

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

and consenting thereto, is likewise a legal meeting. 14 Atty. Gen. 469.

The state highway commission has power to enter into a contract with an oil company for discounts on gasoline needed by the commission to perform its statutory duties. 16 Atty. Gen. 672.

An appointive member of the state highway commission vacates his office as such member by acceptance, while holding it, of the office of town chairman and member of the county board. 17 Atty. Gen. 164.

The commission may not adjudicate the merits of claims filed under the provisions of 289.53, but must withhold a sufficient amount to pay such claims pending adjudication thereof. 20 Atty. Gen. 486.

A request by a county board to the state highway commission to appoint a county highway commissioner from a list of persons specified by the county board is not effective under 83.01 (1) and 84.01 (14), Stats. 1949, because of the limitation imposed. 38 Atty. Gen. 646.

**84.011 History:** 1925 c. 120; Stats. 1925 s. 82.02 (1) (last sentence); 1929 c. 81 s. 2; Stats. 1929 s. 82.02 (1)(b); 1943 c. 334 s. 117; Stats. 1943 s. 84.011; 1953 c. 262.

**84.015 History:** 1869 c. 152 s. 92; R. S. 1878 s. 1312; Stats. 1898 s. 1312; 1917 c. 175 s. 1, 2; 1923 c. 20; 1923 c. 108 s. 156; Stats. 1923 s. 84.01; 1925 c. 11 s. 4, 7; 1931 c. 22 s. 3; 1943 c. 334 s. 118; Stats. 1943 s. 84.015; 1965 c. 62; 1969 c. 500 s. 30 (2) (e).

State authorities having power to purchase compensation insurance covering persons working on a survey financed by the U.S. government may purchase such insurance out of federal moneys, in view of 84.01 and 82.02 (6), Stats. 1935. 25 Atty. Gen. 383.

**84.02 History:** 1869 c. 152 s. 93; R. S. 1878 s. 1313; Stats. 1898 s. 1313; 1917 c. 175 s. 1, 2; 1919 c. 313 s. 2, 3; 1921 c. 156; 1923 c. 108 s. 160; 1923 c. 320 s. 3; 1923 c. 446 s. 1; Stats. 1923 s. 84.02; 1925 c. 11 s. 4, 7; 1927 c. 473 s. 29; 1931 c. 22 s. 1; 1931 c. 45 s. 14; 1931 c. 79 s. 14; 1931 c. 470 s. 4; 1933 c. 196; 1935 c. 133; 1937 c. 393; 1939 c. 420; 1943 c. 334 s. 119 to 121; 1947 c. 373; 1953 c. 75, 318, 600; 1953 c. 631 s. 48; 1959 c. 228 s. 64; 1961 c. 40; 1965 c. 342, 469; 1969 c. 276; 1969 c. 500 ss. 8, 30 (2) (d), (e), (f).

The test imposed by the legislature is whether public welfare be promoted or public travel benefited by a change in route. *Agnew v. Hotchkiss*, 189 W 1, 206 NW 849.

There may be relocation without abandonment of an old highway. *Bosshard v. Hotchkiss*, 190 W 29, 207 NW 695.

A guideboard erected at a road intersection and designating a different route to a city than that adopted as a state trunk highway is illegal unless approved by the state highway commission. 13 Atty. Gen. 529.

Proceedings to alter or change the state trunk highway system may be instituted under 84.02, Stats. 1925. Minor changes in the state trunk highway system may be made under this section without notice to the localities concerned. The "due notice" required must be determined in connection with particular facts in each case. 17 Atty. Gen. 91.

A state trunk highway is subject to relocation, whether originally laid out as a territorial, town or county highway. A state trunk highway is simply a route superimposed upon an existing highway. The state highway commission has no power to order vacation and discontinuance of a highway as such; its power is to discontinue a highway as a route, not to discontinue it as a highway. 18 Atty. Gen. 576.

