

CHAPTER 83.

COUNTY HIGHWAYS.

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83.01 [Renumbered sections 83.02 and 83.025 by 1943 c. 334 s. 93, 94]

83.01 **County highway commissioner.** (1) **ELECTION.** The county board shall elect a county highway commissioner, but in lieu thereof may by resolution request the state highway commission to appoint a county highway commissioner. If the county board shall fail to elect a county highway commissioner or to make such request to the state highway commission, the county shall not participate in state allotments for highways.

(2) **TERM.** Upon his first election the county highway commissioner shall serve until the first Monday in January of the second year succeeding the year of his election, and if re-elected it shall be for a term of two years.

(3) **SALARY.** The salary of the county highway commissioner shall be as determined under the provisions of section 59.15.

(4) **OFFICE AND ASSISTANTS.** The county board shall provide him with suitable offices and such assistants as are necessary for the proper performance of his duties.

(5) **BOND.** The county highway commissioner shall give bond in such sum as the county board shall from time to time require.

(6) **PAYMENT OF SALARIES.** The salaries, expenses of maintaining an office and the necessary traveling expenses of the county highway commissioner, assistants and special highway patrolmen in counties having such patrolmen may be paid monthly out of the general fund after being audited and approved by the county highway committee. All such expenditures out of the general fund shall be reimbursed out of moneys received under the provisions of section 83.10 (1).

(7) **DUTIES.** (a) The county highway commissioner shall have charge under the direction of the county highway committee of the construction of highways built with county aid and of the maintenance of all highways maintained by the county.

(b) He shall perform all duties required of him by the county board and by the county highway committee and shall do or cause to be done all necessary engineering and make all necessary examinations for the establishment, construction, improvement and maintenance of highways. He shall establish such grades and make such surveys and maps or cause the same to be made as he deems proper, and examine the highways and report as to the condition of roads, bridges and culverts, and make estimates of the cost of the improvement thereof, and of the cost of any relocation when required to do so or when he deems the same reasonably necessary.

(c) He shall have charge of all county road machinery and tools, and shall be responsible to the county board for their proper maintenance, repair and storage, and shall in his annual report make a complete inventory of the same, which inventory shall show the date of purchase, the location and condition of such machinery and tools, and the cost and present value thereof.

(d) He shall make an annual report to the state highway commission and to the county board at its annual meeting containing an itemized statement of all expenditures made from the county road and bridge fund during the year ending November 1. He shall include in his report an itemized estimate of the amount needed to properly maintain the county trunk highways in his county for the succeeding year and shall make such recommendations as he deems advisable.

(e) He and his employes may enter private lands for the purpose of making surveys or inspections.

(f) Whenever any fence encroaches upon any highway on the county trunk or state trunk system, the county highway commissioner may issue an order requiring the owner or occupant of the land to which such fence is appurtenant to remove the fence from the highway within 30 days. The order shall be served personally or by registered mail. If the fence is not sooner removed the commissioner shall, after the expiration of 30 days, remove the fence. He shall keep an accurate account of the expense thereof which shall be paid by the county. The expense shall be charged to the town in which such lands are situated and shall be added to its tax roll as a special tax against such lands, and shall be collected and accounted for as other county taxes are. If the claim of encroachment is disputed, the dispute shall be decided in the manner prescribed by section 86.04 (3). [1939 c. 286; 1943 c. 334 s. 86 to 88; 1945 c. 559]

Note: See note to 102.07, citing *Marathon County v. Industrial Commission*, 218 W 275, 260 NW 641.

A temporarily incapacitated county highway commissioner has no authority to appoint another to perform his duties, county board may appoint assistant; lawfully appointed assistant is "employee" of county within meaning of compensation act. 19 Atty. Gen. 235.

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

County has power to purchase automobile to be used by highway commissioner in 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 (4), 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. When a county board purported to delegate the power to discharge county highway employes to the county highway committee, the latter could not (assuming the county board has power to delegate such power) re-delegate such power to the county highway 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 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. Questions whose answer depends upon determination of questions of fact cannot be answered by the attorney general. 34 Atty. Gen. 82.

83.015 County highway committee. (1) ELECTION; COMPENSATION; TERM. (a) Except as otherwise provided in paragraph (b) each county board at the annual meeting shall by ballot elect a committee of not less than 3 nor more than 5 persons, to serve for one year, beginning either as soon as elected or on January 1 following their election, as designated by the county board, and until their successors are elected. Any vacancy in the committee may be filled until the next meeting of the county board by appointment made by the chairman of the board. The committee shall be known as the "County Highway Committee," and shall be the only committee representing the county in the expenditure of county funds in constructing or maintaining, or aiding in constructing or maintaining highways. The members of such committee shall be reimbursed for their necessary expenses incurred in the performance of their duties, and shall be paid the same per diem for time necessarily spent in the performance of their duties as is paid to members of other county board committees, not, however, exceeding \$500 for both per diem and expenses to any member in any year. A different amount may be fixed as a maximum by the county board.

