AN ENGINEERING STUDY TO UPDATE THE IOWA TRANSPORTATION LAWS ANNOTATED

Final Report for
Iowa Highway Research Board
Project HR-234A

January 1995

Project Development Division

Iowa Department
of Transportation

Final Report
Iowa Highway Research Board
Project HR-234A

An Engineering Study to Update the Iowa Transportation Laws Annotated

Under the Direction of

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8. ABSTRACT

Research project HR-234A was sponsored by the Iowa Highway Research Board and the Iowa Department of Transportation.

In the preparation of this compilation of highway and street laws of Iowa, an attempt has been made to include those sections of the Iowa Code Annotated and Iowa Digest to which reference is frequently required by the Department of Transportation, counties, cities and towns in their conduct of highway and street administration, construction and maintenance.

This publication is offered with the hope and belief that it will prove to be of value and assistance to those concerned with the problems of establishing, maintaining and administering a highway and street program.

Because of the broad scope of highway and street work and the many interrelated provisions of Iowa law, and in the interests of keeping this volume in a convenient and usable size, some Code provisions which are insignificant to the principal subject were omitted out of necessity; others were omitted to avoid repetition.

A general index is provided at the end of the text of this volume. Each major topic is divided into subtopics and is accompanied by appropriate Code sections. Specific section numbers as they appear in the Code are in ().

THE READER IS CAUTIONED TO CONSULT LEGAL COUNSEL ON ALL MATTERS BEYOND THE SCOPE OF THIS TEXT.

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FOREWORD

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TABLE OF CONTENTS

Page

Page

Article I, Section 18

IOWA CONSTITUTION

ARTICLE I, SECTION 18

Taking of private property for public uses - just compensation - damages - laws relating to drains, ditches and levees - drainage districts.

Sec. 18 - Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account to the improvement for which it is taken.

The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefitted thereby. The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnations. Amended 1908.

I. IN GENERAL

1. "Taking" generally (3)

If an ordinance is a valid exercise of police power, the fact that it deprives property of its most beneficial use does not render it a "taking." Iowa Coal Mining v. Monroe County, 494 N.W.2d 664 (Iowa 1993).

Absence some physical invasion, a "taking" does not occur until there has been substantial interference with investment-backed expectations. Fitzgarrald v. Iowa City, 492 N.W.2d 659 (Iowa 1992).

Government regulation of property which effectively deprives an owner of any economically viable use of his land can constitute a "taking." Bakken v. Council Bluffs, 470 N.W.2d 34 (Iowa 1991).

To establish a "taking" without just compensation, a property owner must show that damage to his property would not have occurred but for public improvement. Connolly v. Dallas County, 465 N.W.2d 875 (Iowa 1991).

1. "Taking" generally (3) (cont.)

City's reclassification of street, causing reduction in traffic flow in front of landowner's business, is not a basis for claim of compensation under "taking" clause. Grove & Burke v. Fort Dodge, 469 N.W.2d 703 (Iowa 1991).

The power of eminent domain is an attribute of sovereignty which may be delegated only by express authorization of the legislature. Hardy v. Grant Township Trustees, 357 N.W.2d 623 (Iowa 1984).

Land use restrictions, when justifiable under police power, validly enacted and not arbitrary or unreasonable, generally are held not to be invalid as a "taking" of property for public use without compensation. Stone v. City of Wilton, 331 N.W.2d 398 (Iowa 1983).

"Taking" may be anything which substantially deprives one of the use and enjoyment of his property or a portion thereof. Such substantial interference is a fact question. Osborn v. Cedar Rapids, 324 N.W.2d 471 (Iowa 1982).

The character of the invasion, not the amount of damage resulting from the invasion, determines whether a "taking" has occurred. Phelps v. Muscatine County 211 N.W.2d 274 (Iowa 1973).

The right to use property up to property line is a valuable right and restriction of that right by reason of fact that the neighboring property is used for public purpose is a "taking" which must be compensated. Simpson v. Iowa State Highway Commission, 195 N.W.2d 528 (Iowa 1972).

Eminent domain is the taking of private property for a public use for which compensation must be given. Hinrichs v. State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

A temporary road closing for widening or improvement is not an actual "taking" as contemplated by this section, and property owners are not entitled to damages. Blank v. Iowa State Highway Commission, 252 Iowa 1128, 109 N.W.2d 713 (1961).

Restriction or charge for use of navigable streams or lakes is a "taking" within this section, except where the state has improved the navigability of the waters or their use is made of facilities provided by the state; if exception applies, the charge must be proper and reasonable. Witke v. Iowa State Conservation Commission, 244 Iowa 261, 56 N.W.2d 582 (1953).

The destruction, substantial impairment or interference with the rights of access, light, air or view of an adjoining property owner in the highways or streets adjacent to his property, by any work or structure done by the state or any governmental agency is a "taking" of private property within the meaning of this section. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

1. "Taking" generally (3) (cont.)

The construction of a highway that directly, naturally and necessarily causes flooding of adjoining property is a "taking." Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

There may be a "taking" without an actual physical invasion or direct physical appropriation of the property. Id.

2. Power of state or legislature generally (1)

The legislature determines whether private property is being taken for a public use; courts should not substitute their judgment for the legislature's judgment unless it lacks reasonable foundation. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

The power of eminent domain is an attribute of sovereignty which may be delegated only by express authorization of the legislature. Hardy v. Grant Township Trustees, 357 N.W.2d 623 (Iowa 1984).

When the General Assembly declares a condemnation-related use is public in nature, there is a presumption of constitutionality and the court will not interfere unless the purpose is clearly of a private character. Simpson v. Low-Rent Housing Agency of Mount Ayr, 224 N.W.2d 624 (Iowa 1974).

Power of eminent domain can be exercised for public use and cannot be used for taking private property from one person for private use of another. Id.

The legislature has "plenary" power over the highways and streets in that it may take any needed private property for its establishment, maintenance or improvement, but it must pay just compensation. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

The right of eminent domain may be exercised by designated agencies acting under statutory authority for proper use. Id.

Provisions of this section are limitations upon the exercise of eminent domain for the protection of individuals against the excesses of the government with respect to their property and should be liberally interpreted to effect that purpose. Id.

The legislature may authorize use of city streets held in fee without consent of the city and without compensation. City of Clinton v. Cedar Rapids & M. Ry., 24 Iowa 455 (1868).

3. Delegation of power (2)

A city can exercise its power of eminent domain outside its corporate boundaries. Banks v. City of Ames, 369 N.W.2d 451 (Iowa 1985).

The power of eminent domain may be delegated only by express authorization of the legislature. Hardy v. Grant Township Trustees, 357 N.W.2d 623 (Iowa 1984).

3. Delegation of power (2) (cont.)

Statutes delegating power of eminent domain should be strictly construed and restricted to their expression and intention. Hardy v. Grant Township Trustees, 357 N.W.2d 623 (Iowa 1984).

The legislature's authorization to organize sanitary districts is not unconstitutional, despite laws permitting owners of lands to organize drainage districts for various purposes including sanitation. Walker v. Sears 245 Iowa 262, 61 N.W.2d 729 (1953).

The use of railroads is inherently public and subject to the power of eminent domain. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

4. Police powers, generally, different from eminent domain (5)

Although not every police power regulation that restricts some beneficial use of property creates compensable taking, frustration of investment-backed expectations by zoning ordinances may constitute a "taking" for which compensation is due. Fitzgarrald v. Iowa City, 492 N.W.2d 659 (Iowa 1992).

In valid exercise of police power, some use of private property is prohibited or restricted to promote general welfare, as opposed to appropriated for public use under eminent domain. Interstate Power v. Dubuque County, 391 N.W.2d 227 (Iowa 1986).

A regulation enacted under police power will not be deemed to have gone beyond the scope of that power unless the restraint or burden it places on individuals outweighs the societal benefits arising from it. Kent v. Polk County Board of Supervisors, 391 N.W.2d 220 (Iowa 1986).

State police power regulations do not entitle property owner to compensation, however, a "taking" under eminent domain requires compensation. Woodbury County Soil Conservation District v. Ortner, 279 N.W.2d 276 (Iowa 1979).

Generally, police power is the states' right to regulate use of property to prevent use which would be harmful to public interest. National Resources Council v. Van Zee, 261 Iowa 1287, 158 N.W.2d 111 (1968).

Ordinance regulating storage of inflammable liquid is not a "taking." Cecil v. Toenjes, 210 Iowa 407, 228 N.W. 874 (1930).

This section does not limit state police powers except to the extent such powers implicitly forbid certain actions. City of Des Moines v. Manhattan Oil, 193 Iowa 1096, 184 N.W. 823 (1921).

Organization of land into drainage districts is justified under police power. Hatcher v. Green County, 165 Iowa 197, 145 N.W. 12 (1914).

5. Distinction between eminent domain and others powers

The legislature can create or enlarge boundaries of municipalities without consent of inhabitants. Des Moines v. Lampart, 248 Iowa 1032, 82 N.W.2d 720 (1957).

Municipal enlargement of boundaries is not a "taking." Wertz v. Ottumwa, 201 Iowa 947, 208 N.W. 511 (1926).

Ordinance prohibiting rebuilding frame of house with certain materials is not a "taking." City of Shenandoah v. Replogle, 198 Iowa 423, 199 N.W. 418 (1924).

Zoning ordinance prohibiting business operation is not a "taking." Des Moines v. Manhattan Oil, 193 Iowa 1096, 184 N.W. 823 (1921).

Proper exercise of governmental power not directly encroaching on private property is not a "taking." Higgins v. Dickinson County, 188 Iowa 448, 176 N.W. 268 (1920).

Imposing liability on relatives for support of insane is not a "taking." Guthrie County v. Conrad, 133 Iowa 171, 110 N.W. 454 (1907).

Judgment for violation of a liquor law, a lien, is not a "taking." Polk County v. Hierb, 37 Iowa 361 (1873).

Maximum fees for defense of person criminally indicted is not a "taking." Samuels v. Dubuque County, 13 Iowa 536 (1862).

6. Relating to animals

County ordinance prohibiting ownership of dangerous animals as pets did not deprive lion owner of his property without just compensation. Kent v. Polk County Board of Supervisors, 391 N.W.2d 220 (Iowa 1986).

Statutes providing for bovine tuberculin tests could not be held unreasonable or unconstitutional where the reliability of such tests were in question. Panther v. Department of Agriculture, 211 Iowa 868, 234 N.W. 560 (1931).

Diseased animals may be destroyed without compensation. Loftus v. Department of Agriculture, 211 Iowa 566, 232 N.W. 412 (1930).

7. Relating to game and fish

Section 109.14 declaring a dam without a fishway a nuisance is not a "taking." State v. Meek, 112 Iowa 338, 84 N.W. 3 (1900).

Statute requiring owner of any dam or obstruction across any water course to construct and maintain a fishway that allows free passage for fish does not constitute a "taking." State v. Beardsley, 108 Iowa 396, 79 N.W. 138 (1899).

8. Relating to drains and drainage, public use or purpose

Organization of sanitary districts under Section 358.1 is not unconstitutional. Walker v. Sears, 61 N.W.2d 729 (Iowa 1954).

Same rules apply for levee and drainage districts. Harris v. Green Bay Levee & Drainage District No. 2, 244 Iowa 1169, 59 N.W.2d 234 (1953).

Where improvements caused intermittent overflow, damage to land was a "taking." Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Failure to notify or assess does not invalidate proceedings for improvement of drainage ditch. Pottawattamie County v. Harrison County, 214 Iowa 655, 241 N.W. 14 (1932), motion denied, 54 S. Ct. 47, appeal dismissed, 54 S. Ct. 125, 290 U.S. 595, 78 L. Ed. 523.

Public drainage districts may be established without any notice to property owners. Chicago & N.W. Ry. v. Hamilton County, 182 Iowa 60, 162 N.W. 868 (1917), modified on other grounds, 182 Iowa 60, 165 N.W. 390.

Organization of drainage district is justified under police power if the improvement will be conducive to public health, welfare or utility. Hatcher v. Green County, 165 Iowa 187, 145 N.W. 12 (1914).

Failure to notify landowners of drainage assessment rendered tax void against landowner who had notice. Smith v. Peterson, 123 Iowa 672, 99 N.W. 552 (1904).

Attorney General Opinions:

A county board of supervisors may, under the County Home Rule Amendment, regulate the drainage districts within the county on a county-wide basis by adopting ordinances regulating the drainage districts. 1980 Op. Att'y Gen. 631.

When necessary, a town has a legal right to construct a sewer extending beyond its own corporate limits. 1916 Op. Att'y Gen. 59.

9. Relating to schools and school district

City's proposed temporary use of land for possible use by school district constitutes a public use to support city's condemnation of land. Weiss v. City of Denison, 491 N.W.2d 805 (Iowa Ct. App. 1992).

Organization of school district is not a "taking." Thie v. Consolidated Independent School District, 197 Iowa 344, 197 N.W. 75 (1924).

Condemnation of land for school construction was not unconstitutional. Munn v. Independent School District, 188 Iowa 757, 176 N.W. 811 (1920).

Consolidation of land in city into one school district is not a "taking." State v. Grefe, 139 Iowa 18, 117 N.W. 13 (1908).

10. Relating to streets and highways

City's reclassification of street, causing reduction in traffic flow in front of landowner's business, is not a basis for claim of compensation under "taking" clause. Grove & Burke v. Fort Dodge, 469 N.W.2d 703 (Iowa 1991).

Uncompensated removal of billboards for noncompliance with permit requirements is a valid exercise of police power. Department of Transportation v. Nebraska-Iowa Supply, 272 N.W.2d 6 (Iowa 1978).

Vacating an alley is not a "taking." Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

11. Relating to taxation and licensing (8)

Levy and collection of taxes for public purpose does not constitute a "taking". Frost v. State, 172 N.W.2d 575 (Iowa 1969).

Levy and collection of taxes for the construction of highway and bridges is not unconstitutional because they both serve as a public purpose. Id.

No invasion of constitutional rights by requiring person to make written application to National Resources Council when excavating or building on flood plains. Natural Resources Council v. Van Zee, 261 Iowa 1237, 158 N.W.2d 111 (1968).

There is no power to tax where there is no benefit; but general advantages and protection afforded by government are sufficient to grant power to tax. Dickinson v. Porter, 31 N.W.2d 110 (Iowa 1948).

Denial of applicant's permit to sell cigarettes is not unconstitutional as depriving applicant of his property without compensation. Ford Hopkins v. Iowa City, 216 Iowa 1286, 248 N.W. 668 (1933).

Blue Sky Law section 502.1 is constitutional. State v. Soeder, 216 Iowa 815, 249 N.W. 412 (1933).

