from the right and there is a presumption of negligence if she fails to see a car approaching in plain sight, and mere failure to see the car does not overcome the presumption. 173M31, 216NW254.

If automobile entered crossing first it had the right of way over street car. 173M186, 217 NW99.

The doctrine of "Res ipsa loquitur" has no application when all the facts attending an accident are disclosed in the evidence. 173M215, 217NW102.

Contributory negligence of automobile driver

is not imputed to passenger. 173M237, 217NW 125; 173M402, 217NW377.

Negligence and contributory negligence held for jury. 173M622, 217NW485; 173M439, 217NW 493.

That a collision occurs in broad daylight at street intersections between two automobiles coming at right angles in and of itself gives right to an inference that at least one of the drivers was negligent. 175M623, 221NW680.

Whether plaintiff reached intersection first and whether defendant was on wrong side of road, held for jury. 175M449, 221NW715.

Collision at intersection between well-traveled highway and a side road. *Maker v. J.*, 176M285, 223NW137.

Automobilist making left turn and colliding with automobile coming from his right, held guilty of contributory negligence. 176M299, 223 NW145.

Findings of negligence and contributory negligence sustained. *Amon v. N.*, 176M410, 223NW 456.

Negligence of automobilist as to passengers, held for jury, though he had qualified right of way. 177M222, 225NW85.

Right of way as between automobiles. *Krueger v. S.*, 178M619, 227NW50.

Automobilist entering intersection without seeing car to right guilty of contributory negligence. 178M426, 227NW350.

Automobilist having stopped his car in obedience to a "stop" sign has the right of way over traffic from his left; but he is not thereby justified in taking close chances. 178M540, 227 NW854.

Evidence held not to establish contributory negligence on part of motorcyclist. 179M123, 228NW752.

Where a city street coincidental with a trunk highway leaves such highway and swerves slightly to the left, while the trunk highway turns to the right at an angle of 70 degrees, there is an "intersection" within this subdivision within the requirement as to signalling for a left-hand turn. 180M509, 231NW202.

A pedestrian is not negligent as a matter of law in crossing a street at a point not an intersection. 181M376, 232NW630. See *Dun. Dig.* 4167n.

Contributory negligence of street car passenger in alighting and passing behind car, held for jury. 181M277, 232NW265. See *Dun. Dig.* 4167i, 4167n, 7033.

In action by guest, negligence of drivers of both colliding cars held established by evidence. *Lund v. O.*, 234NW310. See *Dun. Dig.* 4164e.

Evidence sustains a finding of the jury that the driver was negligent in failing to keep a lookout and avoid injuring minor. *Peterson v. M.*, 235NW15. See *Dun. Dig.* 4167n.

Negligence of automobile driver and contributory negligence of pedestrian child, held for jury. *Harkness v. Z.*, 235NW281. See *Dun. Dig.*, 4167n, 7011, 7033.

Whether either driver of car in which plaintiffs were passengers or driver of car colliding with it were guilty of negligence, held for jury. *Dux v. R.*, 235NW383. See *Dun. Dig.* 4167a.

The fact that plaintiff was crossing the street at a place other than a crossing or crosswalk did not absolve the driver of the automobile from his duty to exercise ordinary care, nor make the plaintiff guilty of contributory negligence as a matter of law. *Saunders v. Y.*, 233 NW599. See *Dun. Dig.* 4166(51).

The evidence did not require a finding that the minor was negligent as a matter of law because she did not look and see the approaching car. *Peterson v. M.*, 235NW15. See *Dun. Dig.* 4167n.

In action for injuries in collision at intersection, evidence held to sustain finding that defendant had right of way. *Free Press Co. v. B.*, 236NW306. See *Dun. Dig.*, 4167-o.

§2720-21. Through highways—Stopping.

One who has stopped at "thru" street has the right of way over traffic coming from his left; but he is not thereby justified in taking close chances. 178M540, 227NW854.