(b) The number of members on the county highway committee, the membership, manner of appointment, and the terms of the members, in counties having a population of 200,000, or more, shall be as fixed from time to time by the county board.

(c) The town chairman of each town in which county aid construction is performed shall be ex officio a member of the county highway committee, or shall act with such committee, on all matters affecting such construction in his town, provided the town has voted a portion of the cost thereof.

(2) POWERS AND DUTIES. The county highway committee shall purchase and sell county road machinery as authorized by the county board, determine whether each piece of county aid construction shall be let by contract or shall be done by day labor, enter into contracts in the name of the county, and make necessary arrangements for the proper prosecution of the construction and maintenance of highways provided for by the county board, enter private lands with their employes to remove weeds and brush and erect or remove fences that are necessary to keep highways open for travel during the winter, direct the expenditure of highway maintenance funds received from the state or provided by county tax, meet from time to time at the county seat to audit all pay rolls and mate-

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rial claims and vouchers resulting from the construction of highways and perform other duties imposed by law or by the county board. [1931 c. 36; 1933 c. 450 s. 12; 1943 c. 334 s. 89, 90]

Cross Reference: See last sentence of 59.03 (2) (f) for limitation to counties with over 100,000 population.

For additional duties as to parkway system, see 27.065 (13).

Note: 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. *Ke-waunee County v. Door County*, 212 W 518, 250 NW 438.

No authority exists for reimbursement of members of county highway committee for expenses incurred in attending road school. 19 Atty. Gen. 137.

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

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

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

Power to appoint county highway and shop employees and to fix their compensation is in county board, which may delegate it to either highway committee or highway

commissioner or to two jointly. 21 Atty. Gen. 327.

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

See note to 59.03, citing 25 Atty. Gen. 86.

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

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

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

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

If authorizing resolutions are silent with respect thereto, 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 county to bargain collectively with labor unions and to make agreements as to hours, wages, nondiscrimination, etc., discussed. 29 Atty. Gen. 82.

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

83.016 Traffic patrolmen; appointment, duties, bond. (1) The county highway committee may appoint traffic patrolmen for the enforcement of laws relating to the highways or their use, or the maintenance of order upon or near the highways. Traffic patrolmen may arrest without warrant, any person who, in their presence, violates any law relating to highways or the maintenance of order upon or near highways. Any traffic patrolman, sheriff, constable or other police officer may make such arrest without warrant on the request of any other traffic patrolman, sheriff, constable or police officer in whose presence any such offense has been committed. The appointment of any traffic patrolman may be revoked at any time by the county highway committee. No traffic patrolman shall receive or accept from or for any person he has arrested, any money or other thing of value, as or in lieu of bail or for the person's appearance before a court or magistrate, or to cover or be applied to the payment of fines or costs, or as a condition of such person's release.

(2) Traffic patrolmen, before exercising their powers, shall be provided with a badge which shall be worn when on duty. Such badges shall be furnished to the county by the state motor vehicle department.

(3) Traffic patrolmen shall furnish bonds in a sum fixed by the county board to indemnify the county for any and all claims arising out of the performance of their duties. The cost of said bonds shall be paid by the county. [1931 c. 79 s. 13; 1943 c. 334 s. 91]

Note: County is not liable for damage resulting from operation of motor vehicle by special highway patrolman nor in general for any act or any unlawful or tortious act of such officer. 19 Atty. Gen. 628.

It is very doubtful whether patrol officer of highway is authorized to carry concealed weapon. If he deems it necessary to do so it is advisable that he be appointed deputy sheriff. 25 Atty. Gen. 694.

County board member is not eligible after resignation to appointment by county highway committee as special highway patrolman under 82.07 (1), Stats. 1937 (83.016 (1), Stats. 1943). County highway committee appointed under 82.05 (1), Stats. 1937 (83.015 (1a), Stats. 1943) is committee of county board. 26 Atty. Gen. 349.

County highway police officer who is also deputy sheriff is prohibited by this section from accepting recognizance or any money for appearance of 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 of 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 of 1943, and ch. 553, laws of 1943, did not result in the repeal of 83.016, and said section is now in full force and effect. 33 Atty. Gen. 159.

83.02 [Repealed by 1943 c. 334 s. 92]

83.02 County aid highways. (1) The systems of prospective state highways heretofore selected by the county boards and approved by the state highway commission are hereby validated but without prejudice to the exercise of the power to change such systems. Such systems are hereby designated as the county aid highway system.

(2) The state highway commission, on the petition of at least 100 freeholders, may, after investigation, make such alterations in the system of county aid highways as it deems necessary to serve the public interest.

(3) The county board may alter such systems with the consent of the state highway commission. [1939 c. 355; 1943 c. 336 s. 93]

Note: Town or county in removing snow fences by snow plows, causing fences to break, does not give right of action against function, and throwing of snow against town or county. 24 Atty. Gen. 246.