Distribution of auto license fees to counties without returning exact amount collected is not a "taking." McLeland v. Marshall County, 199 Iowa 1232, 201 N.W. 401 (1924), modifies on other grounds, 199 Iowa 1232, 203 N.W. 1 (1925).

Taxation of property for municipal purposes which receives no benefit or protection from the government and imposes no burdens upon the city is unconstitutional, such that the taxation of Union Pacific Railroad Company's bridge across the Missouri River is a "taking." Arnd v. Union Pacific Rd., 120 F. 912 (1903).

Act authorizing city to levy tax for construction of toll bridge is not unconstitutional. Pritchard v. Magoun, 109 Iowa 364, 80 N.W. 512 (1899).

11. Relating to taxation and licensing (8) (cont.)

Taxation of money and credits held by anyone as agent in this state for pecuniary profit is not unconstitutional. Hutchinson v. Board of Equalization, 66 Iowa 35, 23 N.W. 249 (1885).

Laws 1870, c. 102, permitting municipal taxation to aid railroads is not unconstitutional. Stewart v. Board of Supervisors, 30 Iowa 9 (1870).

Municipal corporation boundary enlargements whereby an individual's property is brought within the city limits and taxed for the benefit of the territory is a "taking" if the enlargement is unreasonable and not needed for building and population. Langworthy v. City of Dubuque, 16 Iowa 271 (1864).

Where land is vacant, or a cultivated agricultural farm, not required for any purposes of a town, and solely for the purposes of increasing its revenue, brought within the taxing power by enlargement of the city limits, the extension of the city limits is, in effect, the taking of private property, without compensation. Morford v. Unger, 8 Iowa 82 (1859).

12. Relating to waters and water courses (28)

The extension of public water to an area of private water operation is not a cause of action for a "taking" where the private water company had no exclusive right to furnish water to the area and no right to be free from competition. Water Development v. Board of Water Works, 488 N.W.2d 158 (Iowa 1992).

Flooding of a particular area caused by a public flood control project is a "taking" if the flooding would not have occurred absent improvement. Connolly v. Dallas County, 465 N.W.2d 875 (Iowa 1991).

Cutting of riparian owner's access to lake is not a "taking" of private property if the state changes lake bed when reasonably necessary to aide navigation. Lakeside Boating & Bathing, 402 N.W.2d 419 (Iowa 1984).

Flooding caused by an act of God is not a "taking" even if flooding would not have occurred if the State had not built new bridge. Schrader v. State, 213 N.W.2d 539 (Iowa 1973).

Restriction or charge for use of navigable streams or lakes is a "taking" within this section, except where the state has improved the navigability of the waters or their use is made of facilities provided by the state; if exception applies, the charge must be proper and reasonable. Witke v. State Conservation Commission, 244 Iowa 261, 56 N.W.2d 582 (1953).

When a public structure causes flooding of private property there is a "taking." Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

12. Relating to waters and water courses (28) (cont.)

Littoral owner not entitled to compensation where public dock to be erected on public shore. Peck v. Alfred Olsen Construction, 216 Iowa 519, 245 N.W. 131 (1932).

Discharge of sewer by city upon private lands is a "taking." Beers v. Gilmore City, 197 Iowa 7, 196 N.W. 602 (1924).

Erection of levee and assessment of cost is not a "taking." Richman v. Board of Supervisors, 77 Iowa 513, 42 N.W. 422 (1889).

13. Public use or purpose (12)

A reasonable assurance test that the intended use will come to pass is applied to determine whether a public use necessary for condemnation exists. Weiss v. City of Denison, 491 N.W.2d 805 (Iowa Ct. App. 1992).

Upon trial, plaintiff has burden to prove, by a preponderance of evidence, lack of reasonable expectation of public use. Id.

City's proposed temporary use of land for possible use by school district constitutes a public use. Id.

Initially, the legislature determines whether private property is being taken for public use, and courts should not substitute their judgment unless the use lacks reasonable foundation. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

Protecting businesses already located on property owned by railroads from potentially unequal bargaining position is a "taking" for valid public purpose. Id.

Power of eminent domain can be exercised for public use and cannot be used for taking private property from one person for private use of another. Simpson v. Low-Rent Housing Agency of Mount Ayr, 224 N.W.2d 624 (Iowa 1974).

Private property may only be taken for public use; there must be public necessity for such use. Race v. Iowa Electric Light & Power, 257 Iowa 701, 134 N.W.2d 335 (1965).

As long as use is public use, courts are not concerned with wisdom of law that delegates right to condemn, but it is for the court to say whether condemnor has brought itself within the law that it is empowered to condemn. Aplin v. Clinton County, 265 Iowa 1059, 129 N.W.2d 726 (1964).

Right of eminent domain is a sovereign power limited to public use or purpose. R & R Welding Supply v. Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

Condemnation of property under urban redevelopment law is a "taking" for public use or purpose. R & R Welding Supply v. Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

Private property may not be taken for private use. Vittetoe v. Iowa Southern Utilities, 255 Iowa 805, 123 N.W.2d 878 (1963).

13. Public use or purpose (12) (cont.)

Court decide "public use" when constitutionality of legislative grants are questioned. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

Courts cannot interfere with legislative determination unless clear transgression. Id.

Presumption is in favor of legislative declaration of public use. Id.

Condemnor may not reserve to condemnee rights inconsistent with public use. De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

Generally, property devoted to a public use cannot be taken for another public use which would destroy or materially impair the former use. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Right of special charter city to condemn must be exercised for public purpose. Heinz v. Davenport, 230 Iowa 7, 296 N.W. 783 (1941).

Right to condemn by city must be exercised for public use. Carroll v. Cedar Falls, 221 Iowa 277, 261 N.W. 652 (1935).

Board of railroad commissioners order must comply with public use. Ferguson v. Illinois Central Rd., 202 Iowa 508, 210 N.W. 604 (1926).

"Substantial benefit" to public does not necessarily constitute public use. Id.

"Public use" means public possesses certain rights to the use and enjoyment of property. Id.

Section limited to taking for public or quasi-public purpose. Wertz v. Ottumwa, 201 Iowa 947, 208 N.W. 511 (1926).

The substitution of one public use to the exclusion of another public use is not unconstitutional. Commissioners v. Diamond Ice, 130 Iowa 603, 105 N.W. 203 (1905).

Use by entire community not required. Sisson v. Board of Supervisors, 128 Iowa 442, 104 N.W. 454 (1905).

Right to condemn property for railroad right-of-way is a public use. Stewart v. Board of Supervisors, 30 Iowa 9 (1870).

14. Extent of use or benefit (13)

Absent a showing by complaining property owner that restraint imposed on him outweighs collective benefit to community, there is no "taking." Natural Resources Council v. Van Zee, 261 Iowa 1237, 158 N.W.2d 111 (1968).

Use by public agency is a "public use," regardless of lack of right of individuals to use it. Merrit v. Peet, 237 Iowa 1200, 24 N.W.2d 757 (1946).

14. Extent of use or benefit (13) (cont.)

The test to exercise the right of eminent domain is public convenience, not absolute necessity. Minear v. Plowman, 197 Iowa 1188, 197 N.W. 67 (1924).

The extent of use is immaterial if the use, itself, is public. Dubuque & S.C. Ry. v. Fort Dodge, D.M. & So. Ry., 146 Iowa 666, 125 N.W. 672 (1910).

Public use is one which will benefit the community as a whole. Sisson v. Board of Supervisors, 128 Iowa 442, 104 N.W. 454 (1905).

15. Destruction of property (14) Municipal corporations are authorized to destroy private property to prevent the spread of fire; such authority is not a "taking." Field v. Des Moines, 39 Iowa 575 (1874).

16. Particular purposes or usage

Protecting businesses already located on property owned by railroads from potentially unequal bargaining position is a "taking" for valid public purpose. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

Low-rent housing project only available to persons with certain level of income and not general public, is a public use for which land could be taken. Simpson v. Low-Rent Housing Agency, 224 N.W.2d 624 (Iowa 1974).

Condemnation by power company for power line granted easement only, not a fee. De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

Use of private property for electric transmission lines is a public purpose. Carroll v. Cedar Falls, 221 Iowa 277, 261 N.W. 652 (1935).

Construction of coal shed for coal to be sold for private profit is not a public purpose. Ferguson v. Illinois Central Rd., 202 Iowa 508, 210 N.W. 604 (1926).

Right to condemn for waterworks does not include laying tracks for ice. Creston Waterworks v. McGrath, 89 Iowa 502, 56 N.W. 680 (1893).

Construction of mills and mill dam constitutes a public purpose. Burnham v. Thompson, 35 Iowa 421 (1872).

Attorney General Opinion:

A municipality, through its power of eminent domain, may take over a private water system bond payment of just compensation. 1978 Op. Att'y Gen. 530.

(Particular Purposes & Usage)

17. Streets and highways (24)

City's reclassification of street, causing reduction in traffic flow in front of landowner's business, is not a basis for compensation under "taking" clause. Grove & Burke v. Fort Dodge, 469 N.W.2d 703 (Iowa 1991).

Property taken by federal government to widen road for reservoir was a public use. United States v. 442.94 Acres Polk County, 264 F. Supp. 506 (N.D. Iowa 1967).

Regulating means of access to highway does not constitute a "taking" of property rights unless such regulation deprives owners of adjoining property reasonable access to highway. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

During tenancy, lessee of premises adjoining highway has all the rights of access of an owner. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Condemning land for off-street parking facility is a public use. Ermels v. Webster City, 246 Iowa 1305, 71 N.W.2d 911 (1955).

State Highway Commission has authority to condemn property necessary for highway purposes. Porter v. Iowa State Highway Commission, 241 N.W.2d 1208, 44 N.W.2d 682 (1950).

Vacating public street without assessing damages is not a "taking," however, landowner may sue for consequential damages. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

Vacating highway and cutting off convenient access is a "taking." McCann v. Clarke, 149 Iowa 12, 127 N.W. 1011 (1910).

Legislature may authorize condemnation of highway by published and past notices. Wilson v. Hathaway, 42 Iowa 173 (1875).

18. Railroads (20)

Protecting businesses already located on property owned by railroads from potential unequal bargaining position is a "taking" for valid public purpose. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

Requiring railroad to furnish site to construct coal shed for coal to be sold for private profit is not a public purpose. Ferguson v. Illinois Central Railroad, 202 Iowa 508, 210 N.W. 604 (1926).

Probable use of spur track by public is sufficient for public use. Dubuque & S.C. Ry. v. Fort Dodge, D.M. & S. Ry., 146 Iowa 666, 125 N.W. 672 (1910).

Mine owner's condemnation of a right-of-way for a railway over another's land to the mine serves a public purpose and is not a "taking." Morrison v. Thistle Coal, 119 Iowa 705, 94 N.W. 507 (1903).

19. Levees and dikes (17)

Construction of river levee constitutes a public use. Kroon v. Jones, 198 Iowa 1270, 201 N.W. 8 (1924).

Attorney General Opinion:

If dike system becomes a nuisance, the state and county may be liable as one for a "taking." 1968 Op. Att'y Gen. 23.

20. Drains and drainage (15)

City has authority to condemn permanent and temporary easements over private property to construct and maintain grass waterways. Thompson v. City of Osage, 421 N.W.2d 529 (Iowa 1988).

The legislature may authorize the "taking" of private property for drainage of agricultural lands. Sisson v. Board of Supervisors, 128 Iowa 442, 104 N.W. 454 (1905). Creating drainage districts constitutes a public benefit. Id.

Attorney General Opinion:

A county board of supervisors may, under the County Home Rule Amendment, regulate the drainage districts within the county on a county-wide basis by adopting ordinances regulating the drainage districts. 1980 Op. Att'y Gen. 631.

21. Property subject to appropriation

One whose personal property is damaged, destroyed or reduced in value in a condemnation is as much hurt as if his real estate had been appropriated. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Private property may only be taken for public use and there must be public necessity for such use. Race v. Iowa Electric Light & Power, 134 N.W.2d 335 (1965).

"Property" is not limited to tangible things. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

All private property held is subject to eminent domain. Hoover v. Iowa State Highway Commission, 210 Iowa 1, 230 N.W. 561 (1930).

Dower rights are subordinate to power of eminent domain. Caldwell v. Ottumwa, 198 Iowa 666, 200 N.W. 336 (1924).

22. Property previously subject to appropriation

Property devoted to public use cannot be taken for another public use unless authority is granted by the legislature. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

22. Property previously subject to appropriation (cont.)

Generally, where land has been appropriated for public purpose by eminent domain, it cannot be condemned for other inconsistent public purposes without explicit statutory authority. Town of Alvord v. Great Northern Railroad, 179 Iowa 465, 161 N.W. 467 (1917).

Substituting one public use, excluding others, in not an invasion of the right of property. Park Commissioners v. Diamond Ice, 130 Iowa 603, 105 N.W. 203 (1905).

23. **"Taking" for private use (11)**

Governmental railroad regulations do not deprive the railroad of constitutional protection under this section. Ferguson v. Illinois Central Rd., 202 Iowa 508, 210 N.W. 604 (1926).

Right to regulate railway does not include right to take its property for private use of another. Id.

The right of eminent domain does not include the power to establish private roads. Bankhead v. Brown, 25 Iowa 540. (1868).

24. Validity or necessity of taking (4)

Absent fraud, illegality, oppression or abuse of power, courts will not interfere where the city has exercised its power of eminent domain. Weiss v. City of Denison, 491 N.W.2d 805 (Iowa Ct. App. 1992).

Where city intended to use land for roadway, parking lots, softball and soccer fields, picnic areas, hiking trails and nature study there were valid and present public purposes for condemning the land. Id.

For purposes of condemnation, absolute necessity need not exist; reasonable necessity is sufficient for taking particular land. Id.

Initially, the legislature determines whether private property is being taken for public use, and courts should not substitute their judgment unless the use lacks reasonable foundation. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

Whether zoning can be so oppressive as to constitute unconstitutional "taking" of property depends on the circumstances. City of Denison v. Clabaugh, 306 N.W.2d 748 (Iowa 1981).

The legislature initially determines whether condemnation of private property is for a public use. Simpson v. Low-Rent Housing Agency, 224 N.W.2d 624 (Iowa 1974).

When the constitutionality of a statute is challenged, the courts ultimately determine whether a "taking" by eminent domain is for a public purpose. Id.

24. Validity or necessity of taking (4) (cont.)

Where the General Assembly declares a condemnation-related use is public in nature, there is a presumption of constitutionality with which the courts will not interfere unless the purpose is clearly and manifestly private in nature. Id.

The character of the invasion, not the amount of damage resulting from the invasion, determines whether a "taking" has occurred. Phelps v. Muscatine County 211 N.W.2d 274 (Iowa 1973).

The necessity of taking private property for public use is determined by the legislature, not the judiciary. Thornberry v. State Board of Regents, 186 N.W.2d 154 (Iowa 1971).