Relocation of a state trunk highway effects closing of such portions of an old road as are rendered unnecessary thereby; but where there is any need for such old road it reverts to its former status as a town road and may be vacated by town action only. 19 Atty. Gen. 421.

Where the state highway commission prior to the passage of 84.02 (2), Stats. 1937, apportioned a state trunk highway on a county line between 2 counties such apportionment was ratified and confirmed by 84.02 (2) and the cost of construction of a bridge on the portion apportioned to one county is properly chargeable to that county's allotment of state aid if the bridge does not span a stream forming part of the boundary between 2 counties. 26 Atty. Gen. 232.

Where a town road is made a part of the county trunk highway system and then becomes a part of the state trunk highway system which is subsequently changed as to location, although the old road continues to be used, such road reverts to its prior status as a county trunk road. 37 Atty. Gen. 559.

Where the commission institutes proceedings under 84.02 (3) (a), Stats. 1949, to relocate a portion of the state trunk highway system involving a deviation from the existing location exceeding 2½ miles in 2 counties, and one county board has approved the change but the other one has not, the latter may give its approval later in the absence of any county board rule of procedure to the contrary. 39 Atty. Gen. 137.

**84.025 History:** 1955 c. 4; Stats. 1955 s. 84.025; 1963 c. 6; 1969 c. 276; 1969 c. 500 s. 30 (2) (d).

**84.03 History:** 1869 c. 152 s. 94, 95; R. S. 1878 s. 1314; Stats. 1898 s. 1314; 1917 c. 175 s. 1, 2; 1919 c. 270 s. 2; 1919 c. 313 s. 2; 1923 c. 20 s. 1; 1923 c. 108 s. 161; 1923 c. 414 s. 1; Stats. 1923 s. 84.03; 1925 c. 11 s. 4, 7; 1927 c. 315 s. 1; 1927 c. 473 s. 30; 1929 c. 528 s. 3; 1931 c. 22 s. 3; 1931 c. 346; 1931 c. 391 s. 4; 1937 c. 55, 393; 1941 c. 117; 1943 c. 334 s. 123; 1943 c. 531, 564; 1945 c. 214, 297, 391; 1947 c. 549; 1953 c. 263, 318, 347, 625; 1955 c. 378, 636; 1959 c. 673; 1961 c. 557; 1965 c. 432 ss. 4, 6; 1965 c. 593; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 348; 1969 c. 500 s. 30 (2) (d), (e).

Counties are required to pay from the allotment under 84.03 (3), Stats. 1931, the principal and interest of bonds, but counties may use such allotment for retirement of bonds only to the amount of the original cost of construction. 20 Atty. Gen. 1055.

Where a county board makes an appropriation for acquiring a right of way on a federal aid relocation project under 84.03 (5) and the state highway commission is induced thereby to proceed with relocation at considerable expense the county board cannot thereafter law-

fully rescind an appropriation. 25 Atty. Gen. 427.

Issuance of bonds by a county pursuant to allotment provisions of 84.03 (4) does not give the county an irrevocable right to have such allotments continued until said bonds are retired. 27 Atty. Gen. 126.

**84.04 History:** 1941 c. 117 s. 2; Stats. 1941 s. 84.03 (9a); 1943 c. 334 s. 123; 1945 c. 391 s. 24; 1947 c. 549; 1953 c. 318 s. 20; 1953 c. 625; Stats. 1953 s. 84.04; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500.

**84.05 History:** 1917 c. 175 s. 2; Stats. 1917 s. 1315 sub. 3; 1923 c. 108 s. 163; Stats. 1923 s. 84.05; 1943 c. 334 s. 124; 1965 c. 476; 1969 c. 500 s. 30 (2) (d).

The state, in the exercise of its police power to promote public safety, may require a railroad company to pay a reasonable portion of the expenses of rearranging and reconstructing highways to minimize the danger of grade crossings. The benefit to the railroad resulting from diversion of highway traffic from grade crossings is not measured by the business done by the company, but is determined by the operating advantages which result therefrom. The state's power to assess benefits against the railroads for this work is unaffected by the federal transportation act. *Chicago, M. & St. P. R. Co. v. Railroad Comm.* 187 W 364, 204 NW 606.

