

Subsection (7) is a restatement of part of s. 85.445.

Subsection (8) is an attempted restatement of that part of s. 85.54 (1) relating to the transportation of unmanufactured forest products. The present provision is ambiguous and it is difficult to state exactly what it means. [Bill 99-S]

**348.28 History:** 1959 c. 542; Stats. 1959 s. 348.28.

#### CHAPTER 349.

##### Powers of State and Local Authorities.

On legislative power generally and delegation of power see notes to sec. 1, art. IV; on powers of county boards see notes to sec. 22, art. IV; on municipal home rule see notes to sec. 3, art. XI; on kinds of actions see notes to 260.05; and on recovery of municipal forfeitures see notes to 288.10.

**349.01 History:** 1957 c. 260; Stats. 1957 s. 349.01.

**349.02 History:** 1957 c. 260; Stats. 1957 s. 349.02.

Although the driver whose car struck a traffic officer entered the intersection on the officer's signal to do so, such driver owed the officer the same duty as that which he owed to anyone whom he might reasonably foresee would be injured in an accident as to which his failure of ordinary care might contribute. *McCarthy v. Behnke*, 273 W 640, 79 NW (2d) 82.

Traffic officers may hold up, or reroute traffic when highways are blocked by storms, accidents, or other conditions requiring emergency action. The agency employing such personnel is not liable for accidents occurring to vehicles, property, or highways as a result of such halting or rerouting. 86.06 and 349.16 (1), Stats. 1957, extend authority to highway maintenance personnel to hold up or reroute traffic where the highway is unsafe for travel. 47 Atty. Gen. 82.

**349.03 History:** 1957 c. 260, 262; Stats. 1957 s. 349.03; 1961 c. 336; 1967 c. 252.

**Legislative Council Note, 1957:** The first sentence of sub. (1) is basically a restatement of s. 85.86. The remainder of sub. (1) is a restatement of parts of s. 85.84 and 85.85. The phrase "ordinance, resolution, rule or regulation" used in the present sections has been changed to "traffic regulation" in the new section. This is intended merely to be a simplification of language, not a change in meaning.

Subsection (1) (a) incorporates the language used in present ss. 85.84 and 85.85 to indicate the general authority of counties and municipalities to enact traffic regulations. Whether or not a particular ordinance is inconsistent with or contrary to the statutory traffic regulations seems to be a question of interpretation in each case. By way of illustration, in *City of Oshkosh v. Campbell*, 151 W 567, 139 NW 316 (1913) an ordinance requiring vehicles making right turns to make the turn next to the right-hand curb was held to be valid. There was no statute on the sub-

ject of right turns at the time. In *City of Baraboo v. Dwyer*, 166 W 372, 165 NW 297 (1917) an ordinance limiting speed to 10 miles per hour upon a bridge was held to be void because in conflict with the speed limits established by statute. On the basis of the *Dwyer* case the attorney general ruled that a city ordinance requiring all vehicles to stop before crossing railroad tracks is valid. There is no statute requiring such a stop. 13 Atty. Gen. 246 (1924).

Subsection (2) restates certain express prohibitions contained in present s. 85.84. It enumerates certain situations where local regulation is expressly prohibited and thereby avoids speculation as to whether such regulations would be "contrary" or "inconsistent" within the meaning of sub. (1) (a).

The prohibitions contained in present s. 85.84 do not apply to "corporations organized pursuant to ch. 55, laws of 1899." This exemption has been dropped. The 1899 law authorized the organization of park and pleasure drive associations in cities of the 2nd, 3rd and 4th classes. By virtue of ch. 557, Laws of 1917, no pleasure drive corporations have been permitted to come into existence since June 4, 1917 and the 1917 law further provided that any such corporation in existence at that time could at any time transfer all its parks, boulevards and pleasure drives and gifts and grants therefore to the city park board and that such transfer would operate to dissolve the corporation. It is not likely that any pleasure drive corporations are in existence today and in any event it would seem that they should not have any greater powers than the city itself.

