

power to act in place of the county highway committee. 3 Atty. Gen. 793.

Public moneys of a town or county cannot be devoted to the construction of a bridge, a part of which rests on the soil of another state. 4 Atty. Gen. 949.

A county may be compelled to aid a town in the construction of a bridge, even though the amount voted by the town has been donated. 7 Atty. Gen. 340.

Where 2 towns, located in the same county, join in a petition for county aid in building a bridge costing more than \$400, if the bridge has been apportioned to the 2 towns for maintenance and repairs, each town should pay one-half the cost of building that portion of the bridge apportioned to it, and the county the remaining half. If such bridge has not been so apportioned, then each town should pay such proportion of one-half the cost of the bridge as its assessed valuation bears to the total assessed valuation of the 2 towns. 3 Atty. Gen. 72; 7 Atty. Gen. 397.

Where a bridge has been rendered useless by enlargement of a drainage ditch, the town is not entitled to emergency relief under sec. 1319, Stats. 1919. The drainage district must pay to the town, city or village the expense of lengthening the existing bridge made necessary by enlargement of the drainage ditch. 9 Atty. Gen. 336.

After petitioning the county, but before any contract has been made or construction commenced, the town may abandon the project; if it does so the county may ignore the petition and rescind any action taken towards cooperating in building the bridge, and may devote the funds appropriated by it therefor to other purposes. 10 Atty. Gen. 1005.

An order of a town board altering a highway, where such alteration involves construction of bridges, must be submitted to and approved by the town electors before the county is under any legal obligation to appropriate money to pay a portion of the cost of such bridges. 14 Atty. Gen. 408.

A city participating in construction of a bridge under provisions of 87.02 or 87.03, Stats. 1931, is subject to the county tax for bridges. 21 Atty. Gen. 933.

Town officers are not criminally liable for nonfeasance in failing to repair a bridge where the town has refused to vote necessary funds for repairs. Civil remedies of parties claiming injury are limited to relief afforded under 81.14 and 81.15, Stats. 1933. 23 Atty. Gen. 601.

The procedure whereby a county board may improve or construct a bridge or culvert in a county trunk highway system and assess part of the cost to the town is provided by 83.03, Stats. 1935. 24 Atty. Gen. 297.

See note to 80.11, citing 27 Atty. Gen. 53.

A county highway committee may not refuse county aid to towns because they have made application for state disaster aid. 39 Atty. Gen. 273.

The words "any approach" in 81.38 (2), Stats. 1953, mean "every bridge approach". 42 Atty. Gen. 329.

See note to 86.34, citing 43 Atty. Gen. 192.

Definitions used in Standard Specifications for Road and Bridge Construction should be used to determine whether or not a span is a

"bridge" and eligible for county aid in construction. 46 Atty. Gen. 202.

Where the call of 81.38 is not met, it cannot be used. 81.01 (1), 83.03 (1) and 66.30 (1), Stats. 1957, authorize a county to contract with towns on bridge construction. The extent of county aid depends on the terms of the contract. 47 Atty. Gen. 50.

81.39 History: 1869 c. 152 s. 113, 114; R. S. 1878 s. 1318; Stats. 1898 s. 1318; 1923 c. 108 s. 259; Stats. 1923 s. 87.14; 1943 c. 334 s. 81; Stats. 1943 s. 81.39.

81.42 History: 1911 c. 571; Stats. 1911 s. 1319m; 1923 c. 108 s. 258; Stats. 1923 s. 87.13; 1943 c. 334 s. 82; Stats. 1943 s. 81.42.

CHAPTER 83.

County Highways.

Editor's Note: Extensive notes on ch. 334, Laws 1943, revising the highway laws, are set forth on pages 1296 to 1300, Wis. Statutes, 1943.

83.01 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m—6, 1317m—7 part; 1913 c. 668; 1915 c. 468; 1915 c. 533 s. 1, 12, 13, 14, 15; 1917 c. 289, 366; 1919 c. 313; 1919 c. 362 s. 22, 28, 34, 48; 1919 c. 628 s. 14; 1923 c. 108 s. 126, 127; 1923 c. 446 s. 1; Stats. 1923 s. 82.03, 82.04; 1939 c. 286; 1943 c. 334 s. 86 to 88; Stats. 1943 s. 83.01; 1945 c. 559; 1955 c. 207; 1957 c. 183; 1959 c. 398; 1969 c. 500 s. 30 (2) (e).

On eligibility for office see notes to 66.11.

An act of the county board, to transfer the custody of road machinery from the highway commissioner to a committee, contravenes sec. 1317m—6, Stats. 1919, and is void. 8 Atty. Gen. 534.

The county highway commissioner has immediate charge of county maintenance work on highways. The board may furnish him assistants, but may not take supervision from him or appoint another superintendent of such work. 10 Atty. Gen. 1115.

The county highway commissioner, upon his first election, serves till the second January thereafter, irrespective of how the vacancy occurred. 10 Atty. Gen. 17, 1191.

It is lawful for the county board to erect a building at any convenient place in the county for the storing of county highway machinery. 13 Atty. Gen. 22.

Power to appoint a clerk to the county highway commissioner is vested in the county board under 82.03 (6), Stats. 1925, but this power may be delegated to the county highway commissioner. Assuming that power to appoint a clerk has been delegated by the county board to the county highway commissioner, the latter cannot appoint as clerk a member of the county board. 14 Atty. Gen. 203.

When a vacancy in the office of county highway commissioner is filed by the county board, the office terminates on the first Monday of January of the second year next succeeding appointment. If such vacancy occurs while the county board is not in session, it is filled by the county highway committee; such term expires on the first Monday of January next succeeding such appointment; his successor should be appointed by the county board

at its first regular meeting next succeeding such appointment, to take office on the Tuesday following the first Monday in January next succeeding and hold for the full term. 17 Atty. Gen. 549.

