

CHAPTER 82.

HIGHWAY COMMISSION AND COMMISSIONERS.

<p>82.01 Highway commission. 82.02 Powers and duties of highway commission. 82.03 County highway commissioner. 82.04 County highway commissioner; powers and duties. 82.05 County highway committee; election; compensation.</p>	<p>82.06 Powers and duties of county highway committee. 82.065 County may assume compensation liability for certain highway projects; agreements with localities. 82.07 Special highway patrolmen; appointment, duties, bond.</p>
--	---

82.01 Highway commission. (1) **CREATED.** (a) There is created a highway commission of three members. Such members shall be appointed by the governor with the advice and consent of the senate, for initial terms expiring on March 1, 1931, March 1, 1933, and March 1, 1935, respectively. Thereafter as the various terms expire all appointments shall be for a term of six years and until their successors qualify. At least two of the members shall be men who have had comprehensive business experience and also practical knowledge of highway planning and construction. All members shall devote full time to their duties and shall have no other remunerative employment. Any two of the members of the commission shall constitute a quorum with power to transact all business of the commission.

(b) After the members first appointed shall have qualified and in March of each odd-numbered year the governor shall designate one of the members of the commission as its chairman, and the commission shall elect one of the other members as its vice chairman and the other as its secretary. Any vacancy occurring in the chairmanship shall be filled by the governor and vacancies in the offices of vice chairman or secretary by election of the members of the commission.

(2) **OFFICES.** The commission shall maintain its principal office in the state capitol at Madison, and division offices at such other cities as the necessities of the work demand.

82.02 Powers and duties of highway commission. The commission shall have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of public highways, and shall do all things necessary and expedient in the exercise of such supervision. To that end the highway commission shall have authority and it shall be its duty:

(1) (a) To employ such persons as may be needed to carry on its work, and assign to them such duties as it deems advisable. All such employes shall be under the exclusive control and direction of the commission, and except as provided herein and in chapter 16, the approval of no other officer shall be necessary to give validity to the appointment of any such employe. The commission shall, subject to the approval of the governor, appoint a chief engineer, who shall be known as the state highway engineer, and who may be chosen from the members of the commission. The appointment of a member of the commission as state highway engineer shall not terminate his membership on the commission, but in case of such appointment he shall receive no compensation in addition to his salary as a member.

(b) The secretary of the commission is authorized to sign and execute, in its name, any contract or agreement with the federal government or its departments, subdivisions of the state, corporations, associations, copartnerships and individuals, which has previously been officially determined upon and approved by the commission as a body.

(2) To advise towns, villages and counties with regard to the construction and maintenance of any road or bridge, when requested. On the request of any town, village, or county board, or county highway committee, any engineering work necessary in connection with improvements by any town or county under the provisions of chapter 81 or 83, may be performed by the commission and charged at cost to the town or county. Any moneys paid into the state treasury in payment for such engineering work shall be credited to the appropriation under subsection (13) of section 20.49.

(2a) To employ a director of regional planning whose duties shall be to co-operate with and assist all local planning agencies in the state to the end that their activities may be properly co-ordinated in the interest of the state as a whole; to gather and disseminate city, town, and regional planning information; to co-operate with the conservation commission in the development of a recreational system plan for the state; to co-operate with the state board of health in the regulation and control of lake and stream platting. Said director of regional planning shall be a civil engineer or landscape architect who shall have had not less than five years' practical experience in city or regional planning work.

(3) To make regulations for the survey, plans, construction and inspection of all roads and bridges upon state highways, the county system of prospective state highways, and the state trunk highway system, and to enforce such regulations. And counties must comply with such regulations as a condition to receiving state aid.

(4) To conduct such investigations and experiments, hold such public meetings and attend or be represented at such meetings and conventions inside or outside of the state as may, in its judgment, tend to better highway construction.

(5) To co-operate with state and national organizations in experiments and work for the advancement of highway construction.

(6) To receive gifts appropriations and bequests made to it or to the state for road purposes, pay all moneys received into the state treasury, and as far as practicable to expend and use the same in accordance with the wishes of the donor, such expenditures to be audited and paid as other disbursements of the commission are audited and paid.

(7) To apportion the state and federal highway aid among the counties.

(8) To review the system of prospective state highways selected by the county boards, and to alter the same so as to connect the system of adjoining counties into continuous and direct routes.

(9) To take direct charge, upon the request of the county board, of the construction and maintenance of state aided highways. The cost of such supervision shall be paid monthly by the county treasurer upon presentation to him of itemized vouchers showing such expense, approved by the commission and the chairman of the county board.

(10) To enter private lands to make surveys or inspections.

(11) To make a biennial report of its work to the governor for the use of the legislature and to issue such bulletins, pamphlets and literature as it deems necessary.

(12) To contract with railroad companies for transportation wholly within this state of materials for the construction of any state aided highway; and any railroad company shall be free to grant special freight rates on materials to be used in the improvement of any highway without referring the matter of rates to the public service commission.