Presumption is in favor of legislative declaration of public use. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

Courts will not inquire into necessity or propriety of "taking." Id.

Necessity must be shown prior to "taking." Porter v. Iowa State Highway Commission, 44 N.W.2d 682 (Iowa 1950).

28. Nuisances (10)

Not every noise or interference with property from an overflying aircraft constitute a "taking"; landowners must endure some reasonably anticipated level of inconvenience, discomfort, and loss of peace and quiet. Fitzgarrald v. Iowa City, 492 N.W.2d 65 (Iowa 1992).

Generally, use of police power to abate nuisance will not constitute a "taking" because person has no vested property right in nuisance. Easter Lake Estates v. Polk County, 444 N.W.2d 72 (Iowa 1989).

Abatement order putting mobile home park located on floodplain out of business was not a compensable "taking." Id.

In a suit in equity, before defendants declare that their property was taken without compensation and to have their
property abated as a nuisance, there must be a showing of ownership and use by the defendants. McLane v. Leicht, 69 Iowa 401, 29 N.W. 327 (1886).

29. Leases (7)

Absent contrary terms in lease agreement, lessee is entitled to an award of just compensation for the public "taking" of his leasehold interest. Twin-State Engineering & Chemical v. State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

Lessee is entitled to reasonable compensation for leasehold taken under condemnation. Interstate Finance v. Iowa City, 269 Iowa 270, 149 N.W.2d 308 (1967).

29. Leases (7) (cont.)

Where entire leasehold property is taken by eminent domain, the lessee may recover the value of unexpired term of lease less the rental reserved; where only part of the leasehold property is taken by eminent domain, the lessee may recover the value of use of the premises before appropriation less what it is worth afterwards. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30 (Iowa 1960).

30. Urban renewal (27)

Urban renewal plan was not shown to violate the Fifth and Fourteenth Amendments of U.S. Constitution or state constitutional provisions as being abusive of power of eminent domain and granting special privileges to private redeveloper. Dilley v. Des Moines, 247 N.W.2d 187 (Iowa 1976).

Condemning property under urban development laws is a "taking" for public use or purpose. R & R Welding Supply v. Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

31. Electric transmission lines (16)

"Property," for purpose of this section, includes power company's electrical transmission line easement. Interstate Power v. Dubuque County, 391 N.W.2d 227 (1986).

Eminent domain may be exercised in the transmission of electrical current for public use. Race v. Iowa Electric Light & Power , 134 N.W.2d 335 (1965).

Condemnor of land for transmission line may not reserve any rights that are not compatible with use for which land is condemned in the owner. De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

Use of confiscated private property for construction, maintenance and operation of high-tension electric transmission lines by either private or municipal corporation is a public purpose. Carroll v. Cedar Falls, 221 Iowa 227, 261 N.W. 652 (1935).

Attorney General Opinion:

Iowa State Highway Commission may authorize telephone company to place underground telephone cable along the untraveled portion of a controlled access highway within primary road system of the state. 1970 Op. Att'y Gen. 511.

Article I, Section 18

II. NECESSITY OF COMPENSATION

81. In general, necessity of compensation (81)

City's reclassification of street, causing reduction in traffic flow in front of landowner's business, is not a basis for compensation under "taking" clause; landowner has no property interest in traffic flow. Grove & Burke v. Fort Dodge, 469 N.W.2d 703 (Iowa 1991).

Before compensation is due, there must be a public "taking" of landowner's property. R & R Welding Supply v. Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

Owners of property may be entitled to damages for "taking" for public use, even though they have parted with title and ownership before award is paid. Crawford v. Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1963).

Construction of bridge and causeway that caused greater flooding than before on adjoining property was a "taking." Phelps v. Muscatine County 211 N.W.2d 274 (Iowa 1973).

Unless barred by the terms of the lease, taking of leasehold interest for public use entitles tenant to compensation. State v. Starzinger, 179 N.W.2d 761 (Iowa 1970).

Compensation must be made before there is a material interference with abutting street or highway realty owner's rights of ingress and egress, light, air and view. Rhodes v. Iowa State Highway Commission, 250 Iowa 416, 94 N.W.2d 97 (1959).

Rights of individual whose private property is taken must be fully protected. Crawford v. Iowa State Highway Commission, 247 Iowa 736, 76 N.W.2d 187 (1956).

Compensation must be determined before land is taken for public park. Mathiasen v. Iowa Conservation Commission, 70 N.W.2d 158 (Iowa 1955).

Municipality cannot take private property without paying for it. Sioux City v. Tott, 244 Iowa 1285, 60 N.W.2d 510 (1953).

Just compensation required for "taking" by governmental subdivisions. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Ascertainment and payment of damages is first step. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

Owner entitled to fair compensation for "taking." DeCastello v. Cedar Rapids, 171 Iowa 18, 153 N.W. 353 (1915).

Compensation for taking and right to be heard are essential elements. Taylor v. Drainage District No. 56, 167 Iowa 42, 148 N.W. 1040 (1914), affirmed, 244 U.S. 644.

82. Waiver of or estoppel to claim compensation (84)

If an agreement between a private party and a public party requires the private party to relocate lines on his private property at his own expense, such provision, if otherwise valid, is a waiver of the private party's right to later claim a compensable "taking" has occurred. Xenia Rural Water v. Dallas County, 445 N.W.2d 785 (Iowa 1989).

Water company's failure to abide by the terms of a setback requirement entered into with the county, in which the company agreed to place a water pipeline on private property in exchange for permission to locate a portion of the pipeline on a county right-of-way, estopped the company from claiming a "taking" had occurred. Id.

Waiver or partial money damages is a limitation on requirement of payment. De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

Sale of portion of fee did not waive right to recover consequential damages for destruction of drainage. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Failure to file claim where no damages were appraised precluded charge of invalid proceedings. Goeppinger v. Board of Supervisors, 172 Iowa 30, 152 N.W. 58 (1915).

Compensation for property taken for public purpose is guaranteed by the constitution only where the use of ordinary forms and remedies provided by law are adopted; failure to utilize such remedies waives right to complain. Tharp v. Witham, 65 Iowa 566, 22 N.W. 677 (1885).

Landowner entitled to damages for right-of-way taken although he had no right to erect building. Renwick v. Davenport, 49 Iowa 664 (1878).

Noncompliance of written agreement does not relieve necessity of compensation. Hibbs v. Chicago, 39 Iowa 340 (1874).

Failure to claim damages in method prescribed waives question of constitutionality. Abbott v. Scott County Supervisors, 36 Iowa 354 (1873).

83. Property and rights subject of compensation (85)

When interference with property from overflying aircraft constitutes a "taking," the right to recovery is for the loss of value that has occurred from the "taking," not for the nuisance. Fitzgarrald v. Iowa City, 492 N.W.2d 65 (Iowa 1992).

83. Property and rights subject of compensation (85)

Gasoline storage tanks and distribution system are "real estate," not personal property entitled to removal and relocation benefits upon condemnation under the Relocation Assistance Law. Young v. Iowa Department of Transportation, 490 N.W.2d 554 (Iowa 1992).

"Property," for purpose of this section, includes power company's electric transmission line easement. Interstate Power v. Dubuque County, 391 N.W.2d 227 (1986).

Just compensation must be paid to abutting landowners whenever their access is substantially interfered with or cut off by road vacation. Mulkins v. Board of Supervisors, 374 N.W.2d 410 (Iowa 1985).

A "taking" has occurred, and the city is required to compensate where it has caused a nearly continuous threat against the property, suppressing the property's development potential. Osborn v. Cedar Rapids, 324 N.W.2d 471 (Iowa 1982).

Oral leasehold is property interest that is compensable when taken by eminent domain. Des Moines v. Geller Glass & Upholstery, 319 N.W.2d 239 (Iowa 1982).

A condemnee is entitled to compensation for damages to, destruction of, or reduction of value of personal property so long as it is used in connection with a business operated on the condemned land. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

The damage, destruction of or reduction in value of personal property in a condemnation constitutes a "taking" for which compensation must be paid. Id.

Duty to furnish lateral support that is not ordinarily required by law is a "taking" for which compensation must be paid. Simpson v. Iowa State Highway Commission, 195 N.W.2d 528 (Iowa 1972).

A leasehold interest is legitimate property for which a "taking" must be compensated. Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

All of condemnee's property substantially interfered with by a "taking" in a condemnation proceeding should originally be considered by the condemnation commission. Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969).

Lessee's right to compensation for "taking" of a leasehold interest by eminent domain cannot be terminated by agreement between owner and Highway Commission. Hawbaker v. Iowa State Highway Commission, 253 Iowa 573, 113 N.W.2d 296 (1962).

A corporation has a vested interest or property right which cannot be interfered with arbitrarily where a corporation obtains necessary permits to erect and operate signs and billboards on its properties. Stoner McCray System v. Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956).

83. Property and rights subject of compensation (85) (cont.)

"Real property" includes intangibles such as access, light, air and view; the impairment of such constitutes at least a partial "taking." Anderlik v. Iowa State Highway Commission, 240 Iowa 919, 38 N.W.2d 605 (1949).

Owner of abandoned town site property has compensable interest. Independent School District v. Timmons, 187 Iowa 1201, 175 N.W. 498 (1919).

(Property and Rights Subject of Compensation, Necessity of Compensation)

84. Obstruction of access (86)

Just compensation must be paid to abutting landowners whenever their access is substantially interfered with or cut off by road vacation. Mulkins v. Board of Supervisors, 374 N.W.2d 410 (Iowa 1985).

Even though abutting landowners may not have a "vested" right in a road or bridge, they do have right of free and convenient access over the it. Mulkins v. Board of Supervisors, 374 N.W.2d 410 (Iowa 1985).

Particular actions of condemning authority in exercise of police power, such as installing median strips to regulate flow of traffic, must be proper and reasonable and must not amount to "taking" of property without due process of law. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Easement of abutting landowner to public highway cannot be entirely taken nor substantially impaired or interfered with by governmental action without just compensation. Id.

"Taking" by destruction of access is compensable. Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

The term `access' can be used broadly to mean `the quality of being easy to approach', in addition to `a present right to use'. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (1971).

Landowner seeking recovery for loss of access to his property is not limited to amount of damage or injury caused by altering grade of street but may demand compensation under the Constitution for a valuable property right which has been taken. Stom v. Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

Depriving property owner abutting condemned property of all access is a "taking" for which compensation is required. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Owners of land abutting highway are not entitled to access to their property from all points along highway, but they are entitled to reasonable or free and convenient access to their property and cannot be deprived thereof without just compensation. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

84. Obstruction of access (86) (cont.)

Where only means of ingress and egress for residential site adjoining controlled access highway would be by constructing a private service road parallel to highway between residential site and a driveway provided by State Highway Commission, another driveway should be permitted from such residential site to the highway or just compensation should be paid for taking of right of access thereto. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Material interference with ingress or egress is a "taking." Gates v. Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Destruction or substantial impairment of access, light, air or view is a "taking." Anderlik v. Iowa State Highway Commission, 240 Iowa 919, 38 N.W.2d 605 (1949).

The destruction, substantial impairment or interference with the rights of access, light, air or view of an adjoining property owner in the highways or streets adjacent to his property, by any work or structure done by the state or any governmental agency is a "taking" of private property within the meaning of this section. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

85. Riparian and water rights (89)

Riparian owners' rights can only be taken from them for public good and upon due compensation. Solomon v. Sioux City, 243 Iowa 634, 51 N.W.2d 472 (1952).

Under the Tucker Act, the government has an implied promise to compensate for "taking" of riparian owner's property on navigable river; however, there is no implied promise where the "taking" is temporary or there are consequential injuries. Goodman v. United States, 113 F.2d 914 (8th Cir. 1940).

Drainage of a meandered lake which was in the best of interest of the public is not a "taking" from abutting owner where the owner has no vested interest, no private right and no right to damages caused by drainage. Higgins v. Board of Supervisors, 188 Iowa 448, 176 N.W. 268 (1920).

Granting right to build dam does not relieve necessity of compensation for overflow. Iowa Power v. Hoover, 166 Iowa 415, 147 N.W. 858 (1914).

Des Moines river is city property; improvement and control of its use is not a "taking." Board of Park Commissioners v. Diamond Ice, 130 Iowa 603, 105 N.W. 203 (1905).

Flow of water course cannot be taken without compensation. McCord v. High, 24 Iowa 336 (1868).

Private wharf cannot be taken without compensation. Grant v. Davenport, 18 Iowa 179 (1865).

86. Easements and rights of way (90)

At trial, condemnees are not required to make further proof to preserve claimed error in court's ruling on condemnor's motion to exclude claimed offers. Gustafson v. Iowa Light & Power, 183 N.W.2d 212 (Iowa 1971).

Material interference with abutting street or highway realty owner's rights of ingress and egress, light, air and view is a "taking" of property for which, under the constitution, compensation must first be made. Rhodes v. Iowa State Highway Commission, 250 Iowa 416, 94 N.W.2d 97 (1959).

Cattle pass is a property right. Licht v. Ehlers, 234 Iowa 1331, 13 N.W.2d 688 (1944).

Pipe line company must give compensation for "taking." Browneller v. Natural Gas Pipeline, 233 Iowa 686, 8 N.W.2d 474 (1943).

Right of access is a property right. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Compensation must be made for "taking" of public property. State v. Stanolind Pipe, 216 Iowa 436, 249 N.W. 366 (1933)

Owners are entitled to damages where only an easement was taken. Kucheman v. C.C. Ry., 46 Iowa 366 (1877).

(Necessity of Compensation)

87. Time of payment (91)

In partial "taking," the measure of damages is the difference between the fair market value immediately before condemnation and before it has been affected by proposed public uses and the fair market value of what is left after the "taking." Thompson v. City of Osage, 421 N.W.2d 529 (Iowa 1988).

To determine proper measure of just compensation, the Court of Appeals look to market value of the parcel of land. Nemmers v. City of Dubuque, 764 F.2d 502 (8th Cir. 1985).

Market value should be accessed as of date of temporary "taking" to determine just compensation; the government is responsible for compensating owner for interim during which the "taking" was effective. Id.

Measure of damages in eminent domain proceedings is the property's reasonable market value at the "time of taking," which is the date upon which the condemnation commission views the premises and fixes the damages to which the condemnee is entitled. Heldenbrand v. Executive Council, 218 N.W.2d 628 (Iowa 1974).

Promissory stipulation of "taking" is not sufficient compensation. De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

87. Time of payment (91)

Attorney General Opinions:

Ascertainment and payment of amount prior to taking not required. United States v. 1,997.66 Acres of Land, 137 F.2d 8 (8th Cir. 1943).

Payment of award is prerequisite to invasion of land. Scott v. Price, 207 Iowa 191, 217 N.W. 75 (1927).