§2720-22. Passing street cars, etc.

Automobile driving abreast of moving street car, held not charged with notice that such street car was "about to stop" by the mere fact that it reduced its speed on approaching a crossing. 29F(2d)87.

Laws 1925, ch. 416, §19.—Automobile traveling abreast of street car is not "approaching" the street car, and the car is not "about to stop" merely because it reduces its speed on approaching a crossing. 29F(2d)87.

One seeking to board a street car is not absolved from all care for his own protection merely because of the statutory duty imposed on the driver of passing automobile, and this is particularly true where the automobile is driving abreast of the moving street car so as to render this section inapplicable. 29F(2d)87.

When street car stops before reaching crossing owing to presence of another car in front of it, and it is apparent that the rear car intends to discharge passengers, it is the duty of a vehicle back of it to stop as required by the statute, there being no safety zone at that spot. 33F(2d)27.

§2720-24. Parking regulations, etc.

Court properly charged that it was negligence to park car on left side of road. 178M 465, 227NW493.

Whether parking on left side of road with headlights lit was proximate cause of injury to another held for jury. 178M465, 227NW493.

Defendant parking truck on highway at night without lights, held negligent as to driver of automobile running into truck. 180M252, 230 NW776.

Negligence and contributory negligence, held for jury. 181M32, 231NW244.

Where highway is tarviated it must be left open for the required width on the paved portion. 180M116, 230NW270.

§2720-26. Leaving vehicles on highway, etc.

Where question was whether defendants ought to have anticipated that car would start down grade, evidence that car had been parked at same place in same manner many times previously without starting was admissible. 173M 250, 217NW127.

§2720-32. Municipalities — Ordinances — Etc.

Ordinance prohibiting use of streets passing through school grounds in daytime, held no defense by village to action for injuries resulting from obstruction by chain, but presence of chains was not negligence as matter of law. 180 M407, 231NW14.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. *State v. Hughes*, 233NW874. See *Dun. Dig.* 4165.

§2720-33. Municipalities—Speed, etc.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. *State v. Hughes*, 233NW874. See *Dun. Dig.* 4165.

TITLE III.

THE SIZE, WEIGHT, CONSTRUCTION AND EQUIPMENT OF VEHICLES

§2720-35. Width and height of vehicles—Maximum length * * * *

(c) No Vehicle other than semi-trailer shall exceed a length of 35 feet and no combination of vehicles coupled together shall exceed a total length of 60 feet, with a 5% over-run on said length of 60 feet. Provided that present operating equipment which conforms to the requirements of Chapter 412,

General Laws of 1927, as amended by Section 2, Chapter 407, Laws 1929, shall be permitted to to operate until November 30, 1933.

No truck shall be driven or parked on a public highway with tail gate hanging down or projecting from the vehicle except while such vehicle is being loaded or unloaded, and except when a load thereon extends beyond the tail gate rendering impossible the closing thereof. (As amended by Laws 1929, c. 407, §2, which is again amended Apr. 25, 1931, c. 402.)

* * * *

§2720-37. Weight of vehicles and loads.—

(a) No vehicle or combination of vehicles having a gross weight in excess of those permitted in this section shall be driven or moved on any highway unless the owner shall first have secured a permit as hereinafter provided.

(b) For the purpose of controlling the circulation of vehicles or of combinations of vehicles of heavy weight, the Commissioner is authorized to designate highways within the State as Industrial Roads.

(c) No vehicle equipped with pneumatic tires and with axles spaced 8 feet or more apart and driven on any highway other than an industrial road shall have a maximum wheel weight unladen or with load in excess of 9,000 pounds, or an axle weight in excess of 18,000 pounds.

(d) No vehicle equipped with pneumatic tires and with axles spaced less than 8 feet apart and driven on any highway other than an industrial road shall have a maximum wheel weight unladen or with load in excess of 6,000 pounds, or an axle weight in excess of 12,000 pounds.