(13) To appoint upon the request of any county board a person to be known as the acting county highway commissioner to take charge of the work of constructing and maintaining highways built with state aid, which appointee shall have all the powers and duties conferred by statutes upon county highway commissioners.

(14) To acquire any lands or rights in lands that the commission may deem necessary to carry out any highway improvement made by the state, in the manner provided for town boards and county highway committees in section 81.08, section 83.07 and section 83.08. Lands permanently acquired shall be held in the name of the state.

(15) To provide and maintain in connection with the performance of necessary engineering for highway work and other functions, a materials testing and research laboratory and adequate facilities for highway marking and signing.

(16) To plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and arrange for maintenance by subdivisions of the state or by other means of a system of secondary or feeder roads consisting of roads within the meaning of section 7 of the act of congress approved June 16, 1936, forty-ninth United States Statutes at Large, page fifteen hundred twenty-one and any acts now or hereafter amendatory thereof or supplementary thereto and any federal regulation issued under such act or acts; to plan, select, construct, reconstruct, improve and arrange for maintenance by railroads or by other means of projects for the elimination of hazards to life at railroad grade crossings within the meaning of section 8 of said act of congress approved June 16, 1936, and any such amendatory or supplementary acts and any such federal regulations; to receive all allotments of federal aid funds for such secondary or feeder roads and for such projects for the elimination of hazards to life at railroad grade crossings and also for any other highway purpose, and to receive all funds provided by any source to match or supplement such federal aid funds, and to expend all such funds in accordance with the requirements of any act or acts of congress or of this state making such funds available and to co-operate with federal authorities and subdivisions of the state in carrying out the provisions of this subsection. The provisions of this subsection shall not limit the powers of the commission relative to the federal aid highway system provided elsewhere in these statutes.

(17) In the interest of the public health, to cause the surface on the main traveled portion of all streets and highways not surfaced with a dust free surfacing, which pass a cheese factory, creamery or condensary, to be rendered free from dust and well bonded, for a distance of not more than 400 feet from such cheese factory, creamery or condensary, through the construction, improvement or maintenance of such surface by treatment with an approved bitumen or other approved material capable of rendering such streets and highways free from dust. In the case of such improvements on state trunk highways, the cost shall be chargeable against the appropriation made by subsection (9) of section

20.49; in the case of such improvements on county trunk highways, the cost shall be chargeable to and deducted from the amounts allotted to counties for county trunk highways under subsection (4) of section 20.49; in the case of such improvements on connecting streets in cities or villages, the cost shall be chargeable to and deducted from the allotments to such cities and villages under paragraph (b) of subsection (1) of section 84.10; and in the case of such improvements on roads and streets on account of which allotments are made under subsection (8) of section 20.49, the cost shall be chargeable to and deducted from such allotments. The highway commission may make the same arrangements for the doing of the work as in the case of maintenance. The commission shall keep an accurate account of the cost of such work and shall certify to the secretary of state the amount chargeable to the respective counties, cities, towns and villages. The amount so certified shall be deducted from the respective allotments to such counties, cities, towns and villages and credited to the appropriation under subsection (9) of section 20.49. [1931 c. 22 s. 3; 1931 c. 79 s. 13; 1931 c. 295 s. 2; 1937 c. 303, 357, 393; 43.08 (2); 1941 c. 124]

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.

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

Highway commission has no power to convey or grant rights in land acquired for highway purposes. 22 Atty. Gen. 307.

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

82.025 [Renumbered section 109.06 by 1933 c. 461 s. 2]

82.03 County highway commissioner. (1) **ELECTION.** Each county board shall elect a county highway commissioner, but in lieu thereof may by resolution request the state highway commission to take charge of the work of constructing and maintaining the highways built with state aid. 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 aid 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 fixed by the county board prior to or at the time of his election and annually thereafter. The salary of the highway commissioner during his first term shall not be less than six hundred dollars per annum; the salary of the highway commissioner upon re-election shall not be less than six hundred dollars in any county, and not less than nine hundred dollars in counties which are to do between fifteen thousand dollars and fifty thousand dollars' worth of work the succeeding year, and not less than twelve hundred dollars in counties which are to do more than fifty thousand dollars' worth of work the succeeding year. The amount of work used as the basis for fixing the minimum salary shall be the actual new construction contemplated for the following year.

(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 84.03. [1939 c. 286]

Note: 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. 285.

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.

82.04 County highway commissioner; powers and duties. (1) The county highway commissioner shall have charge under the direction of the county highway committee of the construction of highways built with state or county aid other than state trunk highways and of the maintenance of all highways maintained by the county.

(2) 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 shall deem 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 shall deem the same reasonably necessary.

(3) 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.

(4) 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 first. He shall include in such report an itemized estimate of the amount needed to properly maintain the state highways and the state trunk highway system in his county for the succeeding year and shall make such recommendations as he deems advisable.