Judgements are not entered against the public or private corporation; an allowance is made and the corporation constructing the improvement may not take possession of the property until the damages have been paid or secured. 1926 Op. Att'y Gen. 245.

Payment of compensation prerequisite to taking property. Wulke v. Chicago & Co., 189 Iowa 722, 178 N.W. 1009 (1920).

Bond conditioned on payment of damages for "taking" sufficient security. Sisson v. Board of Supervisors, 128 Iowa 442, 104 N.W. 454 (1905).

Railway may occupy street without payment of damages. Chicago v. Town of Newton, 36 Iowa 299 (1873).

Occupation pending outcome of appeal from award authorized. Peterson v. Ferreby, 30 Iowa 327 (1870).

88. Direct or consequential damages (92)

Condemnation commissioners consider all items of damage caused by "taking," and if requested by condemnee, distinguish direct damages from consequential damages. Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969).

Destruction of or interference with an abutting owner's access or right of access is a direct damage, not consequential. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Remote and prospective benefits are set off for change of grade by viaduct. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

Railroads are not liable for proper use of streets. O'Connor v. St. Louis Ry., 56 Iowa 735, 10 N.W. 263 (1881).

89. Streets and highways (93)

City's reclassification of street, reducing the traffic flow in front of landowner's business, is not a basis for compensation under "taking" clause; landowner has no property interest in traffic flow. Grove & Burke v. Fort Dodge, 469 N.W.2d 703 (Iowa 1991).

89. Streets and highways (93) (cont.)

City and State Highway Commission are liable for damages to abutting owners whose rights of access, light, air and view would be destroyed by constructing a viaduct over the street, even though the landowners were compensated for such rights when the land for street was condemned. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Rights of access, light, air and view are not terminated with the acquisition of the land but are reserved in the landowner parting with the land and continue with remaining land use of future owners. Id.

Damages payable for loss of light, air, view and access. Id.

Evidence as to loss of revenue from commercial property abutting on highway due to detour of traffic for widening and improvement of highway is inadmissible and should not be considered in assessing damages. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Under the Tucker Act, the government has an implied promise to compensate for "taking" of riparian owner's property on navigable river; however, there is no implied promise where the "taking" is temporary or the injuries are consequential. Goodman v. United States, 113 F.2d 914 (8th Cir. 1940).

Street improvement and assessment of cost against abutting property based on benefits do not violate this section. Hutchins v. Hanna, 179 Iowa 912, 162 N.W. 225 (1917).

Loss of light and air is an element of damage to leasehold. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

Construction of switches in street may impose liability on railroad for "taking." Drady v. Des Moines Ry., 57 Iowa 393, 10 N.W. 754 (1881).

Railroad not liable for authorized use of streets by Act. City of Clinton v. Cedar Rapids & M.R. Ry., 24 Iowa 455 (1868).

90. Change of grade of streets and highways (94)

Lessee may recover damages for destruction or reduction in value of personal property on leased premises taken in the amount of the difference between fair mortgage value immediately before condemnation, less fair mortgage value immediately thereafter. Nidy v. State, 189 N.W.2d 583 (Iowa 1971).

Where the city destroyed property owner's driveway by changing the street level, owner is entitled to damages for interference with his private property right of ingress and egress to his property. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

90. Change of grade of streets and highways (94) (cont.)

Construction of viaduct is not equivalent to change of grade of street; damages caused by the viaduct are compensable. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

91. Vacation of streets or highways (95)

Although abutting landowners may not have a "vested" right in a road or bridge, they do have right of free and convenient access over it. Mulkins v. Board of Supervisors, 374 N.W.2d 410 (Iowa 1985).

Where the only access to landowner's property is over a highway, vacation of that highway, destroying the access, is a "taking." Schiefelbein v. United States, 124 F.2d 945 (8th Cir. 1942).

Vacation of a public street or alley without prior assessment of damages to abutting property is not a "taking"; landowner may however, recover any consequential damages. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

92. Railroads (96)

Railroad's authority to construct viaduct does not relieve liability for "taking." Wulke v. Chicago, M & St. P. Ry., 189 Iowa 722, 178 N.W. 1009 (1920).

Landowner entitled to damages for right-of-way "taking" although landowner had no right to erect building. Renwick v. Davenport, 49 Iowa 664 (1878).

Railroads are authorized to occupy streets without compensation. Barney v. Keokuk, 94 U.S. 324 (1876).

Condemnation payment held by sheriff does not relieve condemnor of obligation to pay before possession of condemned property. White v. Wabash, 64 Iowa 281, 20 N.W. 436 (1884).

Where fee of street is in the public, the legislature may authorize railroad to use street without consent of the city and without compensation. City of Clinton v. Cedar Rapids & M. Ry., 24 Iowa 455 (1868).

93. Improvements and fixtures (97)

Right of lessee to use improvements over term of lease is, in a sense, ownership right, and compensable upon condemnation of leasehold. Interstate Finance v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Even though testimony may be admitted in condemnation hearing, contemplation of future improvements is not considered in measure of damages. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

94. Benefits, deduction or set-off (98/99)

Compensation for a partial "taking" is the difference between the fair market value of the entire tract of land immediately before and immediately after condemnation, not including any benefit or betterment. Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (1971).

Even though testimony may be admitted in condemnation hearing, contemplation of benefits from future improvements is not considered in measure of damages. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Evidence of increased value from improvements is admissible in proceeding to condemn realty for highway purposes. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

Landowner's permissive privileges subject to revocation at will cannot be considered in accessing damages for "taking". De Penning v. Iowa Power & Light, 239 Iowa 950, 33 N.W.2d 503 (1948).

Benefits are not considered where strip is taken for highway. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

Benefits are not considered where land is taken for school purposes. Gregory v. Kirkman School District, 193 Iowa 579, 187 N.W. 553 (1922).

Benefits are not considered where land is taken for drain, which are considered a public benefit. Gish v. Castner & Co., 137 Iowa 711, 115 N.W. 474 (1908).

Under this provision, the jury shall not consider any benefits or advantages to the owner as a result of roadway "taking" for improvements. Britton v. Des Moines, O. & S. Ry., 59 Iowa 540, 13 N.W. 710 (1882).

"Any advantage" covers all benefits that may result; incidental, indirect, consequential and remote benefits are included, as well as direct and immediate. Id.

Benefits are excluded because they are enjoyed by the public. Meyer v. Burlington, 52 Iowa 560, 3 N.W. 558 (1879).

The express language of the constitution covers benefits accruing on account of the road itself, as well as on account of its uses. Frederick v. Shane, 32 Iowa 254 (1871).

III. AMOUNT OF COMPENSATION

(Amount of Compensation)

95. Determination of value/Measure of damages (166)

Courts look to individual facts of each case to determine what constitutes "just compensation." CMC Real Estate v. Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

In partial "taking," the measure of damages is the difference between the fair market value immediately before condemnation and before it has been affected by proposed public uses and the fair market value of what is left after the "taking." Thompson v. City of Osage, 421 N.W.2d 529 (Iowa 1988).

To determine proper measure of just compensation, the Court of Appeals looks to market value of the parcel of land. Nemmers v. City of Dubuque, 764 F.2d 502 (8th Cir. 1985).

Market value should be accessed as of date of temporary "taking" to determine just compensation; the government is responsible for compensating owner for interim during which the "taking" was effective. Id.

Condemnation award is not considered comparable because of compromise and/or compulsion. Taylor v. Des Moines, 337 N.W.2d 881 (Iowa 1983).

To determine just compensation of land with mineral interests using the "income capitalization method," it is necessary to consider varied factors, such as future supply and demand, economic conditions, estimates of mineral recoverability, value of currency, changes in the marketplace and technological advances. United States v. 47.14 Acres of Land 674 F.2d 722 (Iowa Ct. App. 1982).

In applying the "income capitalization method," income stream from the sale of minerals over number of years is capitalized in terms of present worth. Id.

When land is taken by eminent domain, landowners are not entitled to have all factors affecting the value of their land added together and taken as the reasonable market value of land. United States v. 9.20 Acres of Land, 638 F.2d 1123 (Iowa Ct. App. 1981).

Measure of damages in eminent domain proceedings is the property's reasonable market value at the "time of taking," which is the date upon which the condemnation commission views the premises and fixes the damages to which the condemnee is entitled. Heldenbrand v. Executive Council, 218 N.W.2d 628 (Iowa 1974).

Although in condemnation proceeding, evidence relative to lessee's loss of profits was not admissible as an independent element of damages, such evidence as to the nature and prosperity of the lessee's business on the property being partially condemned was a proper item to be considered along with all facts. Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

Article I, Section 18

95. Determination of value/Measure of damages (166) (cont.)

To be "comparable," sale must be between willing buyer and seller; sale to condemnor by condemnee is not a "comparable" sale. Socony Vacuum Oil v. State, 170 N.W.2d 378 (Iowa 1969).

In determining value of condemned leasehold, variety of elements of loss, expense and inconvenience may be considered by jury as descriptive of leaseholder's injury caused by condemnation, not as substantive elements of damage. Interstate Finance v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Measure of damages for leasehold interest taken by eminent domain is market value of unexpired term of lease over and above rent stipulated to be paid. Id.

Jury specifically instructed to make award of fair and reasonable market value of interest as of date of condemnation. Id.

Even though testimony was admitted in condemnation hearing, contemplation of future improvements is not considered in measure of damages. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Contemplated profits from use of real estate is not a measure of damages in condemnation cases. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Owner of apartment building, who in reasonable anticipation of condemnation but prior to any "taking," sold or removed all furnishings therefrom was not entitled to damages for loss in value to personal property. Gaar v. Iowa State Highway Commission, 252 Iowa 1374, 110 N.W.2d 558 (1961).

Evidence of the value of crops grown on land is admissible but should not be considered as a measure of damages. Iowa Development v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961). Measure of damages in condemnation cases is not what the land is worth to the landowners themselves, but rather the difference between the fair and reasonable market value of land as a whole immediately before the "taking" and immediately after the "taking," without considering the benefits, if any. Hamer v. Iowa State Highway Commission, 250 Iowa 1228, 98 N.W.2d 746 (1959).

Question of adaptability of residential property for industrial use is an element of value considered in condemnation cases. Kaperonis v. Iowa State Highway Commission, 251 Iowa 39, 99 N.W.2d 284 (1959).

Generally, citizens are not due any compensation for damage to their property from lawful exercise of police power, but compensation is due for what is taken by eminent domain. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Compensation is based on physical condition, location, and present and future uses. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

Article I, Section 18

96. Just compensation (161)

Damages for partial "taking" are measured by diminution in value of the original tract, not by the value of portion of real property taken. Fitzgarrald v. Iowa City, 492 N.W.2d 65 (Iowa 1992).

Courts look to individual facts of each case to determine what constitutes "just compensation." CMC Real Estate v. Department of Transportation, 475 N.W.2d 166 (Iowa 1991).

To determine just compensation of land with mineral interests using the "income capitalization method," it is necessary to consider varied factors, such as future supply and demand, economic conditions, estimates of mineral recoverability, value of currency, changes in the marketplace and technological advances. United States v. 47.14 Acres of Land 674 F.2d 722 (Iowa Ct. App. 1982).

Statutes available for use in condemnation for secondary road purposes which provide for notice to condemnees and opportunity to be heard do not constitute denial of due process. Cahill v. Cedar County, 367 F. Supp. 39 (N.D. Iowa 1973).

The judiciary rather than the legislature determines the amount paid to condemnee to satisfy just compensation requirement. Id.

Correct measure of damages in partial "taking" is the difference between the fair market value of the entire tract immediately before and immediately after condemnation without regard to resulting benefit or betterment. Powers v. City of Dubuque, 176 N.W.2d 135 (Iowa 1970).

Just compensation is due for taking toll bridge property. Plattsmouth Bridge v. Globe Oil & Refining, 232 Iowa 1118, 7 N.W.2d 409 (1943).

Jury assesses just compensation. Bankhead v. Brown, 25 Iowa 540 (1868).

97. Nominal damages (165)

In proceeding to condemn right-of-way and easement for electric transmission line across part of farm, the trial court properly refused to instruct that the jury would be justified in awarding nominal damages if it found that there were no substantial or appreciable difference in the value of the farm before and after the "taking." Danker v. Iowa Power & Light, 249 Iowa 327, 86 N.W.2d 835 (1958).

98. Inadequate or excessive compensation (162)

An award of $9,000 for taking condemnee's right to direct access to and from its business property did not call for interference of Supreme Court on appeal. Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

98. Inadequate or excessive compensation (162) (cont.)

Award within range of trial testimony could not be characterized as "excessive." Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (Iowa 1971).

The amount of compensation allowed in condemnation case is peculiarly within the province of the trier of fact. Van Horn v. Iowa Public Service, 182 N.W.2d 365 (Iowa 1970).

The question of determining whether jury award for condemnation of leasehold was excessive must be decided upon particular facts of each case and similar case law. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Fair value of property is a basis of compensation even though it may be less than owner's investment. Foster v. United States, 318 U.S. 767 (1945).

99. Interest (164)

In condemnation cases, just compensation awarded to the condemnee includes interest necessary to compensate for any delay in payment after condemnor has possession of property. Sac City v. Bensen, 329 N.W.2d 675 (Iowa Ct. App. 1982).

Condemnee is not entitled to interest when condemnee refuses the award in order to pursue an unsuccessful appeal, and the condemnor pays the full amount contemporaneously with the "taking." Id.

Compensation for condemnation of private property for public use can only be allowed where there is a "taking" of a compensable interest and cannot be allowed for something that does not exist. R & R Welding Supply v. Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

A landowner is entitled to interest from the date of "taking" except where the landowner, alone, appeals to the District Court and recovers less than the condemnation award. Iowa Development v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

100. Value of land taken (168)

Damages for partial "taking" are measured by diminution in value of the original tract, not by the value of portion of real property taken. Fitzgarrald v. Iowa City, 492 N.W.2d 65 (Iowa 1992).

In partial "taking," the measure of damages is the difference between the fair market value immediately before condemnation and before it has been affected by proposed public uses and the fair market value of what is left after the "taking." Thompson v. City of Osage, 421 N.W.2d 529 (Iowa 1988).

100. Value of land taken (168) (cont.)

To determine proper measure of just compensation, the Court of Appeals looks to market value of the parcel of land. Nemmers v. City of Dubuque, 764 F.2d 502 (8th Cir. 1985).

Statute limiting value of tract of land purchased for a public hall is not applicable to land obtained by condemnation for use of a township hall. Hardy v. Grant Township Trustees, 357 N.W.2d 623 (Iowa 1984).

To determine just compensation of land with mineral interests using the "income capitalization method," it is necessary to consider varied factors, such as future supply and demand, economic conditions, estimates of mineral recoverability, value of currency, changes in the marketplace and technological advances. United States v. 47.14 Acres of Land 674 F.2d 722 (Iowa Ct. App. 1982).