The last 2 sentences of s. 85.84, relative to forfeiture on bail, are restated in s. 345.15. [Bill 99-S]

**349.06 History:** 1957 c. 260; Stats. 1957 s. 349.06; 1967 c. 292; 1969 c. 383.

**Legislative Council Note, 1957:** This section is a restatement of part of s. 85.84. It represents one of the express grants of authority mentioned in s. 349.03 (1) (b) and is not a limitation on the authority stated in s. 349.03 (1) (a). The supreme court has held that the words "strict conformity" refer to the offense or substantive law and not to the penalty provision. A local ordinance therefore is not void simply because the penalty differs from that imposed by statute. *Dane County v. Bloomfield*, 267 W 193, 64 NW (2d) 829 (1954). [Bill 99-S]

**Editor's Note:** Prior statutes governing the regulation of traffic by municipal governing bodies were considered by the supreme court in *State ex rel. Keefe v. Schmiede*, 251 W 79, 28 NW (2d) 345, and by the attorney general in an opinion published in 17 Atty. Gen. 281.

The term "in strict conformity", as used in 349.06, is not restricted to the offense or substantive law, but includes the penalty necessitating that the forfeiture provision of a local ordinance shall strictly conform to the statute. The language "the penalty for violation of any of its provisions shall be limited to a forfeiture" does not take the forfeiture out of the strict conformity clause, but merely reflects that the penalty of a local ordinance

must be limited to a forfeiture. *Madison v. McManus*, 44 W (2d) 396, 171 NW (2d) 426.

**349.07 History:** 1957 c. 260; Stats. 1957 s. 349.07; 1969 c. 500 s. 30 (2) (e).

The state highway commission has exclusive power to declare as arterial highways selected and marked connecting streets in cities between portions of the U. S. or state highway system. 19 Atty. Gen. 296.

Designation of a highway by the commission as an arterial applies to relocated portions of such highway and to marked detours thereof without additional action by the commission. 20 Atty. Gen. 377.

Town officials do not have authority to place stop signs on U. S. or state trunk highways without the consent of the state highway commission. 22 Atty. Gen. 495.

A city does not have exclusive jurisdiction over U. S. state or county roads and their designated connecting streets, and hence cannot designate them as arterials. 25 Atty. Gen. 525.

**349.08 History:** 1957 c. 260; Stats. 1957 s. 349.08; 1959 c. 69; 1961 c. 106, 205; 1963 c. 36; 1965 c. 196, 227; 1965 c. 433 s. 117; 1969 c. 500 s. 30 (2) (e).

**Editor's Note:** Sec. 349.08 superseded 85.71-85.74, Stats. 1955, all based on sec. 3, ch. 454, Laws 1929, and amendatory legislation. Prior legislation on the same subject was contained in 85.16, Stats. 1927. Interpretations of some of these statutory provisions were published in 15 Atty. Gen. 196 and 20 Atty. Gen. 987.

After a town has erected a stop sign under 349.08 (5) it has the duty to replace it if it is missing. Failure to do so for 19 days after knowledge that it is missing is negligence as a matter of law. *Firkus v. Rombalski*, 25 W (2d) 352, 130 NW (2d) 335.

Tort liability cannot be imposed on a city because it did not adopt a less hazardous sequence of changing traffic lights if the sequence used conformed to departmental rules. *Raisanen v. Milwaukee*, 35 W (2d) 504, 151 NW (2d) 129.

**349.085 History:** 1963 c. 109; Stats. 1963 s. 349.085.

**349.09 History:** 1957 c. 260; Stats. 1957 s. 349.09.

**349.10 History:** 1957 c. 260, 292; Stats. 1957 s. 349.10; 1959 c. 660; 1961 c. 205; 1969 c. 500 s. 30 (2) (e).

**349.105 History:** 1957 c. 294; Stats. 1957 s. 349.105.

**349.11 History:** 1957 c. 260; Stats. 1957 s. 349.11; 1961 c. 537; 1965 c. 181, 569; 1969 c. 500 s. 30 (2) (e).

**Editor's Note:** A city ordinance prescribing a maximum permissible speed was applied in *Milwaukee v. Wroblewski*, 43 W (2d) 603, 168 NW (2d) 829; and in *Milwaukee v. Berry*, 44 W (2d) 321, 171 NW (2d) 305.