(e) No vehicle equipped with pneumatic tires and with axles spaced 8 feet or more apart and driven on any industrial road shall have a maximum wheel weight unladen or with load in excess of 11,200 pounds, or an axle weight in excess of 22,400 pounds.

(f) No vehicle equipped with pneumatic tires and with axles spaced less than 8 feet apart and driven on any industrial road shall have a maximum wheel weight unladen or with load in excess of 8,000 pounds, or an axle weight in excess of 16,000 pounds.

(g) No vehicle equipped with solid tires driven upon any highway shall have a maximum wheel weight unladen or with load, or a maximum axle weight in excess of 80 per cent of the weights prescribed for vehicles equipped with pneumatic tires.

(h) Subject to the maximum axle and wheel loads specified in this section, the gross weight of any vehicle or combination of vehicles driven on any highway shall not exceed the safe capacity of the bridges existing thereon, as may be indicated by warnings posted on the bridge or bridges in question. (As amended Apr. 9, 1931, c. 128.)

§2720-40. Maintenance officers to regulate weights.—The chairman of the body or the officer charged with the maintenance of any highway shall have authority to restrict the character and weight of traffic upon such highway when in his judgment such traffic

will destroy or excessively damage such highway, and shall post such highway with plainly printed notices stating the character and weight of traffic prohibited on such highway at both ends of the section thereof on which traffic is restricted, at intermediate points where said restricted section is intersected by cross roads, and also at the points where such restricted highways leave the nearest municipality. Any person operating any vehicle of the character and weight prohibited in said notices or contrary to the provisions thereof, upon any restricted section of such highway, or any person removing, covering, defacing, obstructing or destroying any such notice shall be guilty of a misdemeanor. (Act Apr. 26, 1929, c. 390, §1.)

§2720-42. Trailers. * * * *

Subdivision (c). Whenever trailers are drawn upon any highway said trailers shall be so constructed and hitched together that they will track on turns and not whip at any time.

Subdivision (d). Whenever any vehicle or combination of vehicles drawn upon any highway exceeds 40 feet in length such vehicles shall have the sides thereof equipped with and illuminated by the use of lights conforming to the provisions of subdivision (d) of Section 49 [§2720-49] of this act. (As amended Apr. 26, 1929, c. 407, §3.)

Laws 1929, c. 407, §3, amends this section by adding thereto subdivisions (c) and (d).

§2720-48. Front and rear lights. * * * *

(g) Every horse-drawn vehicle using the public highways shall, during the period from a half hour after sunset to a half hour before sunrise, carry at the rear thereof a reflex mirror or lighted lamp exhibiting a yellow or red light visible under normal atmospheric conditions from a distance of 200 feet to the rear of such vehicle. Provided, that the failure to equip any horse-drawn vehicle with such lamp or mirror, as herein set forth shall not of itself constitute negligence as a matter of law. (Act. Apr. 26, 1929, c. 407, §4.)

Laws 1929, c. 407, §4, amends this section by adding thereto subdivision (g).

Failure of plaintiff to have his head lights lighted or to stop within the distance in which he could see an object ahead of him, held not as a matter of law the proximate cause of injury from negligence of defendant in proceeding on wrong side of road. 181M400, 232 NW710. See Dun. Dig. 4164a.

(e).

Defendant, held negligent in parking truck without light in highway and liable for injuries and damage resulting from car running into it. 180M252, 230NW776.

§2720-49. Spot lamps, etc. * * * *

(c). Whenever a motor vehicle is equipped with a signal lamp to comply with the provisions of Section 17, the signal lamp shall be so constructed and located on the vehicle as to give a signal yellow or red in color which shall be plainly visible in normal sunlight from a distance of 100 feet to the rear of the vehicle, but shall not project a glaring or dazzling light. (As amended Apr. 26, 1929, c. 407, §5.)

Laws 1929, c. 407, §5, amends subd. (c) of this section to read as above.