The offices of county clerk and county highway commissioner are not incompatible. 17 Atty. Gen. 641.

A temporarily incapacitated county highway commissioner has no authority to appoint another to perform his duties unless he has been delegated power; the county board may appoint an assistant; a lawfully appointed assistant is an "employee" of the county within the meaning of the compensation act. 19 Atty. Gen. 285.

The county highway committee audits expense accounts of the county highway commissioner but the county board determines whether his expense claims as well as those of members of the county highway committee are legal and should be allowed. 22 Atty. Gen. 5.

A county has power to purchase an automobile to be used by the highway commissioner in the necessary performance of his duties. 26 Atty. Gen. 79.

A county board may delegate the power to appoint assistants for the county highway commissioner given by 83.01 (4), Stats. 1943, either jointly to the county highway committee and county highway commissioner or to either such committee or commissioner. Such power may not be re-delegated by such committee or commissioner. 34 Atty. Gen. 68.

A resolution of a county board authorizing the county highway committee and county highway commissioner to carry out highway construction and maintenance work in the manner provided by law "and to employ such patrolmen, laborers and foremen as they may deem necessary," delegates joint authority to the committee and the commissioner and requires joint action by them. Evidence tending to show a different intent on the part of the county board in enacting said resolution, tending to vary or contradict the terms of said resolution which is required by law to be recorded at length by the county clerk in a book kept for that purpose, is inadmissible and cannot be considered in determining its meaning. The question of ratification is one of fact depending on intent. This is true even though the facts are undisputed where varying inferences can be drawn from the facts. 34 Atty. Gen. 82.

If a county board or county highway committee by appropriate action taken pursuant to 83.01 (7) (b) directs a county highway commissioner to participate in activities of a state association of county highway commissioners in the course of which said commissioner is elected an officer of such association and is required to attend meetings of the board or of the entire association, and makes it a part of his official duties to do so, he may be reimbursed for his out-of-pocket traveling expenses incurred in attending such meetings, assuming they are reasonable and necessary and provided that appropriate action is taken by the county board to authorize their reimbursement as provided by 59.15 (3). 34 Atty. Gen. 362.

83.013 History: 1967 c. 292; Stats. 1967 s. 83.013; 1969 c. 500.

83.015 History: 1915 c. 533 s. 11; Stats. 1915 s. 1317m-5 sub. 8; 1919 c. 262; 1919 c. 362 s. 34; 1919 c. 458; 1923 c. 108 s. 128, 129; 1923 c. 356; Stats. 1923 s. 82.05, 82.06; 1925 c. 36; 1927 c. 26, 338; 1927 c. 123 s. 2; 1929 c. 53; 1931 c. 36; 1933 c. 450 s. 12; 1943 c. 334 s. 89, 90; Stats. 1943 s. 83.015; 1947 c. 271; 1949 c. 54; 1953 c. 61; 1969 c. 55; 1969 c. 500 s. 30 (2) (e).

The requirement that the committee shall "audit" claims is not intended to change or impair the powers of county clerks or to give the committee the ultimate power to allow or disallow claims. *Rinder v. Madison*, 163 W 525, 158 NW 302.

Where a town chairman who was ex officio a member of the highway committee for his county and who as such member, but without any specific direction of the committee, superintended the construction of certain bridges in the town, presented his bill for such services, the committee might lawfully have appointed him such superintendent and their approval of his bills with full knowledge of the facts was a lawful ratification of his acts as such superintendent. *Wade v. Sheboygan County*, 167 W 98, 166 NW 774.

The compensation of a member of the county board, acting as a member of the county highway committee, is limited to the stated amount in any one year. If such member had any pecuniary interest in a contract with the county he is subject to the penalties provided by sec. 4549, Stats. 1921, and the contract is void, precluding him from the recovery for such services. *Henry v. Dolen*, 186 W 622, 203 NW 369.

County highway committees have extensive powers, and when duly authorized by the county board their powers respecting details of road improvement and maintenance are as extensive as those of the county board itself; hence their acts are not subject to judicial interference on the ground of lack of wisdom or sound discretion. *Kewaunee County v. Door County*, 212 W 518, 250 NW 438.

A county board cannot add to the county highway committee after the annual meeting, where the number was fixed at 3. The manner of payment of this committee cannot be changed by the county board. The salary of the county highway commissioner must be audited by the county committee. The county committee—not the commissioner—has power to buy tools and machinery. 5 Atty. Gen. 497.

Town chairmen who serve ex officio as members of the county highway committee are to be compensated by the county as other members of the committee. 6 Atty. Gen. 9.

The chairman of the county board is not, ex officio, a member of the county highway committee. 6 Atty. Gen. 19.

The county board may compensate and pay expenses of the county highway committee in purchasing road machinery. 7 Atty. Gen. 36.

The county highway committee elected at the annual meeting of a county board holds for one year and the board cannot elect a new committee prior to the succeeding annual meeting. 7 Atty. Gen. 313, 350.

A county highway committee can incur no county liability for maintenance of highways in excess of funds made available by law or by the county board. 7 Atty. Gen. 392.

Expenses and per diem of members of a county highway committee attending the letting of federal aid construction contracts may not be paid out of joint funds, but by the county, if at all. 10 Atty. Gen. 253.

A county highway committee has no authority to determine where county aid for highway construction work shall be expended in the absence of delegation of such authority to it by the county board. 18 Atty. Gen. 581.

A county highway committee need not be composed of members of the county board and, whether members or not, serve for one year and until their successors are elected. 19 Atty. Gen. 302.

A county board may increase the compensation of members of the county highway committee at a special meeting. 20 Atty. Gen. 1032.

A county highway committee may rent trucks and other snow removal machinery with the option of purchasing the same in the event the county board later authorizes the purchase of such equipment. 20 Atty. Gen. 1182.

Power to appoint a county highway and shop employe and to fix compensation is in the county board, which may delegate it to either the highway committee or the highway commissioner or to the 2 jointly. 21 Atty. Gen. 327.