A municipality may not establish a maximum speed limit of lower than 25 miles per hour on a roadway within a municipal park without the approval of the state highway commission. 39 Atty. Gen. 454.

**349.12 History:** 1957 c. 260; Stats. 1957 s. 349.12; 1967 c. 152; 1969 c. 500 s. 30 (2) (e).

**349.13 History:** 1957 c. 260, 674; Stats. 1957 s. 349.13; 1959 c. 308; 1963 c. 110, 575; 1969 c. 500 s. 30 (2) (e).

A municipal ordinance prohibiting the parking of vehicles on restricted city streets at specified times without obtaining a special permit for which a fee was charged could not be held to be unenforceable by reason of an alleged failure to comply with the sign-posting provisions of 349.13 (1), Stats. 1963, where the evidence as to compliance was so inconclusive as to preclude determination that the presumption of validity had been overcome. *Milwaukee v. Hoffmann*, 29 W (2d) 193, 138 NW (2d) 222.

A traffic officer may only move a vehicle to a position permitted by law and may not order its removal to a police station and charge the cost of such moving to the defendant. 27 Atty. Gen. 250.

A county maintaining a state highway by contract has no authority to regulate parking on such highway, nor can the state highway commission delegate such authority to the county. 47 Atty. Gen. 27.

**349.14 History:** 1957 c. 260, 674; Stats. 1957 s. 349.14.

**Legislative Council Note, 1957:** This is a restatement of present s. 85.845, with 2 minor changes having been made so as to make the law conform to practice. The present law contains 2 subsections, one relating to cities of the first class and the other relating to villages and to cities of the second, third and fourth classes. The subsection relating to cities of the first class does not contain an enumeration of the purposes for which parking meter revenue may be used while the other subsection does. Whether this enumeration was intended as a restriction on the use of such revenue by villages and by cities of the second, third or fourth class is not known, but in any event the enumerated purposes (restated in sub. (2) of the new section) are broad enough to cover any use of such revenue relative to vehicular traffic or parking of vehicles and will not require any change in practice even in cities of the first class. The second change involves the dropping of a provision in the present law which seems to limit the authority of villages and cities of the second, third and fourth classes to erection of parking meters "on the streets or highways within the limits of the municipality." It is a well known fact that such cities and villages have developed metered off-street parking facilities and there is no good reason why this practice should be prohibited in view of present day parking problems.

In regard to the present law, which is restated above, the attorney general has ruled that the county board does not have authority to remove parking meters installed by a city on streets surrounding the court house [38 Atty. Gen. 169 (1949)] and that cities may erect parking meters upon that portion of county trunk highways which extends within the corporate limits and use the revenue therefrom [40 Atty. Gen. 162 (1951)]. [Bill 99-S]

**Legislative Council Note, 1957:** This amendment is designed to incorporate into the vehicle code the change in the law made by ch. 17, laws of 1957, insofar as that act amended s. 85.845 of the 1955 statutes. It appears to have been the purpose of that act to grant to the counties the same rights with respect to parking meters and the use of revenue therefrom as had been previously conferred upon cities and villages. [Bill 643-S]

**349.15 History:** 1957 c. 260, 590; Stats. 1957 s. 349.15.

**349.16 History:** 1957 c. 260; Stats. 1957 s. 349.16; 1969 c. 500 s. 30 (2) (e).

**Legislative Council Note, 1957:** This is a restatement (with the changes noted below) of those parts of s. 85.54 relating to the authority of state and local officials to place special, seasonal or temporary weight restrictions on highways and highway structures and to prohibit vehicles causing damage from using the highways. Those parts of s. 85.54 which are of general interest to the public have been restated in ss. 348.17 and 348.27 (8). While the present version of the law does not expressly refer to weight limitations because of special or temporary conditions, the attorney general has ruled that the section does not grant authority to impose permanent weight restrictions on a highway below the statutory class "B" limitations. 39 Atty. Gen. 496 (1950).