When land is taken by eminent domain, landowners are not entitled to have all factors affecting the value of their land added together and taken as the reasonable market value of land. United States v. 9.20 Acres of Land, 638 F.2d 1123 (Iowa Ct. App. 1981).

Where Corps of Engineer took title to property, value of residual interest had to be added to the "taking" rather than being considered as part of the after-value for purposes of determining compensation. United States v. 298.31 Acres of Land, 413 F. Supp. 571 (Iowa Ct. App 1976).

Market value of condemned property at time of "taking" is standard for ascertaining compensation. United States v. 421.89 Acres of Land, 465 F.2d 336 (8th Cir. 1972).

A jury, in determining value of land remaining after condemnation, may consider reasonable future uses of the land, as well as advantages the land possesses which a seller would bring to the attention of a buyer. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

The jury should not consider speculation that owner's property was worth more in an eminent domain proceeding. Thornberry v. State Board of Regents, 186 N.W.2d 154 (Iowa 1971).

Admission of evidence of comparable property to determine value of condemned property is within trial court's discretion. Perry v. Iowa State of Highway Commission, 180 N.W.2d 417 (Iowa 1970).

The presence of metal deposits in land is a proper element to consider in valuing condemned property. Townsend v. Mid-America Pipeline, 168 N.W.2d 30 (Iowa 1969).

Measure of damages in condemnation cases is not what the land is worth to the landowners themselves, but rather the difference between the fair and reasonable market value of land as a whole immediately before the "taking" and immediately after the "taking," without considering the benefits, if any. Hamer v. Iowa State Highway Commission, 250 Iowa 1228, 98 N.W.2d 746 (1959).

100. Value of land taken (168) (cont.)

Evidence as to loss of revenue from commercial property abutting on highway due to detour of traffic for widening and improvement of highway is inadmissible and should not be considered in assessing damages. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Value of growing crops lost by condemnation should be considered by the jury in determining the fair market value of the condemned land. Bracken v. City of Albia, 194 Iowa 596, 189 N.W. 972 (1922).

101. Leasehold (167)

Successor received just compensation even though "taking" occurred when Department of Transportation limited amount railroad's successor could charge grain elevator to lease railroad property. CMC Real Estate v. Iowa Department of Transportation, 475 N.W.2d 177 (1991).

Fee interest was distinctively separate from leasehold interest and both interests were subject to separate valuations. Fritz v. Iowa State Highway Commission, 270 N.W.2d 835 (Iowa 1978).

Although in condemnation proceeding, evidence relative to lessee's loss of profits was not admissible as an independent element of damages, such evidence as to the nature and prosperity of the lessee's business on the property being partially condemned was a proper item to be considered along with all facts. Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

In determining value of condemned leasehold, variety of elements of loss, expense and inconvenience may be considered by jury as descriptive of leaseholder's injury caused by condemnation, not as substantive elements of damage. Interstate Finance v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Measure of damages for leasehold interest taken by eminent domain is market value of unexpired term of lease over and above rent stipulated to be paid. Id.

Where entire leasehold property is taken by eminent domain, the lessee may recover the value of unexpired term of lease less the rental reserved; where only part of the leasehold property is taken by eminent domain, the lessee may recover the value of use of the premises before appropriation less what it is worth afterwards. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30 (Iowa 1960).

A leasehold is property and when taken in the exercise of eminent domain the lessee is entitled to just compensation or its equivalent in value. Korf v. Fleming, 32 N.W.2d 85 (1948).

101. Leasehold (167) (cont.)

Measure of damages to tenant for depreciation in market value caused by condemnation and construction of highway is the difference in value of tenant's leasehold; in strict terms, however, tenant's recovery is the value of unexpired term less rental reserved. Des Moines Wet Wash Laundry v. Des Moines, 199 Iowa 1082, 198 N.W. 486 (1924).

Tenants in common are entitled to compensation for their interest. Ruppert v. Chicago, O. & St. J. Ry., 43 Iowa 490 (1876).

Evidence of increased value from improvements is admissible in proceeding to condemn realty for highway purposes. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

Sale of buildings on condemned lot after condemnation and before appeal did not preclude recovery by owner. Hollingsworth v. Des Moines & St. L. Ry., 63 Iowa 443, 19 N.W. 325 (1884).

Under this provision, the jury shall not consider any benefits or advantages to the owner as a result of roadway "taking" for improvements. Britton v. Des Moines, O. & S. Ry., 59 Iowa 540, 13 N.W. 710 (1882).

"Any advantage" covers all benefits that may result; incidental, indirect, consequential and remote benefits are included, as well as direct and immediate. Id.

102. Value for special use (169)

To determine just compensation of land with mineral interests using the "income capitalization method," it is necessary to consider varied factors, such as future supply and demand, economic conditions, estimates of mineral recoverability, value of currency, changes in the marketplace and technological advances. United States v. 47.14 Acres of Land 674 F.2d 722 (Iowa Ct. App. 1982).

In applying the "income capitalization method," income stream from the sale of minerals over number of years is capitalized in terms of present worth. Id.

In awarding just compensation using the "income capitalization method," there must be objective support for future demand of minerals to be extracted and a showing of reasonable probability that the land is physically adaptable for that use. Id.

If there is reasonable probability that zoning classification will be changed in the near future to permit a more profitable use of land, landowners are entitled to have that probability considered in determining the proper value of condemned property. Dolezal v. Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

If reasonable before and after market values can be determined, the presence of mineral deposits in land is a proper element of damage in condemnation proceedings. Simpson v. Iowa State Highway Commission, 195 N.W.2d 528 (Iowa 1972).

102. Value for special use (169) (cont.)

A jury, in determining value of land remaining after condemnation, may consider reasonable future uses of the land, as well as advantages the land possesses which a seller would bring to the attention of a buyer. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

Where portion of a railroad is taken for purposes of a highway crossing, the measure of compensation is the diminution in value of property for railroad use. Chicago, R.I. & P. Ry. v. Iowa State Highway Commission, 128 N.W.2d 160 (1970)).

The presence of metal deposits in land is a proper element to consider in valuing condemned property. Townsend v. Mid-America Pipeline, 168 N.W.2d 30 (Iowa 1969).

The amount and value of recoverable mineral deposits are necessary elements considered in determining value of property underlaid with sand and gravel. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Question of adaptability of residential property for industrial use is an element of value taken into consideration in condemnation cases. Kaperonis v. Iowa State Highway Commission, 251 Iowa 39, 99 N.W.2d 284 (1959).

Jury may award for most advantageous and valuable use. United States v. Foster, 318 U.S. 767 (1943).

Most advantageous use must be reasonably probable and such as to affect present market value. Id.

Necessity or convenience of condemnor cannot be considered to compel an award for more than the fair market value, however, the landowner may show that the property is peculiarly adapted for the particular purpose. Tracy v. Mount Pleasant, 165 Iowa 435, 146 N.W. 78 (1914).

103. Partial "taking" (170)

Damages for partial taking are measured by diminution in value of the original tract, not by the value of portion of real property taken. Fitzgarrald v. Iowa City, 492 N.W.2d 65 (Iowa 1992).

"Taking" may be anything that substantially deprives persons of use and enjoyment of their property, not necessarily just the appropriation of the fee. Osborn v. Cedar Rapids, 324 N.W.2d 471 (Iowa 1982).

Where partial "takings" are involved in an interstate highway project, landowner is entitled to compensation for the value of land actually taken and diminution of the value of what land is left; the proper measure of compensation is the difference between the fair and reasonable market value of the entire ownership immediately before the "taking" and the fair and reasonable market value of what is left immediately after the "taking." Farmland Preservation v. Goldsmchmidt, 611 F.2d 233 (1979).

103. Partial "taking" (170) (cont.)

Where less than entire tract is taken, just compensation is generally based on the difference between the reasonable market value of the entire tract and the remaining portion after the "taking." Twin-State Engineering & Chemical v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

Condemnee, part of whose livestock sale business premises were taken by condemnation, was not required substitute livestock pen arrangements to minimize damage resulting to him from condemnation proceedings. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1971).

Measure of damages for a partial "taking" of landowners' property is the difference in fair market value of subject property immediately before and immediately after condemnation. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

(Property Not Taken/Amount of Compensation)

104. Property not taken (172)

Denial of damages not warranted where landowner refused to permit removal of buildings from rest of farm separated by construction of a highway. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

When lands are taken for corporate use, damages do not extend to injuries caused by any unauthorized or unlawful acts of the company, such as fencing. Fleming v. Chicago, D. & M. Ry., 34 Iowa 353 (1872).

Damages include present or future matters which proximately affect market value. Kukkuk v. Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

In an appropriation of half a lot for school purposes, where the other half is occupied by landowner's dwelling, damages are not limited to the value of land taken, but may include damage to the entire premises if occupied as a whole. Haggard v. Algona Independent School District, 113 Iowa 486, 85 N.W. 777 (1901).

105. Value of land (173)

In partial "taking," the measure of damages is the difference between the fair market value immediately before condemnation and before it has been affected by proposed public uses and the fair market value of what is left after the "taking." Thompson v. City of Osage, 421 N.W.2d 529 (Iowa 1988).

Proper basis for damage award when road has been vacated is the difference in fair market value of abutting landowner's farm immediately before and after road vacation. Mulkins v. Board of Supervisors, 374 N.W.2d 410 (1985).

105. Value of land (173) (cont.)

To determine proper measure of just compensation, the Court of Appeals looks to market value of the parcel of land. Nemmers v. City of Dubuque, 764 F.2d 502 (8th Cir. 1985).

Capitalization of future income is an appropriated method of valuation in some condemnation cases, but it should not be uses when the extent of future uses or demand for is speculative; landowner must show that an income-producing market existed at the date of the "taking" or will exist in the reasonable near future. United States v. 75.12 Acres of Land, 693 F.2d 813 (8th Cir. 1982).

When land is taken by eminent domain, landowners are not entitled to have all factors affecting the value of their land added together and taken as the reasonable market value of land. United States v. 9.20 Acres of Land, 638 F.2d 1123 (Iowa Ct. App. 1981).

When realty is condemned, damaged, destroyed or reduced in value the personal property located on such real estate is considered in fixing the damages to the owner or tenant. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

A condemnee is damaged to the extent his property is diminished in value by the condemnation, which is an ultimate fact to be determined by the jury. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Damage may include damage to entire tract even though only partial taking. Haggard v. Algona Independent School District, 113 Iowa 486, 85 N.W. 777 (1901).

106. Injuries (174)

When real estate is condemned, damage to, destruction of, or reduction in value of personal property located thereon is considered in fixing damages to the owner or tenant. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Under the Tucker Act, to recover compensation for damages to crops and reduction in value of land caused by flooding from construction on navigable river by federal government there should be some specific finding supported by substantial evidence that the flooding of riparian owners' land was permanent. Goodman v. United States, 113 F.2d 914 (8th Cir. 1940).

Damages for flooded land is measured by the difference in value before and after flooding. Wapsipinicon Power v. Waterhouse, 186 Iowa 524, 167 N.W. 623 (1918).

In action against a railroad for damages caused by the removal of soil from land, the measure of damages is the difference in the value of land before and after the injury. Parott v. Chicago Great Western Ry., 127 Iowa 419, 103 N.W. 352 (1905).

Owner entitled to consequential damages for proximity of school. Haggard v. Algona Independent School District, 113 Iowa 486, 85 N.W. 777 (1901).

107. Diminution in value (175)

Lessee may recover damages for destruction or reduction in value of personal property on leased premises taken in the amount of the difference between fair mortgage value immediately before condemnation, less fair mortgage value immediately thereafter. Nidy v. State, 189 N.W.2d 583 (Iowa 1971).

A condemnee is damaged to the extent his property is diminished in value by the condemnation, which is an ultimate fact to be determined by the jury. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

State Highway Commission cannot avoid payment of compensation for the "taking" of right of access to highway by express waiver of abandonment where regulation of such access causes substantial or material impairment of or interference with abutting landowners rights of egress and ingress. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Landowner entitled to reimbursement for difference in fair and reasonable market value before and after. Harris v. Green Bay Levee & Drainage Board of Trustees, 244 Iowa 1169, 59 N.W.2d 234 (1953).

Owner entitled to damages to entire lot when used as a whole but only half lot taken. Haggard v. Algona Independent School District, 113 Iowa 486, 85 N.W. 777 (1901).

The immediate and not remote or contingent, consequences must be considered alone in ascertaining the depreciated value of property. Fleming v. Chicago, D. & M. Ry., 34 Iowa 353 (1872).

All circumstances that immediately depreciate value of premises are considered. Henry v. Dubuque, 2 Iowa 288 (1856).

108. Easements or rights of way (176)

Landowner seeking recovery for loss of access to his property is not limited to amount of damage or injury caused by altering grade of street but may demand compensation under the Constitution for a valuable property right which has been taken. Stom v. Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

Improvement to street some distance from landowner's property does not preclude landowner from recovering for loss of access if improvements in fact deprived landowner of access. Id.

Award for 17-acre tract through 200-acre farm for construction of interstate highway which in effect severed farm on slanting curve and caused difficulty in traveling from one section of farm to other was not exorbitant in view of substantial injury to farm and contemporary value of agricultural land. Perry v. Iowa State Highway Commission, 180 N.W.2d 417 (Iowa 1970).

Although damages are recoverable, they do not have to necessarily equal amount required to construct another private way. Gear v. C.C. & D.R. Ry., 39 Iowa 23 (1874).

109. Railroads (177)

In condemnation proceeding by railroad to obtain right-of-way over farm land, it was proper for jury to consider railroad's duty to construct crossing. Lough v. Minneapolis & St. L. R. Ry., 116 Iowa 31, 89 N.W. 77 (1902).

Proper to instruct jury that measure of damages was fair market value of property before the time of the "taking". Hollingsworth v. Des Moines & St. L. Ry., 63 Iowa 443, 19 N.W. 325 (1884).

Damages caused by negligence in construction of railroad are not considered in right-of-way condemnation proceeding, but owners are entitled to compensation for damages caused to part of premises not appropriated from proper construction and use of the railway. Cummins v. Des Moines & St. L. Ry., 63 Iowa 397, 19 N.W. 268 (1884).

Estimating damages for right-of-way taken for railroads is the difference in the value of the land before and after construction of the road; obstruction of owner's view, interfering with privacy, and noises from the train should be considered. Ham v. Wisconsin, I. & N. Ry., 61 Iowa 716, 17 N.W. 157 (1883).

Value of land appropriated by a railroad is what it is worth in its present condition, not its prospective value. Id.

In estimating damages to land caused by locating a railroad through it, landowner may show depreciation in the market value of his whole farm taking into consideration all the inconveniences directly caused by the road. Hartshorn v. Burlington, C.R. & N. Ry., 52 Iowa 613, 3 N.W. 648 (1879).