Upon the relocation of a through-line road to divert the through traffic from grade crossings, the railway company was assessed for benefits a sum less than the cost of the new right of way; and the assessment was sustained. The mere fact that it would cost less to grade and pave the new route than the old one was no concern of the company. The highway authorities have power to so improve both the old and the new, but that does not affect the cost of relocation. *Chicago & Northwestern R. Co. v. Railroad Comm.* 187 W 375, 204 NW 610.

A county and not a railroad company was liable for land taken by a county highway committee for construction of an overhead crossing to eliminate a railroad crossing, since the taking was not exclusively for railroad purposes. *Ulrich v. Kenosha County*, 219 W 65, 261 NW 747.

See notes to sec. 1, art. IV, on delegation of power, citing *Chicago & N. W. R. Co. v. Public Service Comm.* 43 W (2d) 570, 169 NW (2d) 65.

The public service commission's authority to apportion the cost of maintenance of new railroad crossing improvement structures, given pursuant to 84.05 and 195.29 (2), Stats. 1967, is not restricted to a benefits-received standard. *Chicago & N. W. R. Co. v. Public Service Comm.* 43 W (2d) 570, 169 NW (2d) 65.

Jurisdiction of the railroad (now public service) commission over highway crossings and relocation is discussed in 11 Atty. Gen. 214.

**84.06 History:** 1869 c. 152 s. 89; R. S. 1878 s. 1316; Stats. 1898 s. 1316; 1917 c. 175 s. 1, 2; 1919 c. 270 s. 1; 1921 c. 449; 1923 c. 108 s. 164; Stats. 1923 s. 84.06; 1929 c. 226, 386; 1929 c. 516 s. 8; 1937 c. 393; 1943 c. 334 s. 125; 1945 c.

297; 1951 c. 247, 446; 1959 c. 659 s. 65; 1967 c. 351 s. 6; 1969 c. 338; 1969 c. 500 s. 30 (2) (d), (e).

Money appropriated by the state for highway purposes does not constitute a trust fund for the benefit of highway contractors. *State ex rel. McDonald v. Nemachek*, 199 W 13, 225 NW 170.

A contract for highway construction, entered into under 84.06, Stats. 1939, on behalf of the state by the state highway commission after a letting by competitive bids, and containing a provision that supplemental agreements pursuant to the rules and specifications of the commission shall constitute a part of such contract, requires the signed approval of the governor, but a supplemental agreement of the type provided for in the rules and specifications of the commission is merely a modification of the partly executed original contract by an adjustment of compensation to the contractor for particular items of work, and does not require the approval of the governor or that of the state chief engineer. *State ex rel. Lathers v. Smith*, 238 W 291, 299 NW 43.

It is within the discretion of the state highway commission to require bids at unit prices for the excavation of different types of materials in the process of building a highway, and to provide for supplemental agreements in its standard specifications and its contracts for highway construction so as to permit of adjustments of compensation to the contractor where the commission's engineer may make such alterations in the plans or quantity of work as may be necessary and the quantities of any items of work may vary from the quantities scheduled on the plans and in the proposals due to unforeseen conditions, such agreements being necessary in the economy of highway construction and primarily for the protection of the state, in order that the unit price as applied to much larger quantities than estimated may not run the cost of the project into unreasonable sums. *State ex rel. Lathers v. Smith*, 238 W 291, 299 NW 43.

Fees for the publication of notices outside the state, if reasonable, may be paid under sec. 1316 (1), Stats. 1917. 7 Atty. Gen. 540.

The state highway commission has authority, under 84.06 (3), Stats. 1941, to enter into contracts with counties for the performance of highway construction or reconstruction which provide for the counties being compensated at maximum unit price rate of compensation—overall maximum compensation for the job. County highway committees have power to enter into such contracts on behalf of counties. A county is not entitled to extra compensation merely because a contract proves to be an improvident one. The commission may not increase compensation rates provided for in a contract except pursuant to the terms of some provision in a contract authorizing some subsequent adjustment. 31 Atty. Gen. 236.