§2720-50. Construction, etc., of head lamps, etc.

Contributory negligence of motorist colliding with concrete mixer left in highway to guard a partially newly constructed culvert. Held for jury. *Wicker v. N.*, 235NW630. See Dun. Dig. 7033(2).

Evidence held insufficient to support any finding that wife riding with motorist was guilty of contributory negligence when motorist ran into unlighted concrete mixer in highway. *Wicker v. N.*, 235NW630. See Dun. Dig. 7033(2).

§2720-52. Head and other lamps—sale and test.—(a). It shall be unlawful for any person to sell or offer for sale, either separately or as a part of the equipment of a motor vehicle, or to use upon a motor vehicle upon a highway, any electric head lamp or any auxiliary driving lamp, spot lamp, rear lamp or signal lamp, unless of a type which has been submitted to the Commissioner for test and for which a certificate of approval has been obtained from the Commissioner as hereinafter provided. (As amended Apr. 26, 1929, c. 407, §6.)

* * * *

(c) Any person, firm or corporation desiring approval of a device shall submit to the Commissioner two sets of each type of device upon which approval is desired, together with a fee fixed by the Commissioner not to exceed \$75.00 for each type of head lamp and auxiliary driving lamp and a fee not to exceed \$25.00 for each type of rear lamp or signal lamp submitted. Within 30 days the Commissioner shall, upon notice to the applicant submit such device to the United States Bureau of Standards or to such other recognized testing laboratory as he may elect for a report as to the compliance of such type of device with the standard specifications and the provisions of this act as to lighting performance.

The Commissioner is authorized and required to accept the certificate of the United States Bureau of Standards or of some other recognized testing laboratory as to compliance with the specifications and requirements; provided, however, that in cases of dispute as to the findings of such other laboratory appeal may be made to the United States Bureau of Standards; and provided, also, that the Commissioner is authorized to refuse approval of any device, certified as complying with the specifications and requirements, which the Commissioner determines will be in actual use unsafe or impracticable or would fail to comply with the provisions of this act. If the certificate of the United States Bureau of Standards or of some other recognized testing laboratory as to compliance within the specifications and requirements specified in Section 50 be submitted with the application for approval of the lighting devices submitted to the Commissioner, then no fee in excess of \$10.00 shall be required by the Commissioner to be paid by any applicant for approval of any lighting device as specified in this subdivision. (As amended Apr. 26, 1929, c. 407, §7.)

* * * *

Laws 1929, c. 407, §§6, 7, amend subdivisions (a) and (c) of this section to read as above.

§2720-54. Parked motor vehicles must have

lights.—Whenever a motor vehicle is parked or stopped upon a highway whether attended or unattended during the times mentioned in Section 48 there shall be displayed upon such motor vehicle one or more lamps projecting a white light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such motor vehicle and projecting a yellow or red light visible under like conditions from a distance of five hundred feet to the rear, except that municipalities may provide by ordinance that no lights need be displayed upon any such motor vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway. (As amended Apr. 26, 1929, c. 407, §8.)

Contributory negligence of one running into an unlighted truck held for the jury. 174M105, 218NW249.

Evidence held to sustain finding of negligence on part of operator of truck standing on pavement without rear light. 174M105, 218NW 249.

Negligence and contributory negligence affecting recovery for injuries from collision with unlighted parked car, held for jury. 181M32, 231NW244.

Liability insurer of truck violating this section, compelled to pay damages to guest in a touring car held not entitled to contribution from the owner of the touring car, though both the owner of the truck and the driver of the touring car were negligent. *Fidelity & Casualty Co. v. C.*, 236NW618. See Dun. Dig. 1924.

TITLE V. PENALTIES

§2720-61. Driving while intoxicated, etc.

This section is not void for uncertainty as to the meaning of the words "under the influence of intoxicating liquor." 176M164, 222NW909.

Admissibility and sufficiency of evidence. 176 M164, 222NW909.