(5) He and his employes and agents shall be privileged to enter any private lands for the purpose of making surveys or inspections.

(6) He shall have power, in his discretion, to stop travel on any highway in process of construction or repair, by posting notices forbidding such travel at each end of said highway; and any person violating his order shall be liable to a fine not exceeding one hundred dollars, and in addition thereto shall be liable for all damages done to the highway, said damages to be recovered by the county.

(7) Whenever any fence encroaches upon any highway on the county or state system, the county highway commissioner shall issue his order requiring the owner or occupant of the land to which such fence is appurtenant to remove the same from such highway within thirty days. Such order shall be served personally or by registered mail. If the fence is not sooner removed the commissioner shall, after the expiration of such thirty days, cause the same to be removed. He shall keep an accurate account of the expense thereof which shall be paid by the county. The amount of such expenditures shall be charged to the town in which such lands are situated and shall be added to the tax roll of such town as a special tax against such lands, and shall be collected and accounted for as other county taxes are collected and accounted for. If the claim of encroachment is disputed, the dispute shall be decided in the manner prescribed by section 86.06.

Note: The official notice, required by (6), that a road is closed is to protect the traveling public, and one disregarding the notice is contributorily negligent as a matter of law, precluding recovery from either the county or the highway construction contractor for injuries. *Fenske v. Kramp C. Co.*, 207 W 397, 241 NW 349.

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

It is not duty of county highway commissioner to maintain barriers upon portion of highway no longer used after relocation of federal highway. 26 Atty. Gen. 428.

82.05 County highway committee; election; compensation. (1) Each county board at the annual meeting shall by ballot elect a committee of not less than three or more than five persons, to serve for one year, beginning either as soon as elected or on the first day of January following their election, as may be designated by the county board, and until their successors are elected. Any vacancy occurring in the committee may be filled until next meeting of the county board by appointment made by chairman of said board. Such 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 any roads or bridges within the county. The members of such committee shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties, and shall be paid the same per diem for time actually and necessarily spent in the performance of their duties as is paid to members of other county board committees, not, however, exceeding five hundred dollars in counties in which the committee will supervise less than one hundred fifty thousand dollars' worth of construction and maintenance the succeeding year; five hundred dollars in counties in which said committee will supervise between one hundred and fifty thousand and four hundred thousand dollars' worth of said work the succeeding year; and five hundred dollars in counties in which said committee will supervise four hundred thousand dollars' worth or over of said work in the succeeding year for both per diem and expenses to any one member in any one year; provided, that a different amount may be fixed as a maximum by any county board.

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

(3) The town chairman of each town in which state aid construction is performed shall be ex officio a member of the county 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. [1931 c. 36]

Note: 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.

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 member of county board. 25 Atty. Gen. 437.

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

82.06 Powers and duties of county highway committee. The powers and duties of the county highway committee shall be:

(1) To purchase and sell county road machinery as authorized by the county board.

(2) To determine whether each piece of state aid construction in a county shall be let by contract or whether it shall be done by day labor.

(3) To enter into such contracts in the name of the county, and to make such arrangements as may be necessary for the proper prosecution of such construction and maintenance of highways and bridges as is provided for by the county board.

(3a) To enter any private lands with their employes and agents for the purposes of removing weeds and brush and of erecting or removing such fences as may be necessary to keep highways reasonably free from snow and open for travel during the winter season.

(4) To direct the expenditure of highway maintenance funds provided from automobile license fees, or by direct tax by the county board.

(5) To meet from time to time at the county seat to audit, together with the county clerk, all pay rolls and material claims and vouchers resulting from the construction of state aid highways and bridges.

(6) To perform such other duties as may be imposed by law or delegated to it by the county board. [1933 c. 450 s. 12]

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

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 513, 250 NW 438.

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 employes 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.

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.

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

82.065 County may assume compensation liability for certain highway projects; 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]

82.07 Special highway patrolmen; appointment, duties, bond. (1) The county highway committee shall have authority to appoint special highway patrolmen for the enforcement of laws relating to the public highways or their use, or the maintenance of order upon or near the public highways. Such special highway patrolmen may arrest at any place in the state, with or without warrant, any persons who, in their presence, shall violate any law relating to the public highways or their use or the maintenance of order upon or near the public highways. Any such special highway patrolmen, sheriff, constable or other police officer may make such arrest without warrant on the request of any other such special highway patrolmen, sheriff, constable or other police officer in whose

presence any such offense may have been committed. The commission of any such special highway patrolmen may be revoked at any time by the county highway committee. No such officer 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) All such special highway 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 highway commission.

(3) All special highway patrolmen shall furnish a bond 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 bond shall be paid by the county. [1931 c. 79 s. 13]

Note: 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 pa-

trolman under 82.07 (1). County highway committee appointed under 82.05 (1) 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.