Adjacent landowner to street used by railway may recover all damages proximately resulting from use for which it was taken. Kucheman v. C.C. & D. Ry., 46 Iowa 366 (1877).

In an action against railway for negligent or improper construction, the measure of damages is the difference between the value of the property as it is and an estimated value of proper construction. Cadle v. Muscatine W. Ry., 44 Iowa 11 (1876).

110. Streets and highways (178)

Taking farm land for highway purposes without owner's consent reduces value of farm to a greater extent than what land is worth per acre when attached to the farm. Luthi v. Iowa State Highway Commission, 224 Iowa 678, 276 N.W. 586 (1938).

Fair and reasonable market value before and after condemnation is the measure of damages. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Damages to land from "taking" highway right-of-way should be considered as a whole - not separate items. Dean v. State, 211 Iowa 143, 233 N.W. 36 (1930).

Area of land taken for street compared with entire tract not true measure. Kukkuk v. Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

110. Streets and highways (178) (cont.)

Measure where street cut down where no grade established is value before and after. Richardson v. Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

Depreciation in market value is the true measure where embankments are constructed. Nicks v. Chicago, 84 Iowa 27, 50 N.W. 222 (1891).

Amount expanded for fences is not a measure of recovery. Bland v. Hixenbaugh, 39 Iowa 532 (1874).

Where a highway is vacated and a new highway is relocated over the same land, the measure of damages to the landowner is the excess of damage to the land as a consequence of the new road over damage sustained from the old road; if damages for new road are less than damages for old road, the landowner is not entitled to damages. Jewett v. Israel, 35 Iowa 261 (1872).

111. Expenses necessitated by taking (179)

A condemnee is entitled to compensation for damages to, destruction of, or reduction of value of personal property so long as it is used in connection with a business operated on the condemned land. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

The cost of moving certain personal property from condemned premises is not a "reduction in value" within the meaning of §472.14 because its market value was not reduced because of the move. Skaff v. Sioux City, 120 N.W.2d 439 (1963).

Where grade change increases value of property on the street, the owner not entitled to compensation for incidental expense or inconvenience. Meyer v. Burlington, 52 Iowa 560, 3 N.W. 558 (1880).

Recovery for fences is not amount expended but may be reasonably proper under circumstances. Bland v. Hixenbaugh, 39 Iowa 532 (1874).

Chapter 6A
(Transferred from Chapter 471, Code 1991)

EMINENT DOMAIN LAW (CONDEMNATION)

6A.1 Exercise of Power by State

1. Construction and application

Statutes delegating powers of eminent domain are strictly construed and restricted to their clear meaning. Bourjaily v. Johnson County, 167 N.W.2d 630 (Iowa 1969).

Statutes delegating powers of eminent domain are not violative of the constitution. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Attorney General Opinion:

Counties have authority to condemn property for self- liquidating sanitary disposal projects under section 394.1, but do not have power of eminent domain for non-self-liquidating projects under section 6A.1. Op. Att'y Gen. Feb. 2, 1972.

3. Powers of eminent domain - in general

Although the State Highway Commission is authorized to aid in the construction of viaducts on state highways in cities, it is not authorized to do so without liability for property taken or damaged. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

State Highway Commission must pay just compensation for private property taken for establishment, maintenance or improvement. Id.

State's establishment of drainage district is an exercise of police power, not eminent domain, except as to property actually taken or appropriated for ditches. Chicago & N.W. Ry. v. Board of Supervisors, 182 Iowa 60, 162 N.W. 868 (1917), modified on other grounds, 182 Iowa 60, 165 N.W. 390.

Attorney General Opinions:

Executive council may use its power of eminent domain to assist Highway Commission in acquiring site for maintenance facility where appropriate funds are available to the highway department. 1969 Op. Att'y Gen. 269.

City does not have power of eminent domain with reference to acquisition of access, light, air and view affecting properties abutting on street in area that will be occupied by proposed viaduct over railroad tracks. 1949 Op. Att'y Gen. 11.

7. Property previously devoted to public use

Highway Commission's construction of bridge with piers in creek channel would be a "taking" of property Harrison, Pottawattamie Drainage District No. 1 v. State, 261 Iowa 1044, 156 N.W.2d 835 (1968).

6A.1 Exercise of Power by State

10. Necessity for taking, in general

Use of private property can be limited by a reasonable exercise of police powers in matters of health and welfare of the general public. State v. Steenhoek, 182 N.W.2d 377 (Iowa 1970).

Absolute necessity for "taking" particular land is not needed but reasonable necessity is sufficient to authorize condemnation. Vittetoe v. Iowa Southern Utilities, 255 Iowa 805, 123 N.W.2d 878 (1963).

Attorney General Opinion:

Condemnation of land to widen highways is proper where such action is shown to be advisable. 1919-20 Op. Att'y Gen. 261.

11. Property condemnable

The destruction of or substantial impairment or interference with rights of access, light, air or view of an abutting landowner in the highways or streets adjacent to such one's property, by any work or structure upon the highway or street, intended for improvement and done by the state or any governmental subdivision is a "taking" of private property. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

All private property is subject right of eminent domain unless specifically exempted by statute. Hoover v. Iowa State Highway Commission, 210 Iowa 1, 230 N.W. 561 (1930).

15. Access - in general

While access to highway may not be entirely cut off, an owner is not entitled to access to land at all points between land and highway; free and convenient access to property and improvements on it and a means of ingress and egress is not a substantial interference. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

"Taking" right of access to highway by eminent domain is compensable, however, "taking" through exercise of police power is not compensable. Fort Dodge, D.M. & S. Ry. v. American Community Stores, 256 Iowa 1344, 131 N.W.2d 515 (1965).

The destruction of or interference with an abutting owner's access or right of access by a city constructing a public improvement, such as a viaduct, is a direct injury. Liddick v. Council Bluffs,232 Iowa 197, 5 N.W.2d 361 (1942).

16. Reasonable and convenient access

Reasonable and convenient access to landowner's property after condemnation does not mean unlimited access to all points on street or highway. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

6A.4 Right Conferred

1. Validity

Mine owner's condemnation of right-of-way over land of anther to mine for purpose of a railway is a public way. Morrison v. Thistle Coal, 119 Iowa 705, 94 N.W. 507 (1903).

Statute authorizing the establishment of public ways to stone and mineral lands was not unconstitutional. Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1874).

3. Counties

Compensation required for damage for overflow caused by cutting banks of drainage ditch in completing road improvement. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

4. Road to private property

Landowner already having a public or private access to road may not condemn another way over the land of neighbor; existing way of access must be reasonably sufficient. Anderson v. Lee, 191 Iowa 248, 182 N.W. 380 (1921).

Attorney General Opinion:

Land condemned by landlocked owner becomes a public way. The lane may be taxed to the condemnee; the lane is a public way and the county should maintain it as it does other county roads. Op. Att'y Gen. Feb. 28, 1975.

Where landowner's outlet to highway has been taken away by reason of vacation of highway, the landowner is authorized to secure a right of way by condemnation 1932 Op. Att'y Gen. 100.

10. Mineral lands

Mining company having private way to highway could not condemn way for establishment of railroad switch. Fisher v. Maple Block Coal, 171 Iowa 486, 151 N.W. 823 (1915).

Right-of-way for railway to mine may be public way even though it cannot be used by the public for travel, except by railway cars. Morrison v. Thistle Coal, 119 Iowa 705, 94 N.W. 507 (1903).

6. Cities

Cities have authority to establish streets and condemn right-of-ways. Oakes Construction v. Iowa City, 304 N.W.2d 797 (1981).

Private property cannot be confiscated by municipality or other corporation, except for public purpose. Bechtel v. Des Moines, 225 N.W.2d 326 (1975).

6A.6 Railways

10. Roads, streets, bridges, etc., occupying

Where city ordinance grants railroad company right to construct its road "on, over, and long" certain alleys, "along" is synonymous with "on" and "over," and does not mean "by the side of." Heath v. Des Moines & St. L. Ry., 61 Iowa 11, 15 N.W. 573 (1883).

A railroad company's laying of a second track is not necessarily a nuisance, where such

company has acquired the right to run through a city street. Davis v. Chicago & N.W. Ry., 46 Iowa 389 (1877).

Since a railway company has the right to lay its tracks upon city streets without the consent of municipal authorities, the city cannot impose conditions upon the railway company by an ordinance granting the right-of-way. Council Bluffs v. Kansas City, St. J. & C.B. Ry., 45 Iowa 338 (1876).

Railway company laying track on highway is responsible to public that highway shall be put in as good repair as before. Gear v. C.C. & D. Ry., 43 Iowa 83 (1876).

Railway company's right to lay its tracks in the city streets without consent of city authorities is not conditioned upon the previous payment of damages, but is subject to proper equitable control and police regulations. Hine v. Keokuk & D.M. Ry., 42 Iowa 636 (1876).

25. Inconveniences, obstructions, annoyances, and danger of fire, matters considered in determining damages

Inconveniences suffered by an overhead bridge over a highway which interfered with access to town are not to be considered in determining damages of condemnation of land for railroad right-of-way. Simons v. Mason City & F.D. Ry., 128 Iowa 139, 103 N.W. 129 (1905).

The obstruction of the public highway should not be considered in the estimation of damages to which the owner of adjacent land is entitled for appropriation of railway company's right-of-way. Hartshorn v. Burlington C.R. & N. Ry., 52 Iowa 613, 3 N.W. 648 (1879).

6A.13 Change in Streams

2. Construction and application

Changing the natural course of stream, thereby eliminating a bridge upon reconstruction of highway, was regarded as being for the purpose of draining the highway. Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (Iowa 1972).

CHAPTER 25

CLAIMS AGAINST THE STATE AND BY THE STATE

25.2 Examination of Report - Approval or Rejection - Payment

1. Construction and application

Attorney General Opinion:

Refund of monies illegally exacted as motor vehicle registration fees by the state appeal board is paid from the road use tax fund. 1967 Op. Att'y Gen. 51.

25.6 Claims by State Against Municipalities

1. In general

Attorney General Opinions:

Pursuant to section 613A.2, agency or board established pursuant to Chapter 28E may be held liable for its torts and those of its officers, employees and agents acting within the scope of their employment. 1980 Op. Att'y Gen. 624.

Tort claims filed under the provisions of Ch. 25A, as amended, may not be paid from the primary road fund nor any allocation thereof. 1970 Op. Att'y Gen. 459.

Claims for highway construction included in the enumeration in this section, and which had been approved by the state appeal board may be paid from the primary road fund if such claims are otherwise legally payable. Id.

If the claim relates to support of the Highway Commission for engineering and administration of highway work or maintenance of the primary road system, it is authorized by this section, and is otherwise legally payable, that part of the primary road fund allocated by the general assembly to be spent by the Highway Commission for support, engineering, and administration of highway work, and maintenance of the primary road system is available for the payment of such claims, provided, however, such allocation has not reverted. Id.

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

28E.1 Purpose

1. Validity

The legislature's delegation of power to governmental units authorizing political subdivisions of state to perform public services jointly and by agreement, create as separate legal or administrative entity are constitutional. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

2. Construction and application

Legislature may delegate to a properly-created entity the authority to exercise legislative power. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

Attorney General Opinion:

Pursuant to Chapter 28E agreement between Kossuth County and several cities in Kossuth County, money which is reimbursed to Kossuth County Secondary Road Fund by the cities is a portion of, not an addition to, the Kossuth County engineer's total salary set by the Kossuth County Board of Supervisors. 1979 Op. Att'y Gen. 83.

Any overpayment to the county engineer could be legalized by the legislature. Id.

Governing board operating under Chapter 28E is generally required to comply with the open meeting law of this state. 1978 Op. Att'y Gen. 807.

This chapter authorizes cities and towns to do jointly what they are empowered to do individually as a proprietary enterprise or a governmental function. 1967 Op. Att'y Gen. 41.

This chapter is not invocable where other statutes expressly provide for cooperation on specific projects. Op. Att'y Gen. Jan. 18, 1966.

Can not invoke this chapter where other statutes expressly provide for corporation on specific projects where specific statutes control. Op. Att'y Gen. Jan. 18, 1966.

3. Taxation and bonds

Where agency created by intergovernmental agreement has power to issue revenue bonds payable from revenues derived from projects performed by agencies, the participating bodies only act administratively in passing on costs of services. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

28E.4 Agreement with Other Agencies

ATTORNEY GENERAL OPINIONS

1. Private agencies

Public funds may not be spent to support nonprofit private agencies' voluntary programs; however, services may be provided where an agreement of joint exercise of governmental power is warranted. 1976 Op. Att'y Gen. 724.

Section 28E.1 provides authority for state and local governments to enter into agreements with public or private agencies for joint or cooperative actions, which includes allocating tax funds. 1973 Op. Att'y Gen. 316.

2. Assessors

If city's population is less than 125,000, the city assessor and county assessor offices may be combined by appropriate ordinance and in conformance to joint governmental services agreement. 1971 Op. Att'y Gen. 252.

3. Community action councils

Cities have authority to cooperate with community action councils and may spend funds authorizing municipal enterprises subject to the following conditions: 1) ordinance must be necessary and enacted properly; 2) funds must be available and budgeted; and 3) public agencies must enter into cooperation agreements authorizing joint exercise of governmental powers. 1966 Op. Att'y Gen. 132.

6. Flood control projects

Although municipal corporations do not have express powers to cooperate with or defer to the natural resources council in flood control projects, flood control projects are subject to powers expressly given to the natural resources council and municipal corporation to cooperate with the resources council. Op. Att'y Gen. Jan. 18, 1966.

8. Housing Authorities

Municipalities may join together or cooperate by agreement in a low-rent housing project. 1972 Op. Att'y Gen. 632.

28E.4 Agreement with Other Agencies

ATTORNEY GENERAL OPINIONS

10. Recreation facilities

When the city enters into a 28E agreement with another public agency for the construction and administration of a theater or auditorium, it may contribute funds to the facility. 1976 Op. Att'y Gen. 445.

County conservation boards may participate with a town or other local unit of government to establish a recreational area upon land in which either has sufficient interest to establish such a project. 1974 Op. Att'y Gen. 595.

A school board and city council had authority to enter into lease from school district for land to be used as playground or recreational center. 1968 Op. Att'y Gen. 891.

11. Regional planning commission

Public monies controlled by regional planning commission need not be placed in public depositories. 1974 Op. Att'y Gen. 743.

County regional planning commission formed under Chapter 473A may join a multi-county regional planning commission under Chapter 28E. 1973 Op. Att'y Gen. 187.

12. Streets and highways

County board of supervisors may enter into agreement with private agency to construct and maintain secondary roads under the county's jurisdiction. 1971 Op. Att'y Gen. 140.