83.025 County trunk highways. (1) The systems of county trunk highways heretofore selected by county boards and approved by the state highway commission are hereby validated. Such systems may be altered or increased only with the consent of the commission. The county board, or the county highway committee, shall, by conference with the boards or highway committees of adjoining counties, or otherwise, cause their respective systems to join so as to make continuous lines of travel between the counties. Any highway which is a part of the county trunk system shall, by virtue thereof, be a portion of the system of county aid highways. Any city or village street or portion thereof selected as a portion of such system prior to May 1, 1939, shall be a portion of such system. All streets or highways in any city or village over which is routed a county trunk highway or forming connections through such city or village between portions of the county trunk highway system shall be a part of such system unless the governing body of the city or village, by resolution, removes such street or highway from the county trunk system.

(2) The county trunk system shall be marked and maintained by the county. No county shall be responsible for the construction and maintenance of a city or village street on the county trunk highway system to a greater width than are those portions of such system outside the village or city and connecting with such street. When a portion of a county trunk highway extending from one county to another has less mileage than is practical for a patrol section, such portion shall be patrolled by the county in which the major portion of the highway lies, and each county shall bear its proportionate share of the expense of maintenance, payable monthly. The marking and signing of the county trunk highway systems shall be uniform throughout the state, as prescribed by the state highway commission.

(3) The county highway committee, subject to the approval of the county board, may enter into agreements with the state highway commission as provided in section 86.25 (2). [1939 c. 355; 1943 c. 334 s. 94; 1945 c. 214]

Note: There is no statute for apportionment of cost of county trunk highways located on county lines, but 83.01 and 83.03 (6), Stats. 1937 (83.025 and 83.03 (1), Stats. 1943) seem to contemplate that adjoining counties may make agreements with respect thereto. 26 Atty. Gen. 241.

Special committee appointed by county board to work out reapportioning of county trunk system of highways with county committee and commissioner is without power to alter system without approval of state highway commission. 28 Atty. Gen. 15.

A county board may add all town roads within the county to the county trunk system. 28 Atty. Gen. 588.

Ch. 355, Laws 1939, amending 83.01 (6) and 83.06 (1), Stats. 1937, considered and construed. 29 Atty. Gen. 23.

83.026 Federal aid secondary highways. The county highway committee shall cooperate with the state highway commission in the selection of a system of federal aid secondary and feeder roads within the meaning of the Federal Aid Road Act approved July 11, 1916 (39 Stats. at L. 355), and all acts amendatory thereof and supplementary thereto. The county highway committee shall request and consider recommendations from the governing bodies of municipalities within the county as to eligible highways and streets within such municipalities to be selected as part of such system. The highways and streets selected by the committee to be a part of such system shall be subject to the approval of the county board. [1945 c. 214]

83.03 County aid; local levy; donations. (1) The county board may construct or improve or repair or aid in constructing or improving or repairing any highway or bridge in the county.

(2) If any county board determines to improve any portion of a county trunk highway with county funds, it may assess not more than 40 per cent of the cost of the improvement but not over \$1,000 in any year against the town, village or city in which the improvement is located as a special tax but no such assessment shall be made against any town in which the combined appropriation of the town and county for the improvement of county trunk highways in such year exceeds 2 mills per dollar on the assessed valuation of the town. The county clerk shall certify the tax to the town, village or city clerk who shall put the same in the next tax roll, and it shall be collected and paid into the county treasury as other county taxes are levied, collected and paid. A portion or all of such special assessment may be paid by donation.

(3) The county board may accept donations to the county of money or lands for highway or bridge purposes, and apply the donations in accordance with the wishes of the donor as nearly as is practicable.

(4) Any county may, by any lawful means, provide funds to match or supplement state or federal aid for the construction, reconstruction or improvement, under the pro-

visions of chapter 84, of any highway, street or bridge which it is authorized to construct, reconstruct or improve, and to pay such funds to the state highway commission or state treasury as provided in section 84.03 (1) (b). [1939 c. 214; 1943 c. 334 s. 95; 1945 c. 214]

Note: Section 83.03 (6), Stats. 1935 (83.03 (1), Stats. 1943) authorizes a county board to construct a minor bridge with county funds alone or with the aid of the town, village, or city in which the bridge is to be located, but does not authorize the construction thereunder of a bridge eligible to construction under 87.02 (1) (b) (84.11 (1) (b), Stats. 1943). *Schaettle v. State Highway Commission*, 223 W 528, 271 NW 63. [87.02 (1) (b) was later amended by ch. 55, Laws 1937.]

State is responsible for operating movable bridge located on state trunk highway system and constructed under 1317m-5, 1, (a), Stats. 1921 [83.03], 22 Atty. Gen. 240.

See note to 83.14, citing 24 Atty. Gen. 253. County may not take over or maintain town roads without making them part of county trunk system. 25 Atty. Gen. 702.