**84.07 History:** 1869 c. 152 s. 96, 98; R. S. 1878 s. 1317; Stats. 1898 s. 1317; 1917 c. 175 s. 1, 2; 1919 c. 313 s. 1, 2, 3; 1921 c. 402; 1923 c. 108 s. 165 to 168; Stats. 1923 s. 84.07, 84.09; 1927 c. 55; 1927 c. 478 s. 3; 1931 c. 22 s. 3; 1931 c. 283 s. 2; 1935 c. 550 s. 408; 1941 c. 117; 1943 c. 443 s. 126; Stats. 1943 s. 84.07; 1945 c. 297,

391; 1949 c. 70; 1953 c. 381; 1957 c. 525; 1969 c. 500 s. 30 (2) (d), (e).

A county is not liable for damages sustained because of an insufficient culvert under a state trunk highway, since the duty of maintenance is on the state. *Lloyd v. Chippewa County*, 265 W 293, 61 NW (2d) 479, 62 NW (2d) 431.

See note to 81.15, citing *Firemen's Ins. Co. v. Washburn County*, 2 W (2d) 214, 85 NW (2d) 840.

See note to 81.15, citing *Dunwiddie v. Rock County*, 28 W (2d) 568, 137 NW (2d) 388.

A county is liable to county highway workers for compensation for injuries received while constructing highways under an arrangement between the state highway commission and a county highway committee. 21 Atty. Gen. 9.

84.07, Stats. 1941, authorizes the state highway commission to provide for employment of guards to prevent sabotage of state highways. 32 Atty. Gen. 104.

The state highway commission policy of limiting snow and ice control measures to predetermined hills, turns, important highway intersections, railroad crossing approaches and other locations that are usually and constantly dangerous, regardless of alignment or gradient, is in substantial compliance with 84.07 (1). 38 Atty. Gen. 400.

**84.08 History:** 1917 c. 175 s. 2; Stats. 1917 s. 1317 sub. 7; 1923 c. 108 s. 167; Stats. 1923 s. 84.08; 1937 c. 365; 1943 c. 334 s. 127; 1969 c. 500 s. 30 (2) (d).

**84.09 History:** 1943 c. 334 s. 128; Stats. 1943 s. 84.09; 1945 c. 341; 1947 c. 76, 254, 373; 1949 c. 635; 1951 c. 446; 1953 c. 61 s. 76; 1953 c. 264, 308, 643; 1955 c. 530, 574; 1957 c. 329, 597; 1959 c. 640; 1965 c. 249; 1967 c. 291 s. 14; 1969 c. 500 s. 30 (2) (c), (d), (e).

See note to 32.05, citing *Beer v. Ozaukee County Highway Comm.* 9 W (2d) 346, 101 NW (2d) 89.

Whether the language in 84.09 (1), Stats. 1955, authorizing the acquisition of land by purchase or condemnation for "improving and maintaining highways," embraces the power or right to acquire highway-access rights by purchase or condemnation, is not determined. *Beer v. Ozaukee County Highway Comm.* 9 W (2d) 346, 101 NW (2d) 89.

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

See note to 32.09, citing *Hastings Realty Corp. v. Texas Co.* 28 W (2d) 305, 137 NW (2d) 79.

While property condemned pursuant to 84.09 (3) and ch. 32, Stats. 1963, is so taken by the state highway commission through the county highway committee, the ultimate condemnor is the state, acting through such agents, all of which are answerable to the state. *Kynel v. Kenosha County*, 37 W (2d) 547, 155 NW (2d) 583.

Although the county receives title to the property taken for highway purposes, it must convey this title to the state without charge when ordered to do so. *Van De Hey v. Calumet County*, 40 W (2d) 390, 161 NW (2d) 923.