A county may purchase road machinery on deferred payments. 24 Atty. Gen. 167.

A county highway committee may be elected at the spring meeting of the county board and it holds office for one year, but cannot take over the duties until the old committee's one-year term expires. 25 Atty. Gen. 365.

Members of a highway committee who are members of the county board cannot receive their increase in per diem until their next term as members of the county board. 25 Atty. Gen. 437.

A county highway committee may bargain with employes as a group and by such means reach agreement as to hours, wages, seniority, classifications, nondiscrimination, etc., but neither the county highway committee nor the county board may make a contract stipulating that all employes must be members of a particular organization. 27 Atty. Gen. 30.

County employes may join labor unions. 27 Atty. Gen. 254.

If authorizing resolutions are silent with respect thereto, a county highway committee may purchase materials and equipment without asking for bids. 27 Atty. Gen. 489.

See note to 59.06, citing 27 Atty. Gen. 851.

Power of a county to bargain collectively with labor unions and to make agreements as to hours, wages, nondiscrimination, etc., is discussed in 29 Atty. Gen. 82.

See note to 83.01, citing 34 Atty. Gen. 82.

The membership of the county highway committee cannot exceed 5, with the exception that the town chairman shall be ex officio a member in certain instances under 83.015 (1) (c), Stats. 1949. The fact that the county board chairman has been made an ex

officio member of the county board committees generally does not entitle him to expenses and per diem under 84.09 (4) when he accompanies the county highway committee on trips to acquire right-of-way for the state highway commission. 38 Atty. Gen. 594.

If so authorized by the county board the county highway committee may purchase county road machinery either with or without bids and may call for bids on equipment of a particular manufacturer to the exclusion of other similar equipment of other manufacturers. 59.07 (4) and (7), Stats. 1949, does not apply. 39 Atty. Gen. 61.

See note to 59.07 (20), citing 39 Atty. Gen. 519.

83.015 (2), authorizing the county highway committee to enter lands to cut weeds and brush and to erect snow fences for the protection of highways, is an exercise of the power of eminent domain, and 83.18 provides the procedure for determining damages, if any, to owners of lands entered and used. (18 Atty. Gen. 634 overruled as far as it states that such activities are under the police power.) 39 Atty. Gen. 597.

While a county board under 59.04 (1) (c), Stats. 1949, may transact any and all business at its organization meeting in April which is permitted by law to be transacted at the annual meeting, it may not at the April meeting increase the size of the county highway committee from 3 to 5 members and provide that the new members shall serve until the annual meeting or until their successors have been elected and qualified where a 3-member committee to serve for one year had previously been elected pursuant to 83.015 (1) at the prior annual meeting. 40 Atty. Gen. 158.

An appropriation by a county board of a specific sum for the purchase of highway equipment with authorization to the county highway committee to make its choice among the 3 low bids taken for the purchase of equipment complies with 83.015 (2), Stats. 1951, without the necessity for any further approval or authorization from the board for the purchase of specific items. 41 Atty. Gen. 63.

Where a county board of a county of over 25,000 population has provided under 59.03 (2) (i), Stats. 1951, for the annual salary of county board members with additional salary for such members who are also county highway committee members, and a committee member ceases to be a member of the board, he may no longer receive the salary of a county board member but is limited to the salary which the board has provided for highway committee members. 42 Atty. Gen. 84.

A county highway committee has no authority to construct a garage or lease county-owned land. 43 Atty. Gen. 10.

See note to 59.04, citing 46 Atty. Gen. 175.

Members of the county highway committee need not be members of the county board. 48 Atty. Gen. 241.

The county board can increase the \$500 limit during any given year before payment is made, even though the services have already been rendered, but cannot legalize excessive payments already made in the current or previous years. 54 Atty. Gen. 191.

83.016 History: 1923 c. 357; Stats. 1923 s.

82.02 (15); 1927 c. 44; 1931 c. 79 s. 13; Stats. 1931 s. 82.07; 1943 c. 334 s. 91; Stats. 1943 s. 83.016; 1949 c. 269; 1953 c. 608; 1965 c. 510; 1969 c. 255; 1969 c. 500 s. 30 (3) (b).

A county highway police officer who is also a deputy sheriff is prohibited by 83.016, Stats. 1937, from accepting a recognizance or any money for the appearance of an offender in court. 27 Atty. Gen. 307.

83.016, Stats. 1943, which was 82.07 until renumbered and amended by sec. 91, ch. 334, Laws 1943, relating to appointment of county traffic patrolmen and their powers, was in all respects legally enacted and became a valid and effective law on June 20, 1943. The subsequent enactment of ch. 491, Laws 1943, and ch. 553, Laws 1943, did not result in the repeal of 83.016, and said section is in full force and effect. 33 Atty. Gen. 159.

Where a county traffic patrolman is also a deputy sheriff not under civil service, the sheriff may require him to give bond under 59.22 (2), Stats. 1949, notwithstanding that he has given bond as traffic patrolman under 83.016 (3). 40 Atty. Gen. 41.

The authority given to the county board by 83.016 (1), Stats. 1951, to appoint traffic patrolmen may not be delegated to a committee. 40 Atty. Gen. 311.

Under 83.016 (1), Stats. 1951, a traffic officer may arrest a motorist on the basis of information received by radio from another officer who has observed, by means of radar, the speed of the motorist to be arrested. 42 Atty. Gen. 93.

83.018 History: 1949 c. 546; Stats. 1949 s. 83.018; 1957 c. 116; 1959 c. 159.

See note to 66.30, citing 51 Atty. Gen. 168.