Where county in May voted tax to improve county trunk highway in town of S under 83.03, and assessed portion thereof to town and town had voted tax in excess of town's assessment to improve same highway, town levy cannot be used in lieu of assessment against town provided by county. Town may use tax levied in April as basis for county aid under 83.14 and under 83.14 (4) may compel county to appropriate

only difference between \$2,000 and county's share of improvement initiated under 83.03. County may appropriate such amount, greater amount or amount in excess of \$2,000 but cannot be compelled to do so. Town may request county aid in amount in excess of that which county can be compelled to appropriate. If town wishes to have construction commenced before town and county funds are in county treasury under 83.14 (6) it must borrow money in anticipation of its own and county's share of improvement and pay said amount into county treasury. [Stats. 1937] 27 Atty. Gen. 603.

County does not have power to correct defects in state trunk highway constructed by state. 29 Atty. Gen. 378.

County board is not empowered to act under 83.03 (6), Stats. 1941 (83.03 (1), Stats. 1943) in construction of bridge on prospective state highway maintainable by town. 87.01, Stats. 1941 (81.38, Stats. 1943) is controlling. 30 Atty. Gen. 261.

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

83.04 Highway construction by county; noncontract work; payments. (1) All highway improvements made by the county highway committee shall be by contract, unless the committee determines that some other method would better serve the public interest. The manner of advertising for bids and the forms of bids, contracts and bonds shall be substantially those used by the state highway commission. In letting a contract the county highway committee acts for the county.

(2) If it is deemed inadvisable to let a contract for highway construction, the county highway committee may direct the county highway commissioner to proceed with the construction as noncontract work, and he may, under the supervision of the committee, employ and purchase the necessary labor and materials.

(3) During construction the work and materials shall be inspected by the county highway commissioner or by inspectors employed by him with the approval of the county highway committee. Upon the completion of any highway job by or for the county on the county aid system or for which county aid has been granted the work shall be inspected by the county highway commissioner, and if found in conformity with plans and specifications, he shall so find and notify the county highway committee and the county clerk thereof and that the improvement has been accepted.

(4) Upon contract construction final payment shall not be made until the work has been accepted as complete by the county highway commissioner. In case of noncontract work payment shall be made monthly upon verified, detailed, statements and pay rolls prepared by the county highway commissioner and approved and allowed by the county highway committee, and all payments shall be made by orders on the county treasurer in the ordinary form signed by the chairman of the county board and the county clerk, unless the county has adopted some different method of making disbursements, in which event it shall be according to such method and all orders shall be drawn upon and paid out of the fund provided for such construction. Said statements and pay rolls shall be filed with the county clerk.

(5) When final payment has been made upon any highway improvement, any funds remaining in the county treasurer's hands which were provided by any subdivision of the county for that particular improvement, shall be placed together with the county's balance available for that job to the credit of such subdivision of the county, and shall be used to increase the funds available for the next construction job in said subdivision, and any such balance in the bridge fund may be transferred to the road fund or vice versa by the town or village board with the approval of the county highway committee.

(6) No order shall be drawn on the county road or bridge fund in excess of the funds available for the particular improvement for which drawn, without the authority of the county board or the county highway committee. [1943 c. 334 s. 96]

83.05 Improving city or village streets over 18 feet wide. (1) When a portion of the system of county aid highways in any city is to be improved, and the funds from the city and county are available therefor, the city may determine that the roadway shall be paved to a greater width than 18 feet. If it so decides, the city may determine the type of improvement, the width, and all other features of the construction, subject to the approval

of the county highway committee. And said committee shall fix the amount per linear foot of the improvement to be paid by the county. The city shall then improve the street in the manner provided generally for making street improvements. The work shall be done under the supervision of the city, but subject to the inspection of the county highway commissioner.

(2) Upon the completion of the work the county's share of the cost shall be paid to the contractor as though the county had been an immediate party to the contract. In no case shall the payment by the county exceed the cost of 18 feet of the width of the pavement, plus a share of the grading, draining, and appertaining structures, which share shall be determined by dividing the whole cost of these items by the width of the pavement in feet and multiplying the quotient by 18. The balance of the expense of the improvement shall be borne by the city, and shall be provided in the manner in which expense of street improvement is ordinarily met. Assessments of benefits may be made by the city against abutting property in the manner provided where the improvement is done solely at the expense of the city, but such assessments of benefits shall not exceed the difference between the cost of the improvement and the amount contributed thereto by the county.

(3) When a part of the system of county aid highways in a village is to be improved, the village board may determine to pave the same to a greater width than 18 feet, and may pay the additional cost out of the general funds of the village, or assess a part or all of such costs to the abutting property as provided by sections 61.40 and 61.41. A joint contract covering the whole work may be entered into between the county and village officials and the contractor, and the general procedure in regard to the improvement shall be the same as if the improvement had been made in the usual way and the village was not a party to the contract, except that the amount due to the contractor for the additional width of pavement shall be paid by the village. The village board shall determine whether special assessments shall be paid in 1, 3 or 5 years, and the rate of interest on deferred payments. [1943 c. 334 s. 97]

Note: County may not grant highway aid to village for construction of curbs and sidewalks along highways by reason of limitations in (3), Stats. 1935. 25 Atty. Gen. 675.