Two changes have been made in the present law: (1) The provision requiring approval of the county highway commissioner in the case of special weight limitation imposed on town highways or on city or village streets has been dropped; and (2) the provision in sub. (1) (c) restricting the authority of traffic officers and officers in charge of maintenance to order suspension of operation when a contract provides for reimbursement for any damage done has been added. [Bill 99-S]

**Editor's Note:** Amendment 1-A to Bill 99-S, by the same author, added a reference to 84.20 in (1)(c) and carried the following note: "Section 84.20 gives the state highway commission the option of rebuilding a damaged highway rather than reimbursing the local unit of government for the damage done. The amendment makes clear that use of a highway cannot be denied when this option is applicable even though the construction contract does not provide for reimbursement."

See note to 349.02, citing 47 Atty. Gen. 82.  
See note to 348.17, citing 48 Atty. Gen. 152.

**349.17 History:** 1957 c. 260; Stats. 1957 s. 349.17.

See note to 80.47, citing Hartung v. Milwaukee County, 2 W (2d) 269, 86 NW (2d) 475, 87 NW (2d) 799.

**349.18 History:** 1957 c. 260, 674; Stats. 1957 s. 349.18.

**349.19 History:** 1957 c. 260; Stats. 1957 s. 349.19; 1969 c. 500 s. 30 (3) (g), (i).

**349.20 History:** 1957 c. 260; Stats. 1957 s. 349.20.

**349.21 History:** 1967 c. 161; Stats. 1967 s. 349.21.

**349.24 History:** 1957 c. 260; Stats. 1957 s. 349.24.

An ordinance of the town in which Milwaukee county's airport is located, so far as attempting to require local licenses from, and to prevent the daily solicitation of passengers at the airport by, the drivers of cabs licensed by the city of Milwaukee and engaged in carrying air-line passengers between the city and the airport for a cab company licensed by the city and authorized by the public service commission to operate limousines interurban between the city and the airport, violates 85.82, Stats. 1949, and, together with a provision in the ordinance that no license will be issued in the case of a corporation unless its records and main office are located in the town, the ordinance is void as attempting to deprive such cab company and its drivers of their property rights without due process of law and denying to them the equal protection of the laws. Milwaukee County v. Lake, 259 W 208, 47 NW (2d) 87.

Since the Milwaukee county airport terminal is in the city of Milwaukee and the county has not adopted any regulatory ordinances, a cab driver from another municipality and not licensed under the Milwaukee licensing ordinance, can be fined for taking a passenger from the airport into Milwaukee, even though he passed through another city on the trip. Courtesy Cab. Co. v. Johnson, 10 W (2d) 426, 103 NW (2d) 17.

**349.25 History:** 1957 c. 260; Stats. 1957 s. 349.25; 1969 c. 500 s. 30 (3) (g).

## CHAPTER 350.

### Snowmobiles.

On exercises of police power see notes to sec. 1, art. I.

**350.01 History:** 1967 c. 292; Stats. 1967 s. 350.01; 1969 c. 394.

**350.02 History:** 1967 c. 292; Stats. 1967 s. 350.02; 1969 c. 394.

**350.03 History:** 1967 c. 292; Stats. 1967 s. 350.03; 1969 c. 394.

**350.04 History:** 1967 c. 292; Stats. 1967 s. 350.04; 1969 c. 394.

**350.05 History:** 1967 c. 292; Stats. 1967 s. 350.05.

**350.06 History:** 1967 c. 292; Stats. 1967 s. 350.06.

**350.07 History:** 1967 c. 292; Stats. 1967 s. 350.07; 1969 c. 394.

**350.08 History:** 1967 c. 292; Stats. 1967 s. 350.08.

**350.09 History:** 1967 c. 292; Stats. 1967 s. 350.09; 1969 c. 394.

**350.10 History:** 1967 c. 292; Stats. 1967 s. 350.10.

**350.11 History:** 1967 c. 292; Stats. 1967 s. 350.11.