Instruction defining offense in words of statute, held sufficient. 176M164, 222NW909.

§2720-62. Violations of provisions relating to stopping, etc., after accidents—Penalty.

(a). The driver of any motor vehicle involved in any accident resulting in injury or death to any person who violates the provisions of Section 29 [§2720-29] of this Act shall be guilty of a gross misdemeanor.

(b). The driver of any motor vehicle involved in an accident resulting in damage property who violates the provisions of Section 29 [§2720-29] of this Act shall be guilty of a misdemeanor. (As amended Apr. 26, 1929, c. 407, §9.)

TITLE VII.

EFFECT OF AND SHORT TITLE OF ACT TAX ON GASOLINE, ETC., USED FOR MOTOR OR OTHER VEHICLES ON HIGHWAYS

§2720-70. Definitions.

175M276, 221NW6.

The gasoline tax law does not permit a rebate or refund of taxes on gasoline used by county or other municipal subdivision of the state, except taxes paid on gasoline which is used for the purposes other than in a motor vehicle, such as gasoline used in road work other than hauling material. *Op. Atty. Gen.*, May 28, 1931.

§2720-71. Excise tax on gasoline.—There is hereby imposed an excise tax of three cents per gallon on all gasoline used in producing or generating power for propelling motor vehicles used on the public highways of this state. Said tax shall be payable at the times, in the manner, and by the persons hereinafter specified. (As amended Apr. 24, 1929, c. 310, §1.)

§2720-71½. Gasoline distributors to report to oil inspector.—It shall be the duty of every distributor and of every person who sells gasoline to report to the Chief Oil Inspector the number of gallons of gasoline in his possession at the time this act takes effect, and the inspector shall thereupon determine and certify as herein provided the tax on account of such tax as is hereby imposed. (Act Apr. 23, 1929, c. 310, §2.)

Sec. 3 of Act Apr. 24, 1929, c. 310, provides that the act shall take effect May 1, 1929.

§2720-79. Reimbursements in certain cases—penalties for false statement.—Any person who shall buy and use gasoline for any purpose other than use in motor vehicles, and who shall have paid any excise tax required by this act to be paid directly or indirectly through the amount of such tax being included in the price of such gasoline or otherwise, shall be reimbursed and repaid the amount of such tax paid by him upon presenting to the inspector a verified claim in such form and containing such information as the inspector shall require and accompanied by the original invoice thereof, which claim shall set forth the total amount of such gasoline so purchased and used by him other than in motor vehicles, and shall state when and for what purpose the same was used. If the inspector be satisfied that the claimant is entitled to payment, he shall approve the claim. Upon the approval of any such claim the inspector shall draw his check on the gas tax account payable to the person entitled thereto. No such repayment shall be made unless the claim and invoice shall be presented to the inspector within four months from the date of such purchase.

Every person who shall make any false statement in any claim or invoice presented to the inspector, or who shall knowingly present to the inspector any claim or invoice containing any false statement, or shall collect, or cause to be paid to him or to any other person any such refund without being entitled thereto, shall forfeit the full amount of such claim and be guilty of a misdemeanor. (As amended Apr. 1929, c. 257, §1.)

No refund for truck hauling snow plows, etc.; but a refund for tractors hauling snow plows, etc. Op. Atty. Gen., June 1, 1929.

City entitled to refund for gasoline used in stationary engines, but not for that used in fire trucks, street sprinklers or a utility truck. Op. Atty. Gen., July 18, 1929.

The gasoline tax law does not permit a rebate or refund of taxes on gasoline used by county or other municipal subdivision of the state except taxes paid on gasoline which is used for purposes other than in a motor vehicle, such as gasoline used in road work other than hauling material. Op. Atty. Gen., May 28, 1931.