83.06 Maintenance of county aid highways. All streets and highways improved with county aid under this chapter shall be maintained by the towns, cities and villages in which they lie but this provision shall not diminish or otherwise affect the duty of the county with respect to any street or highway which is a portion of the county trunk highway system, nor the powers of the county conferred by section 83.03 (1) and (2) or 59.08 (35). [1939 c. 355; 1943 c. 334 s. 98]

Note: County may enter upon lands adjoining highway and restore original water-course grades, blocking up of which causes periodic flooding of highway, but landowner is entitled to damages in such case. 26 Atty. Gen. 344. Ch. 355, Laws 1939, amending 83.01 (6) and 83.06 (1), considered and construed. 29 Atty. Gen. 23.

83.065 County road and bridge fund; tax levy. The county board shall annually levy a tax of not more than 2 mills on the dollar, in addition to all other taxes, and the proceeds shall be known as the "County Road and Bridge Fund." Expenditures from said fund shall be made only for the purposes of constructing and maintaining highways and bridges under this chapter and for purchasing, operating, renting and repairing machinery, quarries and gravel pits used in such construction and maintenance. [1943 c. 334 s. 99]

Note: 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 two-mill tax for highways and bridges authorized by 83.065, "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 two mills, where no tax was expressly levied under 83.065. McDonald v. Black River Falls, 246 W 172, 16 NW (2d) 410.

83.07 Acquisition of lands, quarries, gravel pits; relocation; eminent domain. (1) The county highway committee or town board may acquire any lands or interest therein needed to carry out the provisions of this chapter. Whenever the county highway committee or town board is unable to acquire the same by purchase at a reasonable price such property may be acquired by condemnation under chapter 32 or subsections (4), (5) and (6) of this section.

(2) In case the county highway committee or town board deems it desirable to acquire any lands or the right to take stone, gravel, clay or other material, from private lands for use in the execution of the committee's or board's duty, or to acquire the right of access to any lands, or the right of drainage across any lands, the committee or board may purchase or condemn such lands or right and take title thereto in the name of the county or town, and the cost thereof shall be paid out of the highway improvement funds.

(3) When lands are acquired under this section to relocate or straighten any highway or to provide easier curves at highway intersections, and tracts not more than 2 acres in area remain separated from the main body of land from which they are acquired, the

county highway committee or town board may, if it deems the acquisition of such minor tracts advisable or necessary to beautify the highway or to protect public travel, acquire such minor tracts in the name of the county or the town. Tracts in excess of 2 acres of like character may be acquired by agreement.

(4) In case the committee or board is unable to acquire needed lands or rights by contract the committee or board may acquire the same in the name of the county or town by eminent domain, as provided in chapter 32 or in the following manner: They may, upon not less than 5 days' notice in writing, exclusive of Sundays and holidays, to the owner, describing the property and stating the time and place of hearing the application, apply to the county judge of the county to appraise the value of the property sought to be taken. At the time set therefor the judge shall hear the parties, and inform himself in respect to the matter, and within 5 days, make his award in writing and file it in his office. The county committee or town board may then pay the sum awarded by delivering to the owner a county or town order, or tender the same, and the title to the property and rights sought to be acquired shall thereupon vest in the county or town for the uses and purposes of the acquirement, and the committee or board may cause a certificate under the hand and official seal of such judge, stating the facts, to be recorded in the office of the register of deeds.

(5) The landowner may, within 30 days after the award is made, file with the judge a notice of appeal to the circuit court, whereupon the judge shall certify all the papers in the proceedings to the court, and thereupon the matter shall be regarded as at issue, and the proceedings shall be as provided in section 32.11.

(6) The committee or board may appeal to the circuit court in the same manner and within the same time and the subsequent procedure shall be like that upon the owner's appeal. Payment or tender of the award shall not defeat the county's or town's right to appeal. [1931 c. 363; 1943 c. 334 s. 100]

Note: Arbitration is not authorized. No judgment and no proceeding whatsoever is authorized in court upon an application to the county judge; if the landowner deems himself aggrieved and desires a review of the judge's determination, he is not required to appeal as from a judgment, but is entitled to a retrial in the circuit court of the matter at issue. The judgment in the county court having been entered without jurisdiction is void, and it was proper to appeal therefrom, although if the county judge had merely filed an award instead of entering judgment, there could not have been a review thereof on an appeal directly to the supreme court. *Breckheimer v. Dane County*, 209 W 131, 244 NW 584.

In proceedings before the county judge under 83.07 (3) to appraise the value of land taken by the county highway committee for the relocation of a state highway under 83.08, an order "by the court" dismissing the proceedings was entered without jurisdiction and was void, and an appeal therefrom directly to the supreme court was proper. The committee's right under 83.08 to resort to condemnation proceedings in the manner provided by 83.07 is not limited by (2) and (2a) of 83.07 to land taken but to the purposes mentioned in those subsections, nor to an area of two acres mentioned in (2a) with reference to land taken for beautifying a highway. The county judge

has no power to award costs in proceedings under this section. [83.07 (2a) and (3) were renumbered 83.07 (3) and (4) by ch. 334, Laws 1943.] *Highway Committee of Jefferson County v. Guist*, 235 W 18, 292 NW 226.