City and county may enter into a joint agreement to provide off-street parking on courthouse grounds. 1970 Op. Att'y Gen. 641.

Section 309.68, Code 1966, relating to intercounty highways does not authorize the construction of a road entirely within one county, and there appears to be no other express provision for the joint cooperation of adjoining counties under section 28E.1, Code 1966, in the construction and maintenance of such a road. 1969 Op. Att'y Gen. 158.

A county and city which controls its own bridge funds may enter into an agreement, under this chapter, to construct a bridge and approaches which intersect at their boundaries so long as the agreement does not require the county to expend more secondary road funds than required for the construction. 1967 Op. Att'y Gen. 307.

28E.4 Agreement with Other Agencies

ATTORNEY GENERAL OPINIONS

12. Streets and highways (cont.)

This chapter authorizes a city and county to improve a road borders city and the county, and which is one-half in the city and one-half in the county. 1966 Op. Att'y Gen. 134.

13. Public bidding

Contracts entered into by a county's solid waste commission does not have to be pursuant to public bid procedures, and a current contract can be renewed or renegotiated without public bidding. Op. Att'y Gen. Aug. 21, 1981.

28E.5 Specifications

1. In general

Section 28F.11 is not the exclusive authority for granting power of eminent domain to a Chapter 28E public agency and in many cases is not applicable. 1974 Op. Att'y Gen. 760.

Section 309.68, relating to intercounty highways, does not authorize the construction of a road entirely within one county, and there appears to be no other express provision for the joint cooperation of adjoining counties under section 28E.1 in the construction and maintenance of such a road. 1969 Op. Att'y Gen. 158.

28E.9 Status of Interstate Agreement

2. Soil conservation districts

This chapter permits an Iowa Soil Conservation District to enter into agreements with agencies of other states with like powers for the joint exercise of governmental powers granted to such agencies. 1970 Op. Att'y Gen. 563.

28E.11 Agency to Furnish Aid

1. Leases

A joint planning commission, such as the Central Iowa Regional Planning Commission, may own and lease a public transit building, maintenance and equipment facilities to the Iowa Regional Transit Corporation. 1971 Op. Att'y Gen. 68.

28E.12 Contract with Other Agencies

ATTORNEY GENERAL OPINIONS

4. Motor vehicles

Political subdivisions that have power to purchase motor vehicles may have the state car dispatcher to purchase vehicles on their behalf. 1971 Op. Att'y Gen. 115.

2. Bridges

A county and city which controls its own bridge funds may enter into an agreement, under this chapter, to construct a bridge and approaches which intersect at their boundaries so long as the agreement does not require the county to expend more secondary road funds than required for the construction. 1967 Op. Att'y Gen. 307.

3. Conservation commission

County conservation boards may participate with a town or other local unit of government to establish a recreational area upon land in which either has sufficient interest to establish such a project. 1974 Op. Att'y Gen. 595.

State Conservation Commission may contract with a county conservation board to pay a portion of the cost of developing snowmobile trails from the conservation fund. Id.

7. Sanitary sewer districts

Members of board of directors of county area solid waste agency are protected under provisions of Chapter 613A. 1975 Op. Att'y Gen. 345.

Contracts between sanitary sewer districts are permissible under Chapter 28E. 1974 Op. Att'y Gen. 592.

County can contribute money to fund a legal entity created under section 28E.1 for a governmental purpose authorized by law without holding an election; however, there is no statutory authority for a council of government created under section 28E.1 to hold an election to authorize the expenditure of funds for a solid waste disposal facility. 1974 Op. Att'y Gen. 411.

Joint agreement establishing sanitary disposal system authorized by section 28E.1. 1971 Op. Att'y Gen. 32.

28E.12 Contract with Other Agencies

ATTORNEY GENERAL OPINION

8. School districts

School district may contract with county and State Highway Commission to pay a portion of the cost of installation and energy for light fixtures placed at the entrance to its school property. 1971 Op. Att'y Gen. 110.

9. Streets and highways

This section provides sufficient authority for a city to contract with the State Highway Commission authorizing it to act as the city's agent under proper agreement to acquire right-of-way necessary to relocate streets and local service roads. 1969 Op. Att'y Gen. 92.

This chapter authorizes a city and county to improve a road which is on the boundary of the city and the county, and which is one-half in the city and one-half in the county. 1968 Op. Att'y Gen. 909.

28E.17 Transit Policy - Joint Agreement - City Debt

1. In general

Cities can share use of municipal transit system through chapter 28E. 1980 Op. Att'y Gen. 646.

CHAPTER 72

DUTIES RELATIVE TO PUBLIC CONTRACTS

72.1 Contracts for Excess Expenditures - Exception for Coal

1. Evasion of limitations

Attorney General Opinion:

Where the total cost of a project exceeds the statutory limitation, material and labor cannot be divided by splitting contracts. 1928 Op. Att'y Gen. 163.

2. Securities

Attorney General Op.inion:

Where public body has outstanding securities up to the legal limit, the securities may not be refunded by sale of refunding securities, but there may be an exchange of refunding securities for those outstanding where holders will surrender them for the refunding securities. 1936 Op. Att'y Gen. 10.

3. No-damage provision

Notwithstanding no-damage provision in a public construction contract, a delay may be so extreme as to be a kind not contemplated. Dickinson Co. v. Iowa Department of Transportation, 300 N.W.2d 112 (Iowa 1981).

Where construction contract contained no-damage provision and contractor showed delay was expected, and on basis of past dealings contractor did not anticipate a two-year delay, but there was no evidence that two-year delays were unknown or uncommon in highway construction, record was not sufficient to make jury question on contractor's claim that delay was not of kind contemplated by parties. Id.

72.2 Executive Council May Authorize Indebtedness

1. Construction and application

Attorney General Op.inion:

Bills for demurrage charges on state institution's supplies should be sworn to, indorsed by officer in charge of state institution, and passed on by board of control prior to payment. 1906 Op. Att'y Gen. 70.

CHAPTER 73

PREFERENCES

73.1 Preference Authorized - Conditions

1. Construction and application

Attorney General Opinions:

The United States Supreme Court's holding in Lafayette v. Louisiana Power & Light, 435 U.S. 387 (1978) does not prevent compliance by municipalities with the preference for Iowa products, produce, coal and labor statutorily required by Ch. 73. 1979 Op. Att'y Gen. 83.

Preference to home concerns over out-of-town concerns not required by state law. 1934 Op. Att'y Gen. 371.

Statute mandatory only where quality of goods is equal and available in Iowa at no extra cost. 1934 Op. Att'y Gen. 318.

If state board of education believes that the differences in quality of Iowa product significantly offsets the excess of price, the board is authorized to buy the Iowa product even though the price is a little higher. Id.

Statute does not require purchase of inferior goods but should be construed to give all reasonable or equitable benefits to Iowa products. 1928 Op. Att'y Gen. 199.

3. Contracts for public improvement

Section does not apply to contracts for public improvement. Keokuk Water Works v. City of Keokuk, 224 Iowa 718, 277 N.W. 291 (1938).

State, county and municipalities have authority to enter into valid agreements with the federal government that grants will be used to aid financing construction of public works and used in accordance with the conditions under which it was granted, giving preference to Iowa materials and products. Id.

73.2 Advertisements for Bids - Form

1. Construction and application

Attorney General Opinions:

School board not required to advertise for bids where equipment used was not reasonably adapted to use of Iowa coal. 1938 Op. Att'y Gen. 506.

Ordinance restricting advertised bids to local contractor would be a discrimination against the taxpayer and possible contrary to state law. 1934 Op. Att'y Gen. 371.

If there's no difference in the quality of materials from an out-of-town bidder, the low bid should be accepted. Id.

1. Construction and application (cont.)

Attorney General Opinions:

Statute does not require purchase of inferior goods but should be construed to give all reasonable or equitable benefits to Iowa products. 1928 Op. Att'y Gen. 199.

2. Specifications, sufficiency

Specifications calling for furnishing articles for municipal waterworks system by trade name or other identification marks were not invalid because it did not suggest that items were not accessible to all bidders. Keokuk Water Works v. City of Keokuk, 224 Iowa 718, 277 N.W. 291 (1938).

CHAPTER 73A
(Transferred from Chapter 23, Code 1991)

PUBLIC CONTRACTS AND BONDS

73A.1 Definitions

1. Public improvement

Attorney General Opinions:

County's Solid Waste Commission does not have to follow public bid procedures when entering into contracts. 1981 Op. Att'y Gen. 162.

Reconstruction of a county plat book system is not a public improvement within terms of Ch. 23 and thereof does not require a public hearing or competitive bids. 1974 Op. Att'y Gen. 759.

Public improvements, as defined by this section, does not include the acquisition of real estate. 1969 Op. Att'y Gen. 283.

A park board is an agency of the city and must, therefore, comply with statutory provisions regarding contracts for public improvements which cost more than $5,000. 1928 Op. Atty' Gen. 378.

2. Municipality

Attorney General Opinion:

The State Fair Board is a municipality and does not have to hold hearings or let bids for improvements or repairs that are in the best interest of the state, under $5,000, and approved by the executive council. 1965 Op. Att'y Gen. 349.

73A.2 Notice of Hearing

1. Municipality

Attorney General Op.inion:

Under "municipality" definition, the provision of this section does not control type of advertising required by sections 309.40, 311.5. 1938 Op. Att'y Gen. 731.

73A.2 Notice of Hearing

2. Buildings

Public hearing on plans and specifications for public improvements, competitive bidding and awarding contracts is not applicable to construction of industrial buildings under act authorizing city to construct for purpose of securing and developing industry. Green v. Mount Pleasant, 256 Iowa 1184, 131 N.W.2d 5 (1965).

2. <u>Buildings</u> (cont.)

Attorney General Opinions:

Compliance with statutory requirements of public hearing, approval and bonding is required when a school district employs the services of a construction manager for building a high school. 1974 Op. Att'y Gen. 598.

Installment payment of cost of construction is not authorized. 1940 Op. Att'y Gen. 538.

CHAPTER 306

ESTABLISHMENT, ALTERATION AND VACATION OF HIGHWAYS

306.1 Roads and Streets

1. Validity

State statutes used in condemnation for secondary road purposes and provide for notice to condemnees, opportunity to be heard and assessment of damages by impartial tribunal do not violate state constitutional requirement that private property not be taking for public use without just compensation. Cahill v. Cedar County, 367 F. Supp. 39 (N.D. Iowa 1973).

2. In general

Use of federal funds for construction of bridge over river did not mean that the road project for which landowners property was condemned involved use of federal funds because the bridge project was discrete from road building for which land was taken. Cahill v. Cedar County, 419 U.S. 806 (N.D. Iowa 1973).

If closing portion of secondary highway is not part of a construction program, the board of supervisors is not required to consult trustees of township. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Bridge is considered an integral part of road on which it is located. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

Status of local secondary road or highway is a question of law for the court. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

No person has vested right to keep highways open, therefor, highways may be altered, vacated or closed at any time. Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

Public highways are created by statute, either directly or through power delegated to subdivision of the state, and may be discontinued the same way; no individual can acquire rights to prevent the discontinuance of a highway. A & S v. Iowa State Highway Commission, 116 N.W.2d 496 (1962).

Attorney General Opinion:

The requirements set forth in section 313.2 for implementation of functional classification of the roads and streets of Iowa (306.1 through 306.8 of the code) have not been met through enactment of Chapters 36, 46, 61 nor 232, Acts of the 66th General Assembly, First Session. 1976 Op. Att'y Gen. 366.

County has no duty to plow secondary road designated as "snowmobile route" and can not be held liable for injuries. 1974 Op. Att'y Gen. 712.

2. In general (cont.)

State park roads are extensions of secondary roads and subject to concurrent jurisdiction of State Highway Commission and State Conservation Commission. 1963 Op. Att'y Gen. 211.

Designation by owner and acceptance by public is sufficient to establish road as part of secondary road system. 1955 Op. Att'y Gen. 28.

3. Primary and interstate roads

White citizens have no standing to assert state statutes for condemnation for secondary roads; statute provides that all U.S. citizens have same right in every state as enjoyed by white citizens to inherit, purchase, lease, sell, hold and convey personal property. Cahill v. Cedar County, 367 F. Supp. 39 (N.D. Iowa 1973).

Attorney General Opinions:

Safety rest areas are part of the public highways of Iowa, and there is prohibition against using part of the primary road fund to construct such rest areas. 1968 Op. Att'y Gen. 494.

Iowa State Highway Commission has exclusive authority to control access to those portions of National Interstate and Defense Highway System located within corporate limits of cities or towns. 1965 Op. Att'y Gen. 208.

Commission may also control access on extensions of Iowa primary highways within corporate limits of cities or towns in cooperation with the cities or towns. Id.

4. State park roads

Attorney General Opinion:

It is unlawful to consume beer or alcoholic liquors on state park roads, which under this section, are public highways. Op. Att'y Gen. March 31, 1965.

Lake Manawa State Park's roads are extensions of secondary roads and are subject to concurrent jurisdiction of the State Highway Commission and the State Conservation Commission. 1963 Op. Att'y Gen. 211.

5. Secondary roads

State statutes used in condemnations for secondary road purposes do not deny whites citizens of any rights, privileges or immunities secured by the Constitution. Cahill v. Cedar County, 367 F. Supp. 39 (N.D. Iowa 1973).

5. Secondary roads (cont.)

Board of supervisors were not required to consult trustees of township before deciding to close portion of secondary highway after bridge collapsed. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Highway retained status of local secondary road where there were no evidence showing formal steps had been taken by board of supervisors to establish old state highway. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Property owners' substantial contributions to improve secondary road still does not make the road a private, nor semi-private roadway, and property owners have no vested or contractual right to base objections against closing the road. Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

Attorney General Opinions:

City or town retains chief responsibility over street which is an extension of a secondary road despite county board of supervisor's participation in maintenance. 1970 Op. Att'y Gen. 476.

County may not maintain a road as part of its secondary road system unless legally a "public road." 1969 Op. Att'y Gen. 125.

City and county may enter into agreement under chapter 28E to construct bridge and approaches. 1967 Op. Att'y Gen. 307.

Strip of land used as access by public to cemetery part of secondary road system and must be maintained by board of supervisors. Op. Att'y Gen. Jan. 25, 1966.

6. Bridges

Bridge is considered an integral part of road on which it is located. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

Attorney General Op.inion:

A county and city which controls its own bridge funds may enter into an agreement, under this chapter, to construct a bridge and approaches which intersect at their boundaries so long as the agreement does not require the county to expend more secondary road funds than required for the construction. 1967 Op. Att'y Gen. 307.

7. Duty to repair and maintain

Attorney General Opinion:

County has no duty to plow secondary road designated as "snowmobile route" and can not be held liable for injuries. 1974 Op. Att'y Gen. 712.