83.02 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m—3, 1317m—7 sub. 8 part; 1913 c. 668; 1915 c. 533 s. 4, 15; 1917 c. 643; 1919 c. 650 s. 1; 1919 c. 679 s. 61; 1923 c. 50; 1923 c. 108 s. 131; 1923 c. 414 s. 4; Stats. 1923 s. 83.01; 1925 c. 11 s. 4, 7; 1925 c. 263; 1927 c. 473 s. 30; 1939 c. 355; 1943 c. 334 s. 93; Stats. 1943 s. 83.02; 1969 c. 500 s. 30 (2) (e).

83.025 History: 1925 c. 11 s. 4, 7; 1925 c. 263; Stats. 1925 s. 83.01 (6); 1939 c. 355; 1943 c. 334 s. 94; Stats. 1943 s. 83.025; 1945 c. 214; 1953 c. 437; 1957 c. 412; 1965 c. 112; 1969 c. 500 s. 30 (2) (e).

A county board authorized to adopt main traveled highways as county roads may make such adoption by resolution. State ex rel. Johnson v. Hintgen, 157 W 355, 147 NW 363.

There is no statute for apportionment of the cost of county trunk highways located on county lines, but 83.025 and 83.03 (1), Stats. 1937, seem to contemplate that adjoining counties may make agreements with respect thereto. 26 Atty. Gen. 241.

A special committee appointed by a county board to work out a reapportionment of the county trunk system of highways is without power to alter the system without approval of the state highway commission. 28 Atty. Gen. 15.

A county board may add all town roads within the county to the county trunk system, with the consent of the state highway commission. 28 Atty. Gen. 588.

A street may be selected as part of a county trunk system only if it physically connects with the system. The state highway commission must approve the selection, but the municipality may withdraw without commission approval. The county must maintain normal highway width in a city street. 29 Atty. Gen. 23.

Under 83.025 (2), Stats. 1947, the obligation of a county to construct and maintain a street on a county trunk system extends only to the usual width of such highway outside the city. 38 Atty. Gen. 175.

The county, in maintaining highways under 83.025 (2), Stats. 1953, is discharging a governmental function with respect to the rights of the traveling public and except as modified by statute is not liable for the negligence of its officers or agents in the performance of such function. However, the county may be liable for damages caused to adjoining landowners by nuisances which it has created on such highways and as to such owners the county is deemed to be acting in a proprietary capacity. (24 Atty. Gen. 246 is withdrawn to the extent that it is inconsistent.) 43 Atty. Gen. 58.

A county has the duty to maintain a city street which is a part of the county trunk system to the full width of the street, providing such street is not wider than the portions of the county system connecting with such street. 44 Atty. Gen. 97.

83.025 (2), 83.03 (1) and 83.05, Stats. 1955, so far as relevant as to county work or aid in construction of county trunk highways in villages, are discussed in 44 Atty. Gen. 252.

83.026 History: 1945 c. 214; Stats. 1945 s. 83.026; 1969 c. 500 s. 30 (2) (e).

83.027 History: 1963 c. 518; Stats. 1963 s. 83.027; 1965 c. 252; 1969 c. 500 s. 30 (2) (e).

83.03 History: 1911 c. 337; Stats. 1911 s. 1317m—5 sub. 1; 1913 c. 502; 1913 c. 668 s. 5, 11; 1913 c. 773 s. 86; 1913 c. 776; Stats. 1913 s. 1317m—5 subs. 1, 1a; 1915 c. 533 s. 1, 9; 1917 c. 556; 1919 c. 134; 1919 c. 679 s. 62; 1923 c. 108 s. 134; 1923 c. 220; Stats. 1923 s. 83.03; 1925 c. 192; 1927 c. 20; 1929 c. 212; 1939 c. 214; 1943 c. 334 s. 95; 1945 c. 214; 1951 c. 102; 1969 c. 500 s. 30 (2) (e).

Resolutions of the county board, delegating to town and village boards the right to select the location where money shall be expended for highways, are an unlawful delegation and therefore void. 3 Atty. Gen. 97.

A county board may appropriate money for setting out ornamental and shade trees along the highways. 6 Atty. Gen. 16.

The county may improve or aid in improving any bridge or highway in the county. 2 Atty. Gen. 118; 4 Atty. Gen. 484, 680; 8 Atty. Gen. 742.

A county board may, in its discretion, aid in the construction of a so-called spillway in lieu of aid in construction of bridges for which the town has applied to the county. 13 Atty. Gen. 365.

Excluding the limitation as to tax rate and amount of indebtedness, the power of a county board to construct or improve, or aid in constructing or improving, streets in cities

connecting portions of the state trunk highway system is not limited. 13 Atty. Gen. 442.

A county board may, in its discretion, grant aid to a town for improvement of a highway, may make an appropriation therefor from surplus funds in the county treasury, and may make such appropriation from such surplus funds presently available; if the town expends funds for improvement of a highway it cannot be reimbursed by the county. 18 Atty. Gen. 333.

The state is responsible for operating a movable bridge located on a state trunk highway system and constructed under 83.03. 22 Atty. Gen. 240.

See note to 83.14, citing 24 Atty. Gen. 253.

Where a county in May voted a tax to improve a county trunk highway in a town under 83.03, Stats. 1937, and assessed a portion thereof to the town and the town had voted a tax in excess of the town's assessment to improve the same highway, the town levy cannot be used in lieu of the assessment against the town provided by the county. A town may use the tax levied in April as the basis for county aid under 83.14 and under 83.14 (4) may compel the county to appropriate the difference between \$2,000 and the county's share of improvement initiated under 83.03. A county may appropriate such amount, a greater amount or an amount in excess of \$2,000 but cannot be compelled to do so. A town may request county aid in an amount in excess of that which the county can be compelled to appropriate. If a town wishes to have construction commenced before town and county funds are in the county treasury under 83.14 (6) it must borrow money in anticipation of its own and the county's share of improvement and pay said amount into the county treasury. 27 Atty. Gen. 603.