County highway committee may discontinue condemnation proceedings brought before county judge at any time before payment or deposit of amount of award. Such discontinuance is not bar to new proceedings to acquire same land. 19 Atty. Gen. 99.

Section 253.07 authorizes affidavit of prejudice against county judge in performance of jurisdiction given to appraise property taken for highway purposes. 20 Atty. Gen. 346.

83.07 (2), Stats. 1941, does not authorize county highway committee to condemn additional lands for county-owned gravel pit for purpose of operating pit commercially as well as for its own use. 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 pit is operated both for use of county and for sale of gravel to others. 31 Atty. Gen. 241.

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

83.08 Acquisition of lands and interest therein. (1) The county highway committee may acquire by gift, devise, purchase or condemnation any lands or interests therein for the proper improvement, maintenance, relocation or change of any county aid or other highway or street or any bridge thereon which the county is empowered to improve or aid in improving or to maintain. Whenever the committee deems it necessary to acquire any such lands or interests therein for any such purpose, it shall so order and in such order or on a map or plat show the old and new locations and the lands or interests required, and shall file a copy of the order and map with the county clerk. The committee shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, at a price, including damages, deemed reasonable by the committee. The instrument of conveyance shall name the county as grantee and shall be filed with the county clerk and recorded in the office of the register of deeds.

(2) If any of the needed lands or interests therein cannot be purchased expeditiously for a reasonable price, the committee may acquire the same either by condemnation under chapter 32 or section 83.07, or may make and sign an award of damages to the owner and file the same with the county clerk; and thereupon the amount so awarded shall be payable the same as when the lands or interests are acquired by purchase; and the

owner may receive the award without prejudice to his right to claim and to contest for a greater sum. When the award has been filed, the highway authorities and their contractors and employes may take possession of the lands and exercise full control of the interests in lands acquired. A copy of the award shall be delivered or mailed to the owner if his address be known and if not known then to the occupant of the land. If the land is unoccupied and the name or address of the owner is unknown, the award shall be published at least once each week for 3 successive weeks in a newspaper having general circulation in the county. The award of damages to the owner shall be recorded in the office of the register of deeds. The owner may, within 2 years after the filing of the award with the county clerk, proceed as provided in chapter 32 to have his damages appraised, or may within said period apply to the county judge, on 5 days' written notice to any member of the highway committee, to appraise the damages and thereafter the proceedings shall be as provided in section 83.07.

(3) The cost of land and rights so acquired, including any damages allowed and other expenses connected therewith, shall be paid out of available improvement or maintenance funds. [1931 c. 22 s. 2; 1937 c. 393; 1943 c. 334 s. 102; 1945 c. 341]

Note: Under 83.08 (2), Stats. 1931, the county highway committee has no right to review its award, and the landowner may retain the same if satisfied, but when the landowner exercises the option to contest such award by proceeding under the condemnation chapter (ch. 32, Stats.), he subjects himself to its provisions, which involve an award by commissioners, and, in case of an appeal therefrom by either party to the circuit court, a trial de novo; and the issues on such trial in circuit court are not limited to the question whether the landowner should have a higher award, but the question whether the award should be reduced is also in issue. Where, on the trial in circuit court, the value of the land taken is found to be less than the award made by the county highway committee, judgment in favor of the highway committee for the difference is proper. *Carisch v. County Highway Committee*, 218 W 375, 257 NW 11.

See note to 32.10, 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.

Under 83.08 (2), Stats. 1941, where a county makes, files and pays an award of damages to the owner of land desired for the relocation of a state highway and takes possession, the county takes no further steps with respect to the condemnation, but the matter is closed unless the landowner is dissatisfied and brings proceedings within 2 years to have his damages appraised. In such case, earlier enacted 32.15 (1) (providing that a person having the power of condemnation, in possession of property without having instituted condemnation proceedings, must bring proceedings to acquire title or else the landowner may institute proceedings "at the expense of such person") has no application; so that the county, in such case, under 83.08 (2), is not liable for the expenses of proceedings brought by the landowner to have his damages appraised. *Knutson v. Rock County*, 238 W 110, 297 NW 355.

Word "owner" as used in 83.07 and 83.08, Stats. 1931, includes mortgagee and other

lien holders having vested property right in land to be acquired. It is proper that compensation for taking land for highway purposes be paid to clerk of circuit court for benefit of interested parties in cases where fee holder and lien claimants cannot agree upon division thereof. 20 Atty. Gen. 411.

When award is made for highway easement under 83.08 (2), Stats. 1931, conveyance by landowner cannot be required as condition of paying award. Landowner who conveys easement may not contest for increase in amount of damages. 20 Atty. Gen. 818.

Where award is made and filed county obtains easement and no formal conveyance is necessary. [Stats. 1931] 21 Atty. Gen. 553.