§2720-79½. Distributors to report the amount on hand.—It shall be the duty of

every distributor and of every person who sells gasoline to report to the inspector the number of gallons of gasoline in his possession at the time this act takes effect, and the inspector shall thereupon determine and certify as herein provided the additional tax on account of such gasoline which is hereby imposed. (Act Apr. 19, 1929, c. 257, §2.)

§2720-88. Apportionment of gasoline tax funds.—All moneys accruing to the state road and bridge fund from taxes imposed on the use of gasoline under authority of Section 5 of Article 9 of the constitution shall be distributed and used in the manner and for the purposes hereinafter set forth. (Act Apr. 22, 1929, c. 283, §1.)

§2720-89. State Auditor, State Highway Commissioner to apportion funds.—On or before the first Tuesday in April of each year the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue during the current calendar year to the state road and bridge fund from such tax and shall apportion such sum among the several counties of the state as herein provided and the commissioner of highways shall forthwith send a statement of such apportionment to the state auditor and to the county auditor of each county showing the amount apportioned to each county during such year. (Act Apr. 22, 1929, c. 283, §2.)

§2720-90. State Auditor to draw his warrant.—The state auditor shall on August 1 of each year draw his warrant on the state road and bridge fund in favor of each county for the amount to which such county is entitled under said apportionment out of the receipts from such tax during the first half of the current calendar year and shall on February 1 of each year draw his warrant on the state road and bridge fund in favor of each county for the amount to which such county is entitled under said apportionment out of the receipts from such tax during the last half of the next preceding calendar year. (Act Apr. 22, 1929, c. 283, §3.)

§2720-91. Limitations of amount to each county.—Not less than three-fourths of one per cent nor more than three per cent of the moneys accruing to the state road and bridge fund from such tax shall be apportioned to any one county in any one year. In the making of such apportionment regard shall be had to the mileage of county and town roads and the traffic needs and conditions of the respective counties. (Act Apr. 22, 1929, c. 283, §4.)

§2720-92. County Board to designate county aid roads.—The county board of each county is hereby authorized to designate as a county aid road any county or town road therein and any portion of a county line or town line road with the construction and maintenance of which such county or any town therein is charged, but no state aid road shall be designated as a county aid road. Such designation shall be evidenced by resolution of the county board and by an order signed by the chairman thereof and countersigned by the county auditor, which order

shall be filed in the office of the county auditor. Such designation may by like resolution and order be revoked at any time.

All county aid roads shall be constructed, improved and maintained by the county. A certified copy of the resolution either designating or revoking a county aid road shall be filed with the commissioner of highways. Provided that the County Board of any County may designate as a county aid road any road situate in the unplatted portion of any village in said county by a resolution adopted by unanimous vote of such Board. Such designation may by resolution and order adopted by a majority vote, be revoked at any time. (Act Apr. 22, 1929, c. 283, §5.)

Taxpayer has no right to appeal from action of county board in designating a town road as a county aid road. Op. Atty. Gen., Aug. 31, 1929.

Op. Atty. Gen., Aug. 21, 1929; note under §2551.

Roads designated as county aid roads prior to passage of this act must be redesignated as such gasoline tax cannot be used to pay expenses of maintaining roads prior to designation. Op. Atty. Gen., Sept. 20, 1929.

Employment of town supervisor on county aid road is not prohibited by §1096, Mason's St. Op. Atty. Gen., May 3, 1930.

Under this section, construed with section eight, the county board may designate a small portion of a road with a view of building a bridge under this act. Op. Atty. Gen., June 16, 1930.

A county board has authority to buy a right of way and construct a new road, and if a township refuses to contribute the amount fixed by the county board, board would be justified in refusing to build the road. Op. Atty. Gen., Mar. 17, 1931.

§2720-93. Money to be used on county aid roads.—The moneys apportioned to each county under the provisions hereof shall be used solely in the construction, improvement and maintenance of county aid roads therein and shall be expended by the county board on such county aid roads as it shall determine and in the manner herein provided. All county aid roads constructed under the provision of this act shall be constructed under the supervision and according to plans and specifications made by the county highway engineer, filed with the county auditor and approved by the county board. (Act Apr. 22, 1929, c. 283, §6.)