Under 83.03 (1), Stats. 1943, a county board may voluntarily aid a village in repairing a bridge on a county line, which bridge is jointly maintained by the village and an adjoining town in the next county. 34 Atty. Gen. 50.

83.03 (1), Stats. 1945, authorizes a county to aid in improvement of a city street regardless of whether it is a county trunk highway. 35 Atty. Gen. 471.

Responsibility for county trunk highways is on the county. A town is not authorized to contribute to the cost of construction of a bridge on the county trunk highway system other than as provided by 83.03 (2). 36 Atty. Gen. 409.

83.03 (1), Stats. 1947, does not apply where a town has constructed a bridge without any request for county funds having been made until the project is completed. 38 Atty. Gen. 240.

83.03 (1), Stats. 1949, is sufficiently broad to authorize the county board to maintain or aid in maintaining any highway in the county, and the view expressed in 25 Atty. Gen. 702 is no longer applicable. 39 Atty. Gen. 134.

Receipt of county aid for a bridge by a city or village under 83.03, Stats. 1949, does not necessarily subject the municipality to a bridge tax. 40 Atty. Gen. 29.

See note to 83.025, citing 44 Atty. Gen. 252.

On the proper use of highway funds appropriated by 83.03 and 83.065, Stats. 1955, see 46 Atty. Gen. 122.

The county board has the power under 83.03 (1), Stats. 1955, to appropriate funds for the removal of snow from any public road in the county. 46 Atty. Gen. 155.

Counties may provide and pay for snow removal on town roads used as mail routes. 47 Atty. Gen. 21.

See note to 81.38, citing 47 Atty. Gen. 50.

83.035 History: 1939 c. 248; Stats. 1939 s. 59.08 (35); 1955 c. 651 s. 11, 21; Stats. 1955 s. 83.035.

The compensation received by the county for highway work done for a municipality under 59.08 (35), Stats. 1945, is a matter of contract between the 2 governmental units and may include such items as insurance on the equipment. 36 Atty. Gen. 69.

See note to 83.05, citing 38 Atty. Gen. 175.

Counties may contract for the furnishing of labor, equipment and materials to local municipalities for highway purposes. 39 Atty. Gen. 134.

Where costs of highway projects undertaken by counties for municipalities under 83.14 exceed the amount provided jointly by the county and municipality, additional work needed to complete the project must be done pursuant to contract between the county and municipality under 59.08 (35), Stats. 1953. 42 Atty. Gen. 59.

83.04 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m-7; 1913 c. 668; 1915 c. 468; 1915 c. 533 s. 1, 14, 15; 1917 c. 289; 1919 c. 313 s. 1, 2; 1919 c. 628 s. 14; 1923 c. 108 s. 135; 1923 c. 446 s. 1, 2, 3; Stats. 1923 s. 83.04; 1929 c. 226, 386; 1929 c. 516 s. 8; 1929 c. 528 s. 1; 1943 c. 334 s. 96; 1969 c. 500 s. 30 (2) (e).

The power conferred by sec. 1317m-7 (3), Stats. 1915, upon county highway commissioners does not conflict with the authority of the county board to audit and determine the validity of claims, nor does it repeal the laws in force at the time of its enactment respecting the duties of county boards and county clerks in the allowing of claims against the county. *Rinder v. Madison*, 163 W 525, 158 NW 302.

See note to 65.90, citing *Immega v. Elkhorn*, 253 W 282, 34 NW (2d) 101.

The county treasurer should not pay out moneys on the order of the county highway commissioner when the available funds are exhausted. 2 Atty. Gen. 111.

Where a county highway commissioner substantially overdraws the amount allotted for a given work, he acts without authority and may be compelled to pay back the amount of the overdraft. 4 Atty. Gen. 444.

There is no provision of law authorizing the appointment of a deputy county commissioner of highways. The commissioner may appoint inspectors, however, and the mayor of a city within which a state aid highway is being built may be appointed such an inspector. 5 Atty. Gen. 628.

Upon letting a contract to a contractor who has given trouble to the highway commission under other contracts, the commission may reasonably require the new bond to be that of a surety company instead of an individual. 11 Atty. Gen. 649.

See note to 65.90, citing 37 Atty. Gen. 586.

83.05 History: 1917 c. 643; Stats. 1917 s.

1317m—5 subs. 1b to 1e; 1921 c. 422 s. 38; 1923 c. 108 s. 136; Stats. 1923 s. 83.05; 1943 c. 334 s. 97; 1957 c. 132; 1959 c. 622; 1961 c. 158.

By reason of limitations in 83.05 (3), Stats. 1935, a county may not grant highway aid to village for construction of curbs and sidewalks along highways. 25 Atty. Gen. 675.

83.05, 62.15, and 59.08 (35), Stats. 1949, are applicable where it is proposed to have the county do the work of resurfacing a city street to a width greater than 18 feet if such street constitutes a portion of the county trunk highway system. 38 Atty. Gen. 175.

Under 83.05 (1), Stats. 1949, the determination to widen a city street to a greater width than 18 feet where such city street constitutes a part of the county trunk highway system is to be made exclusively by the city, and the approval by the county highway committee is limited to the type of improvement, width and construction features. Such approval may not be withheld arbitrarily. The cost of curbs, gutters and storm sewers is included under 83.05 (2), Stats. 1949, but not the cost of sidewalks. 38 Atty. Gen. 477.

See note to 83.025, citing 44 Atty. Gen. 252.

83.06 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m—5 subs. 1, 5, 6, 1317m—7 sub. 9, 1317m—9 sub. 3; 1913 c. 668 s. 5; 1915 c. 533 s. 8, 10, 15; 1917 c. 556; 1917 c. 643; Stats. 1917 s. 1317m—5 subs. 1, 1f, 5, 6, 1317m—7 sub. 9, 1317m—9 sub. 3; 1919 c. 134; 1919 c. 679 s. 62; 1923 c. 108 s. 137; Stats. 1923 s. 83.06; 1939 c. 355; 1943 c. 334 s. 98, 99.