Copy of award made under 83.08 (2), Stats. 1935, should be served on fee owner of land and his wife and on all mortgagees and other lien holders. 24 Atty. Gen. 275.

Where county highway committee has made award for right-of-way, highway authorities and their contractors and employes are entitled to immediate possession and may apply for injunction restraining owner from interfering with them in taking possession. [Stats. 1937] 27 Atty. Gen. 645.

Where owner of land to be condemned for highway relocation cannot be ascertained, it appears to be legislative intent in 83.08, (2), Stats. 1941, that service may be made in manner prescribed where address of owner is unknown. If proceedings are otherwise proper and notice given in above manner should be held inadequate, it would not affect measure of damages ultimately to be paid true owner, but his right of action to contest award would not be limited to period prescribed by statute. Landowner may proceed to have his damages appraised immediately upon filing of award under 83.08 (2), Stats. 1941, even though there has been no actual physical entry upon his land. After award is made, approved and filed highway authorities may take immediate possession of land even though owner commences proceedings to have his damages appraised. 31 Atty. Gen. 6.

83.09 Emergency repairs of county trunk highways. Whenever a flood or other casualty renders any county trunk highway dangerous for travel, the town chairman shall immediately close it and notify the county highway commissioner thereof, and the commissioner shall promptly make repairs necessary to render the highway safe for travel. If sufficient funds are not available in the county maintenance fund, the commissioner may, with the consent of the chairman of the county board or of the county highway committee, make the necessary repairs, and the cost thereof shall be paid as soon as funds are available. [1943 c. 334 s. 103]

83.10 [Renumbered section 86.07 by 1943 c. 334 s. 147]

83.10 State allotment to county trunk highways. (1) From the appropriation made by section 20.49 (3), there shall be allotted, by the state highway commission, to the several counties as state aid for the county trunk highway systems, the sum of \$3,500,000. Forty per cent of such allotment shall be in the ratio that the number of motor vehicles registered from each county in the fiscal year ended the previous June 30 bears to the total number registered in the state and 60 per cent in the ratio that the

mileage of highways on the preceding January 1 in each county exclusive of highways and streets in cities and villages bears to the total mileage of such highways in the state. From the appropriation made by such subsection there shall be an additional allotment to each county equal to \$65 per mile of county trunk highways in such county on the preceding January 1. Such allotments shall be used for constructing, repairing and maintaining the county trunk highway system and the bridges thereon, including snow and ice removal and control, under the direction of the county highway committees. Any county may allocate all or part of its allotment, with the approval of the commission, to match or supplement federal aid funds for the construction, reconstruction and improvement of the county trunk highway system and in such event such amount may be retained by or paid to the commission or the state treasury as the commission may require and shall be expended in accordance with the provisions of section 84.06 and any applicable act of congress. All or part of such allotment not allocated to match or supplement federal aid as herein provided shall be expended in accordance with the applicable provisions of this chapter.

(2) The county board of any county having a population of 500,000 or more may appropriate any portion of the moneys received by such county under section 20.49 to the cities and villages and the county park commission within such county for the construction or reconstruction of streets, park or parkway roads or drives, or for the payment of the principal or interest on bonds issued by any town, city or village in such county for the construction of bridges carrying a traffic in excess of 2,500 vehicles per day, according to a determination made by the state highway commission. [1931 c. 22; 1937 c. 393; 1939 c. 42, 105; 1943 c. 334 s. 104; 1945 c. 391]

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

83.11 Marking section and quarter section corners in highways. Any county board may provide that section and quarter section corners in any highway constructed in whole or in part with county funds may be marked with suitable permanent monuments or markers; and the expense of putting in and maintaining such markers shall be paid out of the county road and bridge fund or other county fund as may be determined by the county board. [1943 c. 334 s. 105]

83.12 [Repealed by 1937 c. 365]

83.12 Cattle passes. As a part of any highway improvement or as a separate project under this chapter, cattle passes across highways may be constructed at places determined by the county highway committee to be necessary and practical. [1943 c. 334 s. 106]

83.13 Guideboards. The county board may erect and maintain guideboards on county aid and county trunk highways which are not part of the state trunk highway system, the cost to be paid out of such fund as the board shall direct. [1943 c. 334 s. 107]

83.14 County aid on town and village initiative. (1) Any town meeting or village board may vote a tax of not less than \$500 to improve a designated portion of a county aid highway and may accept cash donations for such purposes, and when accepted subsequent proceedings shall be the same as if a tax of like amount had been voted. Highways in villages shall not be eligible to improvement under this section wherever the buildings fronting the highways average more than one to each 60 lineal feet of highway. The tax shall not exceed one mill on the dollar on the taxable property but every town and village may vote \$500, and such tax shall be paid to the county treasurer when the county taxes are paid.

(2) When the tax has been voted the town or village board shall petition the county board at its next annual meeting to appropriate at least an equal amount as the county's share of the cost of the proposed improvement. The petition shall designate the highway to be improved and state the character of the improvement and the amount which has been voted therefor.