The state highway commission may order counties to convey to the state lands acquired for highway purposes under 84.09 (3). A

county acquiring land for highway purposes by unrestricted warranty deed acquires title in fee simple. 35 Atty. Gen. 468.

In state highway acquisition cases, counties may be reimbursed by the state for expenses of highway committee members at the customary rate established by the county board. Those expenses of the county highway committee are governed by 83.015 (1). 36 Atty. Gen. 219.

The state highway commission may acquire a limited easement on lands adjoining a highway for drainage purposes under 84.09 (1). 36 Atty. Gen. 636.

84.09 (3m) is applicable only where the state highway commission elects to acquire lands within a city under that section, and it has no application to acquisition of a right of way by a city at its own expense and on its own initiative. Where lands have been conveyed for park purposes only to an improvement association organized under ch. 55, Laws 1899, which association in turn conveyed said lands to a city for park purposes only, the city may proceed to use a portion of such lands for widening a highway upon obtaining a quitclaim deed from the original grantor; the improvement association in the meantime having become defunct. Where lands have been conveyed to a city for park purposes only, upon condition subsequent that such lands are to revert to the grantor if the lands are diverted to any other use, and it is proposed to widen a pleasure drive in the park and use it for a state trunk highway so as to materially impair or destroy the usefulness of the drive for pleasure, recreation and amusement purposes, such proposed use places an additional servitude upon the land which must be acquired from the grantor by gift, purchase or condemnation. 37 Atty. Gen. 86.

An easement to maintain a power line is an interest in land. Where highway construction across land acquired subject to the easement necessitates relocation of line, the company is entitled to compensation. 39 Atty. Gen. 332.

Moneys expended by the state highway commission for purchase of right-of-ways in cities must be for lands purchased or condemned in the name of the state pursuant to 84.09. 40 Atty. Gen. 154.

Where the state highway commission, pursuant to 84.09 has by order directed a county highway committee to acquire fee title to a parcel of land for highway purposes, and resort is had to ch. 32 by reason of inability to negotiate a purchase for a reasonable award, the county acquires title in fee simple. (21 Atty. Gen. 553 distinguished.) 40 Atty. Gen. 218.

The state highway commission has power to condemn property owned by school districts and to condemn property of public utilities engaged in interstate commerce subject to the rights of such utilities under 86.16 and 182.017 (1). Previous opinions of the attorney general (29 Atty. Gen. 458 and 30 Atty. Gen. 266) to the contrary are no longer applicable because of statutory changes. 41 Atty. Gen. 229.

**84.10 History:** 1929 c. 528 s. 2; Stats. 1929 s. 84.10; 1931 c. 22 s. 1, 2; 1935 c. 30, 299, 540; 1943 c. 81; 1943 c. 334 s. 129; 1943 c. 491, 564; 1945 c. 358, 391; 1953 c. 318 s. 22 to 24; 1957

c. 525; 1965 c. 432; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d).

Where it is the duty of the state to maintain and operate a bridge but the state avails itself of the provisions which permit it to arrange with the city for such operation and maintenance, and a contract is made whereby the city takes over such activity under the supervision and control of the state with reimbursement to the city of the cost thereof, the city is not liable for damages to persons and property in the discharge of such function. The expenses of the city in defending any such claim may properly be considered as operating costs subject to reimbursement by the state. 34 Atty. Gen. 98.

**84.103 History:** 1947 c. 193; Stats. 1947 s. 84.103; 1969 c. 500 s. 30 (2) (d), (e).

84.103 does not preclude a county from restricting the use of land along certain highways by a proper zoning ordinance under 59.97, in the absence of the state highway commission's exercise of power in a way that conflicts with such ordinance. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

Ch. 193, Laws 1947, creating 84.103, relating to the Silent Cross memorial highway, is construed in 36 Atty. Gen. 368.