Under 83.06, Stats. 1937, the county highway commissioners may enter upon lands adjoining a highway and restore original watercourse grades, blocking up of which causes periodic flooding of a highway; but the landowner is entitled to damages in such case. 26 Atty. Gen. 344.

83.065 History: Stats. 1923 s. 83.06 (4); 1943 c. 334 s. 99; Stats. 1943 s. 83.065.

A county may purchase a stone crusher. *Western W. S. Co. v. Chippewa County*, 102 W 614, 78 NW 764.

Taxes levied by a county to cover items in the county budget entitled "Sec. 83.14. Highway Construction," and "Sec. 83.03, Emergency Road and Bridge," were within the purpose of the 2-mill tax for highways and bridges authorized by 83.06 (4), Stats. 1941, "in addition to all other taxes," and were to be excluded from the one per cent limitation of 70.62 (2) to the extent that they did not exceed 2 mills, where no tax was expressly levied under 83.06 (4). *McDonald v. Black River Falls*, 246 W 172, 16 NW (2d) 410.

See note to 65.90, citing *Immega v. Elkhorn*, 253 W 282, 34 NW (2d) 101.

The tax authorized by 83.06, Stats. 1923, for highway construction and maintenance may be used to meet state aid allotments. The two-mill limitation in such section, upon the tax that may be levied, is not a limitation upon moneys that may be provided by a county to meet such allotments. 12 Atty. Gen. 553.

See note to 65.90, citing 37 Atty. Gen. 586.

See note to 83.03, citing 46 Atty. Gen. 122.

83.07 History: 1911 c. 337; 1911 c. 664 s.

49; Stats. 1911 s. 1317m—5 sub. 7, 1317m—6 sub. 4; 1913 c. 668 s. 5; 1913 c. 773 s. 86; 1915 c. 533 s. 5; Stats. 1915 s. 1317m—5 sub. 7, 1317m—6 sub. 3; 1919 c. 313 s. 1, 3; 1921 c. 422 s. 39; 1923 c. 108 s. 138; 1923 c. 446 s. 2, 3; Stats. 1923 s. 83.07; 1927 c. 38; 1931 c. 363; 1943 c. 334 s. 100; 1951 c. 613; 1953 c. 308; 1955 c. 522; 1957 c. 597; 1959 c. 640.

See note to 114.33, citing *Ferguson v. Kenosha*, 5 W (2d) 556, 93 NW (2d) 460.

A county may acquire and maintain for its own use a gravel pit, and may sell surplus gravel to other municipalities. Such pit may be located outside the county. 8 Atty. Gen. 410.

A stone quarry or gravel pit owned by a city may not be condemned by the county or the state to obtain materials for highway construction. 9 Atty. Gen. 306.

The bed of a river may be taken for public use, such as for road materials. The highway authorities have no right to take gravel from the bed of a river without the owner's consent, or until the right has been otherwise acquired. 10 Atty. Gen. 38.

A privately owned gravel pit may be taken under the power of eminent domain to obtain needed highway materials. 10 Atty. Gen. 284.

The owner of private property in a ravine which is not a watercourse has the right to fill the ravine and erect a building on the filled-in land, even though such filling may obstruct a culvert in a state trunk highway constructed to carry off surface water which at times flows down the ravine. Such land may be taken, thus preventing obstruction of the culvert, in condemnation proceedings. 12 Atty. Gen. 356.

A county highway committee, with the approval of the state highway commission, may relocate, and may condemn land for, a portion of a county trunk highway forming part of a system of county trunk highways selected by the county board and approved by the state highway commission. 15 Atty. Gen. 340.

Entry on land acquired by agreement with an owner for highway purposes under 83.07 and 83.08, Stats. 1927, may be made immediately upon consummation of a contract or conveyance. 17 Atty. Gen. 118.

A county board, through its highway committee, acquires land for highway purposes by right of eminent domain when it cannot acquire it by contract. 18 Atty. Gen. 274.

In improving a highway a county may divert a nonnavigable stream to avoid building a bridge and may condemn land for that purpose. Contra, with respect to a navigable stream. 18 Atty. Gen. 525.

The word "owner" as used in 83.07 and 83.08, Stats. 1931, includes a mortgagee and other lien holders having vested property rights in land to be acquired. 20 Atty. Gen. 411.

83.07 (2) does not authorize a county highway committee to condemn additional lands for a county-owned gravel pit for the purpose of operating the pit commercially as well as for its own use. The county's liability to adjoining property owners for damage by dust and cave-ins is that of one proprietor to another, and governmental immunity for negligence does not attach where the pit is operated both for use of the county and for sale of gravel to others. 31 Atty. Gen. 241.

83.07 and 83.08, Stats. 1943, do not authorize a county board or county highway committee to purchase lands for the purpose of avoiding the cost of providing highways and bridges to such lands. 34 Atty. Gen. 7.

Where a highway right-of-way has been acquired by a county pursuant to 83.07, Stats. 1945, and a building is located thereon which the owner refuses to remove, the highway authorities may take such steps as are reasonably necessary to remove the same and are entitled to injunctive relief if the owner interferes. 86.04 provides an alternative but somewhat less expeditious procedure for removing the encroachment. 36 Atty. Gen. 58.

Where a county desires to acquire 12 acres of land as a location for a county highway garage, machine shop, and gas and oil storage tanks and the owner refuses to sell at a reasonable price, condemnation proceedings should be instituted by the county under ch. 32. 38 Atty. Gen. 25.

83.08 History: 1911 c. 337; Stats. 1911 s. 1317m-7 sub. 2; 1913 c. 668; 1919 c. 313 s. 1, 2; 1923 c. 108 s. 139; 1923 c. 446 s. 1; Stats. 1923 s. 83.08; 1929 c. 187; 1931 c. 22 s. 2; 1937 c. 393; 1943 c. 334 s. 102; 1945 c. 341; 1951 c. 612; 1953 c. 308, 643; 1955 c. 522; 1957 c. 412; 1959 c. 640; 1969 c. 500 s. 30 (2) (e).