Subject to limitations of section 7 of Laws 1929, c. 283, gasoline tax money may be used in buying graders and other road equipment. Op. Atty. Gen., June 1, 1929.

Mason's 1927 Statutes, §2563, relating to plans and specifications, is not applicable to this act. Op. Atty. Gen., May 1, 1930.

Mason's 1927 Statutes, §2595, is applicable to the construction of county aid roads.—Id.

There is no legal objection to the county board fixing a reasonable rate for the use of its road machinery on county aid roads and charging the county aid roads funds with such amount and crediting same to the road and bridge fund. Op. Atty. Gen., May 12, 1930.

The provision requiring that county aid roads shall be constructed under the supervision and according to plans and specifications made by the county highway engineer are mandatory. Op. Atty. Gen., June 28, 1930.

§2720-94. Portion to be used to maintenance.—Of the moneys so apportioned to each county not less than twenty nor more than fifty per cent as the county board shall determine by resolution shall be devoted to

the maintenance of county aid roads and shall be expended by the county board in the various towns of the county substantially according to the mileage, traffic needs and conditions of county aid roads within each town within the county. Provided, however, that in any county where 35 per cent or more of the roads therein, including state and county aid and town roads lying outside of cities and villages have been improved and graveled or otherwise surfaced, the county board by a resolution adopted by unanimous vote thereof, may use the whole of the money accruing to such county for the maintenance of county aid roads therein.

The town board of any town may appropriate to the county, moneys out of its road and bridge fund, and any moneys so appropriated shall be expended by the county in the maintenance of county aid roads within such town. (Act Apr. 22, 1929, c. 283, §7.)

While a town must ordinarily pay for the cost of construction of a county aid road it cannot be compelled to contribute to the maintenance of the road after it has been constructed. Op. Atty. Gen., Feb. 18, 1930.

§2720-95. Townships to aid in construction of county aid roads.—The remainder of the moneys so apportioned to each county shall be devoted to the construction and improvement of county aid roads therein. No work of such construction or improvement shall be begun or any contract therefor let until the town within which lies the road so proposed to be constructed or improved shall have paid to the county toward the cost of such work an amount equal to not less than ten nor more than twenty per cent of the cost of such road within the township as the county board shall determine by resolution as such cost is estimated by the county highway engineer, or shall have included such amount in its annual levy for the town's road and bridge fund, provided that the county board upon unanimous vote may by resolution waive as to any town the requirement that it shall contribute toward the cost of constructing or improving county aid roads, whenever it shall appear to the county board that the enforcement of said requirement would be impracticable or unjust. In case of such levy such payment shall be made to the county not later than December 1 of the year following such levy with interest thereon from the commencement of such work at the rate of six per cent per annum. Provided that, such town may appropriate a further amount out of its road and bridge fund, to be expended by the county in the construction of such county aid roads in said town as the voters may determine. (Laws 1929, c. 283, §8, as amended Apr. 20, 1931, c. 221, §1.)

The county board may designate a small portion of a road merely for the purpose of building a bridge with the aid of town funds. Op. Atty. Gen., June 16, 1930.

While the voters of a township must consent to the amount of a tax levy for roads and bridges, the town board, if it has funds on hand authorized by the voters, may appropriate same under this section without a vote of the people. Op. Atty. Gen., June 30, 1930.

Township may not borrow money in anticipation of future payments from gasoline tax. Op. Atty. Gen., Mar. 11, 1931.

After town meeting has voted to levy tax

for construction of county aid roads, county auditor must extend the same and county board cannot waive the contribution. Op. Atty. Gen., April 27, 1931.

After townships have actually paid money into the county treasury as contribution toward cost of constructing county aid roads, the county board is powerless to refund it. Op. Atty. Gen., April 27, 1931.