**84.104 History:** 1951 c. 660; Stats. 1951 s. 84.104; 1969 c. 500 s. 30 (2) (e).

**84.105 History:** 1939 c. 138; Stats. 1939 s. 84.105; 1943 c. 334 s. 130; 1955 c. 268; 1965 c. 252; 1967 c. 291 s. 14; 1969 c. 392 s. 84; 1969 c. 500 s. 30 (2) (d), (e).

**84.11 History:** 1929 c. 528 s. 2; Stats. 1929 s. 87.02; Spl. S. 1931 c. 14; 1935 c. 285; 1937 c. 55; 1943 c. 334 s. 131; Stats. 1943 s. 84.11; 1945 c. 214, 297; 1953 c. 600; 1957 c. 25; 1961 c. 40; 1965 c. 252; 1969 c. 276 ss. 347, 590 (1); 1969 c. 500 ss. 10, 30 (2) (d).

State appropriations to aid in bridge construction do not lapse, once the state highway commission has certified the same as payable by the state, with respect to a particular bridge. 8 Atty. Gen. 554.

When a municipality petitions for aid, and the physical and other conditions named in the statute are present, aid may be granted, notwithstanding the petitioner is to receive donations from a nearby city. 8 Atty. Gen. 734.

Funds provided by a county board through a bond issue for construction of a bridge at a designated site may be used for the construction of a bridge at a new site determined upon by the state highway commission. 16 Atty. Gen. 359.

Where a city has acquired a right-of-way and let contracts, which have been partially executed, for construction of a bridge, it is too late to apply for apportionment of the costs thereof. 21 Atty. Gen. 968.

Money raised by a bond issue to build a bridge cannot be used for any other purpose. If the bonds have not been sold action for a bond issue may be rescinded and the county's share of the bridge may be paid out of the general fund without levying a county tax for that specific purpose. 22 Atty. Gen. 113.

Cities and villages which have constructed bridges under 84.11, Stats. 1949; may be taxed

for aid to town bridges pursuant to 84.14 (3) and 81.38. 40 Atty. Gen. 29.

**84.12 History:** 1929 c. 528 s. 2; Stats. 1929 s. 87.03; Spl. S. 1931 c. 14; 1937 c. 55; 1943 c. 334 s. 132; Stats. 1943 s. 84.12; 1945 c. 297; 1957 c. 525; 1969 c. 231; 1969 c. 500 ss. 11, 30 (2) (d).

A county may not lawfully refuse to make provision for its proportion of the cost of a bridge as certified by the state highway commission. The county clerk and county board may be compelled by mandamus to make such provision. 11 Atty. Gen. 841.

**84.13 History:** 1929 c. 528 s. 2; Stats. 1929 s. 87.04; 1943 c. 334 s. 133; Stats. 1943 s. 84.13; 1945 c. 377; 1965 c. 62; 1969 c. 500 s. 30 (2) (e).

A toll bridge acquired by the state under 87.04, Stats. 1927, and made a free bridge may be insured by the state in the state insurance fund and the cost of such insurance may be debited to the appropriation made to the state highway commission under 20.49 (4). 17 Atty. Gen. 514.

**84.135 History:** 1945 c. 389; Stats. 1945 s. 84.135; 1959 c. 640; 1969 c. 500 s. 30 (2) (e).

**84.14 History:** 1917 c. 661; Stats. 1917 s. 1325k sub. 8; 1921 c. 439 s. 2; Stats. 1921 s. 1321b sub. 7, 1321c sub. 9, 1325k sub. 8; 1923 c. 108 s. 251; Stats. 1923 s. 87.06; 1929 c. 528 s. 3; 1937 c. 55; 1943 c. 334 s. 135; Stats. 1943 s. 84.14; 1945 c. 391; 1957 c. 97; 1969 c. 500 s. 30 (2) (d), (e).

**84.15 History:** 1929 c. 528 s. 2; Stats. 1929 s. 87.05; 1931 c. 436; 1935 c. 30; 1943 c. 334 s. 136; Stats. 1943 s. 84.15; 1945 c. 297; 1969 c. 500 s. 30 (2) (d), (e).