Where a county condemned a corner of a piece of land to permit constructing a curve in a highway, and did not use a small corner piece for the roadway, this piece was not a remnant; the determination of whether to condemn such a piece is for the county. *Brausen v. Daley*, 11 W (2d) 160, 105 NW (2d) 294.

See note to 32.09, citing *Leininger v. County Highway Committee*, 217 W 61, 258 NW 368.

See note to 84.05, citing *Ullrich v. County of Kenosha*, 219 W 65, 261 NW 747.

See note to 84.09, citing 40 Atty. Gen. 218.

83.09 History: 1911 c. 337; Stats. 1911 s. 1317m-9 subs. 1, 2; 1913 c. 668; 1915 c. 533 s. 17; Stats. 1915 s. 1317m-9 subs. 1, 2, 9; 1921 c. 422 s. 40; 1923 c. 108 s. 140; Stats. 1923 s. 83.09; 1943 c. 334 s. 103.

83.10 History: 1931 c. 22; Stats. 1931 s. 84.03 (2), (6); 1937 c. 393; 1939 c. 42, 105; 1943 c. 334 s. 104; Stats. 1943 s. 83.10; 1945 c. 391; 1949 c. 421; 1953 c. 318; 1953 c. 674 s. 17; 1955 c. 179; 1961 c. 557; 1965 c. 432 s. 6; 1967 c. 92 s. 22; 1967 c. 291 s. 14; 1969 c. 392 s. 84; 1969 c. 500 s. 30 (2) (e).

Funds allotted to counties for county trunk highways under 83.10 (1), Stats. 1943, may be used to retire bonds where the cost of construction for which the bonds were issued might properly have been paid from such funds in the first instance. 32 Atty. Gen. 345.

83.11 History: 1915 c. 533 s. 17; Stats. 1915 s. 1317m-9 sub. 13; 1923 c. 108 s. 142; Stats. 1923 s. 83.11; 1943 c. 334 s. 105.

83.12 History: 1929 c. 226; Stats. 1929 s. 83.04 (10); 1943 c. 334 s. 106; Stats. 1943 s. 83.12.

83.13 History: 1915 c. 533 s. 17; Stats. 1915 s. 1317m-9 sub. 12; 1923 c. 108 s. 147; Stats. 1923 s. 83.13; 1943 c. 334 s. 107.

83.14 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m-4, 1317m-5 subs. 2

to 4; 1913 c. 384; 1913 c. 668 s. 4, 5; 1913 c. 776; 1915 c. 533 s. 1, 4 to 7; 1915 c. 576; 1915 c. 635 s. 4; 1917 c. 566 s. 19; 1917 c. 643; 1919 c. 650 s. 1, 2; 1923 c. 108 s. 153; Stats. 1923 s. 83.14; 1927 c. 441; 1929 c. 206; 1943 c. 334 s. 108; 1949 c. 227; 1963 c. 6.

Where a town appropriates money under sec. 1317m-4, Stats. 1911, and the county highway commissioner incurs expense in making the improvement in excess of the total appropriations by the town, county and state for that purpose, the county cannot, upon appropriating a sum to pay such deficit, charge any part thereof to the town. 1 Atty. Gen. 20.

The town board may be compelled by mandamus to make the petition provided for by sec. 1317m-4, Stats. 1911. 2 Atty. Gen. 82.

Upon receiving a petition in accordance with sec. 1317m-4, Stats. 1913, it is the absolute duty of a county board to make the appropriation provided for and if it fails to do so it may be compelled by mandamus to make the appropriation. 2 Atty. Gen. 124.

Money raised for the improvement of a specific highway in a town, being raised for a specific purpose, cannot be diverted from such purpose and does not constitute assets to be divided upon a division of the town. 4 Atty. Gen. 586.

A special town meeting may reconsider an action of the annual meeting. The electors of a town may change the place where money is to be expended under the state aid for highway law, unless the state or county objects. But the town board may not say where such money shall be expended. 4 Atty. Gen. 629.

Money raised for a specific improvement under the highway state aid law cannot be devoted to a different improvement by a committee of the county board. 4 Atty. Gen. 775.

A special tax valid under sec. 1317m-4, Stats. 1915, must be paid to the county treasurer even when a village was created pending the collection. 6 Atty. Gen. 273; 7 Atty. Gen. 147.

Where a town meeting votes 2 taxes for 2 improvements under state aid, the county board may be compelled to appropriate a sum equal to one tax, in any year, but not both taxes. The work is to be done the year following the making of the appropriation. 8 Atty. Gen. 652.

The town board cannot, by levying highway taxes, compel county aid. That power is vested alone in the town meeting. When a town board has levied taxes for the permanent improvement of highways, the county board may, in its discretion, appropriate money to aid in such construction. 10 Atty. Gen. 1134.

Where a town meeting votes a tax for improvement of a designated portion of county aid highways, the duty of the town board is to petition for county aid at the county board's next annual meeting; if the town expends funds for improvement of a highway it cannot be reimbursed. 18 Atty. Gen. 333.

Where a town has voted to construct a road, has petitioned for county aid, county aid has been granted, and construction has been actually begun, a town meeting cannot delay completion of the project. 21 Atty. Gen. 676.

An unexpended balance raised by a town under 83.14, Stats. 1931, and remaining in the county treasury may be expended by the county for construction work designated by the town board. 22 Atty. Gen. 174.

Where a town strictly follows 83.14, Stats. 1933, for improving county aid highways, county aid is mandatory. Otherwise it is discretionary with the county to grant aid under 83.03 (1), except that the county may not reimburse the town for funds already expended. 24 Atty. Gen. 253.