Laws 1931, c. 221, amending this section cannot be given retroactive effect and applies only to county aid roads designated as such subsequent to the approval of the act on April 20, 1931. Op. Atty. Gen., May 12, 1931.

§2720-96. Unorganized townships.—Unorganized townships shall for the purposes of this act be deemed to be towns, and the county board shall as to such unorganized townships perform the duties and functions of the town board of organized townships. (Act Apr. 22, 1929, c. 283, §9.)

§2720-97. To be credited to County Road and Bridge Fund in certain counties.—All moneys apportioned under the provisions of this act to counties having a population of more than 200,000 shall be credited to the

county road and bridge fund of such county and shall be appropriated and expended by such county upon public highways exclusive of trunk highways within such county, in such amounts as the county board of said county shall deem advisable, for the purposes and in the manner in which other moneys accruing to such fund may be appropriated and expended and such appropriations and expenditures shall not be limited or restricted by the provisions of Sections 5, 6, 7, 8 and 9 [§§2720-92 to 2720-96] of this act. (Act Apr. 22, 1929, c. 283, §10.)

§2720-98. Provisions severable.—If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this act. (Act Apr. 22, 1929, c. 283, §11.)

§2720-99.—All acts and parts of acts inconsistent with the provisions hereof are hereby repealed. (Act Apr. 22, 1929, c. 283, §12.)

CHAPTER 13A

Vessels Navigating Lakes and Rivers

§2740-1. Definition.—The words "motor boat" where used in this act shall include every vessel propelled by machinery, except tug and/or tow boats propelled by steam and operated upon any lakes or streams of this state, except lakes and streams situated in whole or in part north of the north line of township 52 as the same extends due west across the state and excepting likewise all waters constituting the boundary between the State of Minnesota and any other state. (Act Mar. 26, 1931, c. 88, §1.)

§2740-2. Speed of motor boats.—No motor boat under the provisions of this chapter shall be operated at a speed greater than is reasonable and proper having due regard to the safety of other boats and persons. (Act Mar. 26, 1931, c. 88, §2.)

§2740-3. Must have mufflers.—Every motor boat under the provisions of this chapter propelled by an internal combustion engine shall at all times be so equipped as to completely and effectually "muffle" and silence the sound of the explosions of such engine by diverting its exhaust under water, or otherwise. It shall be unlawful to operate any such motor boat so propelled by an internal combustion engine with the muffler or cut-out open on any navigable or public waters in this state other than international waters, waters constituting the boundary between the State of Minnesota and any other state, except while such motor boat is actually competing in a race licensed to be held pursuant to section 4 [§2740-4] hereof. (Act Mar. 26, 1931, c. 88, §3.)

§2740-4. Mufflers may be open in races.—Such motor boats may be operated with mufflers or cut-outs open while actually competing in any race licensed to be held by the council or other governing body of the city, village, or town adjacent or nearest to that portion of the body of water on which such race is to be held. (Act Mar. 26, 1931, c. 88, §4.)

§2740-5. Owner to report accidents.—Within 48 hours after a motor boat meets with an accident involving personal injury or loss of life, it shall be the duty of the owner or the person in charge of such motor boat to prepare a written report, setting forth the details of the casualty, which report shall be forwarded by mail or otherwise to the sheriff of the county in which the accident occurred. (Act Mar. 26, 1931, c. 88, §5.)

§2740-6. Inconsistent acts repealed.—All prior acts or parts of prior acts inconsistent with the provisions of this act are hereby repealed. (Act Mar. 26, 1931, c. 88, §6.)

§2740-7. Violation—penalties.—Any person who violates any section of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or imprisonment not exceeding thirty days, or both. (Act Mar. 26, 1931, c. 88, §7.)

§2740-8. Effective July 1, 1931.—This act shall take effect and be in force from and after July 1st, 1931. (Act Mar. 26, 1931, c. 88, §8.)