**84.20 History:** 1943 c. 543; Stats. 1943 s. 84.20; 1947 c. 165; 1959 c. 606; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d), (f), (h).

**84.25 History:** 1949 c. 492; Stats. 1949 s. 84.25; 1951 c. 247; 1955 c. 270; 1961 c. 157; 1965 c. 175, 252; 1969 c. 500 s. 30 (2) (d), (e).

Where the state designates a section of highway as non-access, but takes no land from the owner, and the owner has access to another highway, no compensation is payable. *Nick v. State Highway Comm.* 13 W (2d) 511, 109 NW (2d) 71.

See note to 227.15, citing *Nick v. State Highway Comm.* 13 W (2d) 511, 109 NW (2d) 71.

The statutes do not provide for a hearing on the application of a property owner to the state highway commission for a permit to build a driveway from his premises to a controlled-access highway. *Nick v. State Highway Comm.* 21 W (2d) 489, 124 NW (2d) 574.

The closing of a street by the highway commission pursuant to 84.25 (3) at the junction of its intersection with a controlled-access highway does not constitute a compensable taking, though property owners are deprived of direct access thereto, provided that reasonable access remains. *McKenna v. State Highway Comm.* 28 W (2d) 179, 135 NW (2d) 827.

See note to 80.13, citing 42 Atty. Gen. 320.

Highway zoning and roadside protection in Wisconsin. Levin, 1951 WLR 197.

**84.27 History:** 1925 c. 371; Stats. 1925 s.

20.49 (5a); 1927 c. 493 s. 1; 1933 c. 140 s. 4; 1941 c. 49 s. 60; 1941 c. 317; 1945 c. 358, 391; 1953 c. 318 s. 8; Stats. 1953 s. 84.27; 1955 c. 366; 1961 c. 531; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 ss. 602 (1), 603 (2); 1969 c. 500 s. 30 (2) (e).

The Grand Army Home for Veterans at King, Wisconsin, is a state charitable institution and entitled to benefits under 20.49 (5a), Stats. 1947. 36 Atty. Gen. 358.

**84.28 History:** 1925 c. 11; Stats. 1925 s. 20.49 (6); 1929 c. 417; 1931 c. 22 s. 2; 1933 c. 140 s. 4; 1943 c. 334 s. 2; 1945 c. 358, 391; 1947 c. 198; 1953 c. 318 s. 9; Stats. 1953 s. 84.28; 1955 c. 121; 1959 c. 568; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (e).

Lands comprising a state military reservation (Camp Williams, Juneau county) are not eligible for benefits of appropriations under 20.49 (6), Stats. 1947, except such "swamp lands" as were attempted to be made a part of said reservation by unconstitutional acts of the legislature. 36 Atty. Gen. 419.

**84.29 History:** 1955 c. 296; Stats. 1955 s. 84.29; 1957 c. 97; 1969 c. 500 s. 30 (2) (d), (e).

The purpose of an interstate highway, constituting a freeway and part of the national system of interstate highways, is not to serve the traveling public or abutters as a local road but is to serve as a safe, efficient, and speedy means of transporting traffic from one state to another. Stefan Auto Body v. State Highway Comm. 21 W (2d) 363, 124 NW (2d) 319.

**84.295 History:** 1961 c. 588; Stats. 1961 s. 84.295; 1965 c. 252; 1969 c. 500 s. 30 (2) (d), (e).

**84.30 History:** 1959 c. 458; Stats. 1959 s. 84.30; 1969 c. 500 ss. 12, 30 (2) (d), (e), (f), (g).

**84.40 History:** 1965 c. 593; Stats. 1965 s. 84.40; 1967 c. 110; 1969 c. 500 s. 30 (2) (d), (e).

See note to sec. 31, art. IV, note to sec. 3, art. VIII, and note to sec. 10, art. VIII, citing State ex rel. La Follette v. Reuter, 36 W (2d) 96, 153 NW (2d) 49.