Funds raised by a village and matched by county funds under 83.14 (3) for improvement on a county aid highway in the village may be used for such improvement although it consists of extending the width of the highway, now being paved by the county, beyond 18 feet. 24 Atty. Gen. 469.

A county board cannot by resolution compel towns to issue bonds for road purposes to cover both towns' and county's shares of improvements subject to later repayment of the county's share to towns. 25 Atty. Gen. 11.

A county board is obliged to appropriate under 83.14, Stats. 1937, a minimum of \$2,000 for improvement of prospective state (county aid) highways only when the petition of the town is filed at a regular meeting of the county board next following the voting by the town of tax for such improvement and the obligation of the county to make such appropriation is limited to that amount. A county is not obliged to appropriate any sum for such improvement where a town raises money for such improvement by issuance of bonds. 26 Atty. Gen. 167.

See note to 83.03, citing 27 Atty. Gen. 603.

County aid to a town is mandatory only where the improvement is on a designated portion of a county aid highway as defined in 83.02, Stats. 1949. 39 Atty. Gen. 139.

See note to 83.035, citing 42 Atty. Gen. 59.

83.15 History: 1897 c. 40; Stats. 1898 s. 1325d; 1923 c. 108 s. 254; Stats. 1923 s. 87.09; 1943 c. 334 s. 110; Stats. 1943 s. 83.15; 1965 c. 229.

The procedure for the construction of bridges over state boundary waters is outlined and discussed in 5 Atty. Gen. 211.

83.16 History: 1903 c. 94 s. 1; Supl. 1906 s. 1325e; 1923 c. 108 s. 255; Stats. 1923 s. 87.10; 1943 c. 334 s. 111; Stats. 1943 s. 83.16; 1965 c. 229.

83.17 History: 1935 c. 480; Stats. 1935 s. 82.065; 1943 c. 334 s. 112; Stats. 1943 s. 83.17.

83.18 History: 1943 c. 334 s. 113; Stats. 1943 s. 83.18.

83.19 History: 1943 c. 334 s. 114; Stats. 1943 s. 83.19.

If a county has adopted a town road in connection with the establishment of a detour as a county road, its liability for injury to a traveler would be under 81.15, Stats. 1931. 21 Atty. Gen. 955.

83.20 History: 1917 c. 215; Stats. 1917 s. 670 (19); 1919 c. 695 s. 37; Stats. 1919 s. 59.07 (14); 1955 c. 651 s. 9, 22; Stats. 1955 s. 83.20.

CHAPTER 84.

State Trunk Highways; Federal Aid.

Editor's Note: Extensive notes on ch. 334, Laws 1943, revising the highway laws, are set forth on pages 1296 to 1300, Wis. Statutes, 1943.

84.001 History: 1969 c. 500; Stats. 1969 s. 84.001.

84.01 History: 1911 c. 337; 1911 c. 664 s. 49; Stats. 1911 s. 1317m—1, 1317m—2, 1317m—6 sub. 1 part; 1913 c. 668; 1915 c. 533 s. 1 to 3; 1917 c. 14 s. 83; 1917 c. 175 s. 2; Stats. 1917 s. 1315 part, 1317m—1, 1317m—2, 1317m—6 sub. 1 part; 1919 c. 270 s. 1; 1919 c. 362 s. 22, 28, 32; 1919 c. 679 s. 60; 1921 c. 422 s. 37; 1921 c. 449; Stats. 1921 s. 1315 part, 1316 sub. 5 (b), 1317m—1, 1317m—2, 1317m—6 sub. 1 part; 1923 c. 108 s. 123, 124, 162; 1923 c. 357; Stats. 1923 s. 82.01, 82.02, 84.04; 1925 c. 11 s. 3, 7; 1925 c. 120; 1927 c. 44, 100; 1929 c. 81 s. 1 to 3; 1929 c. 468 s. 1; 1929 c. 516 s. 9; 1931 c. 22 s. 3; 1931 c. 79 s. 13; 1931 c. 295 s. 2; 1937 c. 303, 393; 1943 c. 129, 279; 1943 c. 334 s. 116, 116a; 1943 c. 491, 523; Stats. 1943 s. 84.01; 1945 c. 214, 297, 341, 391; 1947 c. 46, 483; 1949 c. 52; 1951 c. 97, 286, 610; 1953 c. 264, 345, 600, 615; 1955 c. 179, 465; 1957 c. 263, 525; 1961 c. 40; 1963 c. 99, 224, 225; 1965 c. 62, 107, 365; 1965 c. 432 s. 6; 1965 c. 587; 1967 c. 34; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276; 1969 c. 500 ss. 6, 7, 30 (2) (d).

The state highway commission has implied authority to purchase or lease real estate for the construction of a building to be used in equipping, storing, repairing and building motor vehicles given to the state by the U.S. government. A contract for such purchase or lease should be executed in the name of the commission. 9 Atty. Gen. 439.

Option contracts, agreeing to make conveyances of lands to the state, should be signed, witnessed and acknowledged, and should be executed by the state highway commission through its proper officers. 9 Atty. Gen. 456.

Whether decisions of the state highway commission in the discharge of its powers and duties shall be made in "executive session" is a question for it to determine by majority vote. 13 Atty. Gen. 67.

Political activities by persons in the employ of the state highway commission which the law does not prohibit cannot be prohibited by the commission. The state highway commission is the judge of its own procedure and details of record of its own proceedings, except as the law otherwise directs. The law does not require that votes of individual members of the commission on any motion, resolution or prohibition shall be recorded, and the governor has no authority to require such record to be made. 13 Atty. Gen. 309.

Holding of meetings of the state highway commission is a subject solely within the control of the commission itself. Notice of time and place of any meeting having been duly given to each member of the commission, a meeting held pursuant thereto, if a quorum is present, whether it be considered as an adjourned regular meeting or as a special meeting, is a legal meeting. A meeting held without notice, at which all members are present