(3) The county board shall thereupon appropriate for the improvement a sum equal to or greater than the amount voted therefor by the town or village; and shall raise the same by tax on all the taxable property of the county.

(4) No county shall be required to appropriate in any year over \$2,000 for work in any town or village.

(5) The improvement shall be performed, supervised and paid for and accepted in the same manner as other county aid work.

(6) Construction shall not begin until the funds to pay for the same are in the county treasury and the plans and specifications have been approved by the county highway committee. After any town has voted the tax such town may borrow money for such improvement in anticipation of the tax levy and the appropriation to be made by the county board, and pay the same into the county treasury as an advance, after which construction

may proceed. The county shall reimburse the town for such advance when the necessary funds become available.

(7) Towns may take the initiative in the improvement of county aid highways by issuing bonds and the funds produced by such bond issue shall be handled and expended as though raised by taxation.

(8) The county clerk shall, on or before January 1 of each year, file with the state highway commission a written statement setting forth the petitions granted by the county board and the improvements determined upon under section 83.03, the location, character and contemplated cost of each improvement, and the amount to be paid by the county and town or village for making each improvement. [1943 c. 334 s. 108]

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

Unexpended balance raised by town under 83.14, Stats. 1933, and remaining in county treasury may be expended by county for construction work in town designated by town board. 22 Atty. Gen. 174.

Where town strictly follows this section for improving prospective state (county aid) highways county aid is mandatory. Otherwise it is discretionary with county to grant aid under 83.03 (6), Stats. 1935 (83.03 (1), Stats. 1943), except that county may not reimburse town for funds already expended. 24 Atty. Gen. 253.

Funds raised by village under 83.14 (1), Stats. 1935, and matched by county funds under (3) for improvement on prospective state trunk (county aid) highway in village may

be used for such improvement although it consists of extending width of highway, now being paved by county, beyond eighteen feet. 24 Atty. Gen. 469.

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 county's share to town. [Stats. 1935] 25 Atty. Gen. 11.

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

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

83.15 [Repealed by 1943 c. 334 s. 109]

83.15 Aid by county for state line bridge. The county board of any county bounded in part by a river which is also a state boundary line may aid any municipality of such county in the construction of a bridge across such river or any part thereof, by an appropriation therefor not exceeding one-third of the cost of such bridge. [1943 c. 334 s. 110]

83.16 County may contract with foreign county. The board of supervisors of any county in this state bordering on any navigable stream which is the boundary line between such county and a county in another state is hereby authorized in conjunction with the board of supervisors of such adjoining county in such other state, to construct and maintain a bridge or bridges across such river at a place or places within the limits of such county as may be agreed upon by said respective boards of supervisors, whenever said board of supervisors in this state shall deem it necessary, and to enter into a contract with such board of supervisors of the adjoining county of such other state for the construction, maintenance and repair of such bridge or bridges. [1943 c. 334 s. 111]

83.17 County may assume compensation liability; agreements with localities. Whenever a county contributes funds to a highway project undertaken by a town, village or city in the county or a city, town or village has its highways maintained by the county with local funds, the county through its county highway committee may assume the liability under the workmen's compensation act of the town, village or city to any employe on such project, and may by agreement with the governing body of the town, village or city provide for the amount the town, village or city shall pay to the county for the assumption of such liability. Such action of the county highway committee shall remain in effect until the county board by resolution disapproves of such action. [1935 c. 480; 1943 c. 334 s. 112]

83.18 Entry on lands. (1) ENTRY; PURPOSES; ROAD MATERIALS IN HIGHWAYS. For constructing or maintaining any highway by the county, the county highway committee or commissioner shall possess all the powers conferred upon town boards by section 81.06.

(2) APPRAISAL OF DAMAGES; APPEALS THEREFROM. The owner or occupant of lands entered upon or used by the county for any of the purposes mentioned in section 81.06 or 83.015 (2) may apply to the county highway committee to appraise the resulting damages and such damages may be determined by agreement. If they are unable to agree upon the same, the committee shall make an award of damages and file it with the county clerk as provided for towns in section 80.09, and the owner or occupant may appeal from such award within the time and in the manner provided by section 80.24, and the proceedings on such appeal shall be governed and shall conform in all things to the provisions of section 80.24 except that service shall be made on 2 members of the county highway committee. [1943 c. 334 s. 113]

83.19 Temporary highways and detours. When any highway which is maintained or to be maintained by the county shall be practically impassable or be dangerous to travel

or when it shall be deemed necessary on account of construction or repair work thereon or for other reasons to suspend travel upon any part of such highway, the county highway commissioner may lay out and open temporary highways for the accommodation of public travel through any lands, and the county highway commissioner shall possess the powers conferred by section 81.08 upon town boards. Said powers shall be exercised by him in like manner and the procedure shall be the same except that the contract and orders and claim for damages and other papers relating to the matter shall be filed with the county clerk, and claims for damages shall be acted upon by the county board in the manner provided by section 59.76. [1943 c. 334 s. 114]

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