**84.41 History:** 1965 c. 593; Stats. 1965 s. 84.41; 1967 c. 110; 1967 c. 351 s. 6; 1969 c. 55; 1969 c. 500 s. 30 (2) (e).

**84.42 History:** 1965 c. 593; Stats. 1965 s. 84.42; 1969 c. 500 s. 30 (2) (e).

**84.51 History:** 1969 c. 406; Stats. 1969 s. 84.51.

**84.52 History:** 1969 c. 215; Stats. 1969 s. 84.52.

## CHAPTER 86.

### Miscellaneous Highway Provisions.

**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.

**86.01 History:** 1869 c. 152 s. 101; R. S. 1878 s. 1326; Stats. 1898 s. 1326; 1909 c. 143; 1913

c. 703; 1913 c. 773 s. 107; 1923 c. 108 s. 212; Stats. 1923 s. 86.01; 1943 c. 334 s. 64, 138.

**86.02 History:** 1869 c. 152 s. 125; R. S. 1878 s. 1327; Stats. 1898 s. 1327; 1923 c. 108 s. 218; 1923 c. 446 s. 4; Stats. 1923 s. 86.02; 1943 c. 334 s. 139.

The provision in 86.02, Stats. 1923, relative to treble damages is penal in nature, and the statute must be strictly construed. Where the legislature authorized building of a dam which caused damage to highways, the act of defendant in constructing the dam was not unlawful and the treble damage feature is eliminated. Oconto County v. Union M. Co. 190 W 44, 208 NW 989.

86.02, Stats. 1939, so far as imposing treble damages in case of injury to a highway, has no application where the act resulting in damage was expressly authorized by the legislature. Where damage is caused by the manner in which the dam was constructed, maintained or operated, the basis of liability of the proprietor is negligence, and there is no absolute liability. Wausaukee v. Lauerman, 240 W 320, 3 NW (2d) 362.

**86.021 History:** 1919 c. 294; Stats. 1919 s. 4446c; 1925 c. 4; Stats. 1925 s. 343.483; 1955 c. 696 s. 123; Stats. 1955 s. 86.021.

**86.022 History:** 1869 c. 152 s. 101; R. S. 1878 s. 1326; Stats. 1898 s. 1326 sub. 1; 1909 c. 143; 1923 c. 108 s. 214; Stats. 1923 s. 4446d; 1925 c. 4; Stats. 1925 s. 343.484; 1931 c. 378; 1955 c. 696 s. 124; Stats. 1955 s. 86.022.

The word "wilfully" is used in sec. 101, ch. 152, Laws 1869, in such a sense as to exclude from its operation a deposit of material on the highway by the landowner in good faith and for a justifiable purpose. State v. Smith, 52 W 134, 8 NW 870. See also Wyman v. State, 13 W 663.

A barn occupying less than one-half the width of a street in a populous village, though room for travel is left, is an obstruction. State v. Leaver, 62 W 387, 22 NW 576.

Sec. 1326, R. S. 1878, applies only to obstructions intentionally, wilfully or maliciously placed in a highway. Pauer v. Albrecht, 72 W 416, 39 NW 771.

A fence which intrudes into a highway without hindering or rendering dangerous the travel thereon is not an obstruction but a mere encroachment. State v. Pomeroy, 73 W 664, 41 NW 726.

A barbed wire fence intentionally placed nearly lengthwise the traveled portion of a highway is an obstruction. Bartlett v. Beardmore, 77 W 356, 46 NW 494.

A strip of land dedicated to the public use as and for a highway, and which the municipality has a right to open as such, but which in fact has never been opened or made capable of public use, is not a highway. State v. Paine L. Co. 84 W 205, 54 NW 503.

A post 3 feet from the traveled track of the highway may constitute an obstruction. Neale v. State, 138 W 484, 120 NW 345.

Any object unlawfully placed within the limits of a highway is an obstruction if it impedes or seriously inconveniences public travel or renders it dangerous and it is not necessary that such object should stop travel in order