306.1 Roads and Streets

7. Duty to repair and maintain (cont.)

City or town retains chief responsibility over street which is an extension of a secondary road despite county board of supervisor's participation in maintenance. 1970 Op. Att'y Gen. 476.

County may not maintain a road as part of its secondary road system unless legally a "public road." 1969 Op. Att'y Gen. 125.

Acceptance of a dedication is a prerequisite to the existence of a public road; and the board of supervisors' duty to repair and maintain a dedicated highway depends upon whether there was an acceptance of the dedication to the public. Op. Att'y Gen. Jan. 25, 1966.

If dedicated road has been accepted by the public then it is part of the secondary road system and is under the jurisdiction and control of Board of Supervisors. 1955 Op. Att'y Gen. 28.

9. Private roads

Attorney General Opinions:

County cannot spend public funds to maintain privately owned farm home lanes. 1990 Op. Att'y Gen. 74.

After passing an appropriate ordinance, county may maintain privately owned farm home lanes for fee sufficient to cover operating costs. Id.

306.3 Definitions of Terms

1. In general

State's statutory duties for primary road system and common law duty to make highways safe for traveling must be judicially reviewed on basis of torts to act as reasonable and prudent Department of Transportation would act in circumstances. State's reasonableness must be balanced according to danger imposed by outmoded device, increase in safety of new device or design, cost of upgrading, available resources, other known hazard to motorist, including other needs of highway system. Butler v. State, 336 N.W.2d 416 (Iowa 1983).

County has duty to establish, maintain, repair and rebuild secondary roads and bridges; county has power to vacate as well as establish roads. Mulkins v. Board of Supervisors, 330 N.W.2d 258 (Iowa 1983).

306.3 Definitions of Terms

1. In general (cont.)

Attorney General Opinions:

The requirements set forth in section 313.2 for implementation of functional classification of the roads and streets of Iowa (306.1 through 306.8 of the code) have not been met through enactment of Chapters 36, 46, 61 nor 232, Acts of the 66th General Assembly, First Session. 1976 Op. Att'y Gen. 366.

Iowa's National Guard, a state institution, is entitled to the services of the Highway Commission in the improvement of roads upon Camp Dodge reservation. 1971 Op. Att'y Gen. 124.

2. Bridges

Attorney General Opinions:

Bridge located on a state road within a state park is not a county bridge. 1934 Op. Att'y Gen. 169.

3. Intersections

County supervisor may determine how traffic on local county road shall stop or proceed at intersection of arterial and local county road. Arends v. De Bruyn, 217 Iowa 529, 252 N.W. 249 (1934).

Traffic at intersections on arterial highways has right-of-way over traffic on local county roads. Id.

306.3 Definitions of Terms

4. Private roads

Attorney General Opinions:

County cannot spend public funds to maintain privately owned farm home lanes. 1990 Op. Att'y Gen. 74.

After passing an appropriate ordinance, county may maintain privately owned farm home lanes for fee sufficient to cover operating costs. Id.

306.4 Jurisdiction of Systems

1. In general

Constructing and maintaining public highways are governmental functions. Genkinger v. Jefferson County, 250 Iowa 118, 93 N.W.2d 130 (1959).

Highways may be created through statute. Carstens v. Keating, 210 Iowa 1326, 230 N.W. 432 (1930).

1. In general (cont.)

Public only had an easement in county highway, but the city had fee title to city street. Clare v. Wogan, 204 Iowa 1021, 216 N.W. 739 (1927).

A street or highway is an easement, which involves only the right of each individual in the community to pass, with an incidental right of the public to maintain it. City of Dubuque v. Maloney, 9 Iowa 450 (1859).

Attorney General Opinion:

County boards of supervisors did not have authority to enter into contracts with State Highway Commission for it to construct secondary road projects using federal aid allocated to "farm to market roads." 1938 Op. Att'y Gen. 624.

2. Construction with other laws

County has power and duty to establish, repair, and rebuild secondary roads and bridges. County may vacate as well as establish roads. Mulkins v. Board of Supervisors, 330 N.W.2d 258 (Iowa 1983).

Rural subdivision road plans are approved by county engineers as well as board of supervisors, despite general authority of board of supervisors to direct the work of county engineers. Spencer's Mountain v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

Department of Transportation has exclusive jurisdiction over primary road system, including highway location and design. Curtis v. Board of Supervisors, 270 N.W.2d 447 (Iowa 1978).

Counties have statutory duty to keep bridges and their approaches, which form part of any secondary road system within their boundaries, in a reasonably safe condition. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

State has full authority and power over public highways. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Special statutes authorize State Highway Commission to close intersection of state and county roads with controlled-access facilities without resorting to procedure set up by general statutes for assessment and collection of damages by owner of land abutting vacated or closed road. Warren v. Iowa State Highway Commission, 250 Iowa 473, 93 N.W.2d 60 (1959).

General eminent domain statute had no application to condemnation for primary highway. Welton v. Iowa State Highway Commission, 233 N.W. 876, 211 Iowa 625 (1930).

2. Construction with other laws (cont.)

County auditor's duties to establish and vacate roads do not abridge the Board of Supervisors' authority to lay out, establish, alter or discontinue roads. Brooks v. Payne, 38 Iowa 263 (1874).

County Court's power to establish roads through the county is not affected by special acts which give the city authority to regulate and improve the lanes and alleys and regulate width of sidewalks. Knowles v. City of Muscatine, 20 Iowa 248 (1866).

Attorney General Opinions:

Counties can only close public roads which are under their jurisdiction and control; dedication and acceptance is required for a street in an unincorporated village to be public. 1980 Op. Att'y Gen. 645.

Any portion of a secondary road not vacated or closed must be maintained continuously by county board of supervisors. 1980 Op. Att'y Gen. 639.

Board of supervisors can close secondary road bridges over railroad crossings. 1974 Op. Att'y Gen. 479.

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. 1970 Op. Att'y Gen. 511.

Acceptance of a dedication is a prerequisite to the existence of a public road; and the board of supervisors' duty to repair and maintain a dedicated highway depends upon whether there was an acceptance of the dedication to the public. Op. Att'y Gen. Jan. 25, 1966.

If dedicated road has been accepted by the public then it is part of the secondary road system and is under the jurisdiction and control of Board of Supervisors. 1955 Op. Att'y Gen. 28.

Highway Commission and board or commission concerned have concurrent jurisdiction of highways on or adjacent to state lands. 1953 Op. Att'y Gen. 20.

Reimbursement of county road fund for money advances for farm-to-market construction is limited to amount actually spent. 1952 Op. Att'y Gen. 102.

3. Improvements

The proper public official may use stone within the limits of the highway or street in a reasonable manner to keep the highway or street in repair. Overman v. May, 35 Iowa 89 (1872).

4. Extent of authority

As a result of road condemnation, the public acquired the right to travel and the right to improve the grades of the road. Pillings v. Pottawattamie County, 188 Iowa 567, 176 N.W. 314 (1920). Without a statute directly confirming the board of supervisors' authority to construct a bridge across a navigable lake, which bed belongs to the state, the board had no authority to do so. Snyder v. Foster, 77 Iowa 638, 42 N.W. 506 (1889).

5. Primary roads

The Department of Transportation has exclusive jurisdiction over primary road system and power to determine location and design of highways in that system. Curtis v. Board of Supervisors , 270 N.W.2d 447 (Iowa 1978).

State has full authority and power over public highways. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502.

Jurisdiction and control over primary highways are vested in the State Highway Commission; the courts cannot approve or disapprove location, design, plans nor specifications of public highways. A & S v. Iowa State Highway Commission, 253 Iowa 1258, 116 N.W.2d 496 (1962).

Building interstate highways is a proper function of the state. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30 (Iowa 1960).

Code 1927, section 4755-b27 authorized the State Highway Commission to condemn a right-of-way to straighten a primary road. Jenkins v. Iowa State Highway Commission, 205 Iowa 523, 218 N.W. 258 (1928).

Highway authorities are responsible for placing opening in grades thrown in highways to permit surface water to escape in its natural course of flowage from higher to lower lands. Pate v. Rogers, 193 Iowa 726, 187 N.W. 451 (1866).

The authority to erect all bridges in the county which might be necessary and for public convenience is vested in the board of supervisors. Bell v. Foucth, 21 Iowa 119 (1866).

Attorney General Opinions:

Iowa State Highway Commission may authorize telephone company to place underground telephone cable along the untraveled portion of a controlled access highway within primary road system of the state. 1970 Op. Att'y Gen. 511.

The county engineer is responsible for immediate supervision and good-faith performance, whereas the county board of supervisors establish policy for road construction and maintenance, allocate funds and inspect work. 1948 Op. Att'y Gen. 150.

306.4 Jurisdiction of Systems

6. Secondary roads - in general

County has power and duty to establish, repair, and rebuild secondary roads and bridges. County may vacate as well as establish roads. Mulkins v. Board of Supervisors, 330 N.W.2d 258 (Iowa 1983).

District court might exercise power over charitable trust where testator devised his residuary estate to the county for use in construction of a paved highway. Blackford v. Anderson, 226 Iowa 1138, 286 N.W. 735 (1939).

Gravesites containing former owner or family member of land located beside county highway should be properly guarded by fence or other suitable barrier by proper authorities. Bidwell v. McCuen, 183 Iowa 633, 166 N.W. 369 (1918).

Former section 306.1 (repealed; see this section now) and sections 320.4 and 320.6 authorized the board to permit construction of a cattleway across a highway upon application and permission by the by the board. Davis v. Pickerell 139 Iowa 186, 117 N.W. 276 (1908).

Attorney General Opinions:

Counties can only close public roads under county jurisdiction and control. 1980 Op. Att'y Gen. 645.

There must be a dedication and an acceptance for a street or road in an unincorporated village to be public. Id.

The board of supervisors have the prerogative to close secondary road bridges over railroad crossing. 1974 Op. Att'y Gen. 479.

Counties are not prohibited by law from paying secondary road employees for overtime. 1972 Op. Att'y Gen. 491.

Supervisors may recover damage to secondary bridge from persons operating an overloaded truck, which is an illegal operation. 1970 Op. Att'y Gen. 509.

Extension of a farm-to-market highway was under the jurisdiction and control of board of supervisors. 1952 Op. Att'y Gen. 102.

The board of supervisors could accept the commissioner's advisory recommendation in full, in part or reject the entire proposed project. 1948 Op. Att'y Gen. 43.

The board of supervisors was given a wide discretion in performing its duties under this section (formerly section 309.1, repealed). 1938 Op. Att'y Gen. 184.

In accordance with statutory provisions, board of supervisors could abandon a county road and make it part of the township road system. 1928 Op. Att'y Gen. 246.

7. Maintenance and repairs, secondary roads

Counties have statutory duty to keep bridges and their approaches, which form part of any secondary road system within their boundaries, in a reasonably safe condition. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

This section (formerly section 309.1, repealed) did not impose a duty upon the board of supervisors to keep the highways in repair. Nolan v. Reed, 139 Iowa 68, 117 N.W. 25 (1908).

Evidence of a road which had not been fenced and had not remained in any definite location was insufficient to establish highway by prescription. Slack v. Herrick, 226 Iowa 336, 283 N.W. 904 (1939).

There must be a continued uninterrupted, adverse use for a statutory period to create "highway by prescription." Dugan v. Zurmuehlem, 203 Iowa 1114, 211 N.W. 986 (1927).

If there is a long continued use of land as a highway with the knowledge and consent of the proprietor, he will not be permitted to repudiate or deny "highway by prescription." Kinsinger v. Hunter, 195 Iowa 651, 192 N.W. 264 (1923).

Public may acquire right to use land for a highway by prescription. Schmidt v. Battle Creek, 188 Iowa 869, 175 N.W. 517 (1920).

Attorney General Opinion:

County boards of supervisors have duty to maintain secondary roads, under their jurisdiction, continuously in the best practicable condition and remove obstruction, including snow. 1980 Op. Att'y Gen. 639.

8. Establish, secondary roads

The county board of supervisors is a inferior tribunal and there is no presumption that it has jurisdiction to establish highway; such jurisdiction had to be shown through an action to enjoin it from removing a fence which was obstructing highway. Daveleaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

Board of supervisors could not establish a road as a private way, upon the land of one person, for the convenience of another who already had access to public highway. Richards v. Wolf, 82 Iowa 358, 47 N.W. 1044 (1891).

Board of supervisors of a county did not have authority to lay out a highway over land within the limits of a corporate town; jurisdiction of highways within corporate limits reside exclusively in the corporation. Gallaher v. Head, 72 Iowa 173, 33 N.W. 620 (1887).

8. Establish, secondary roads (cont.)

A road may be of public utility although it gives egress to only one person, who has no other public road; the public is entitled to a road to reach it and has no right to render it inaccessible. Johnson v. Board of Supervisors, 61 Iowa 89, 15 N.W. 856 (1883).

Attorney General Opinion:

Strip of land used as access by public to cemetery part of secondary road system and must be maintained by board of supervisors. Op. Att'y Gen. Jan. 25, 1966.

Board of supervisors' duty to repair and maintain a dedicated highway depends upon whether or not the public accepted the dedication. Id.

Attorney General Opinions:

Road authorities determine the depth of ditches on any particular road, and their discretion is limited only by implied prohibition against injuring trees or expressed prohibition against interfering with drainage. 1938 Op. Att'y Gen. 184.

Board of supervisors authorized to pay all or any part of damages covered by a "taking" of land from the general fund where establishment of road was petitioned for in the usual way; if the board ordered petitioners to pay part of the cost for establishing highway, the board had to pay the other part. 1916 Op. Att'y Gen. 83.

Board of supervisors did not have authority to permit public roads to be used for other purposes than that of general public travel. 1906 Op. Att'y Gen. 402.

9. Improvements and repairs, secondary roads

Landowner was not entitled to peremptory order directing county officials to repair underpass which was not essential to landowners use, but was necessary to make it safe, since it was presumed that officials would perform their duty to maintain safe highways. Licht v. Ehlers, 234 Iowa 1331, 12 N.W.2d 688 (1944).

In improving a road, a county should make sure that the surface water will flow its natural course; county has no right to collect surface water either on the road or from another's land. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

County has authority to grade and improve its public road, and to contract services and issue warrants to demand payment. Long v. Boone County, 32 Iowa 181 (1871).

9. Improvements and repairs, secondary roads (cont.)

Attorney General Opinions:

Board of supervisors could grant farmers permission to rock certain stretches of local county roads at expense of the farmers, but under county engineer's supervision. 1938 Op. Att'y Gen. 814.

County supervisors have the power to employ whomsoever it choose to maintain secondary road system and could employ township trustees to take care of local county road maintenance. 1932 Op. Att'y Gen. 179.

When improving highways, board of supervisors must remove waste material, not the property owner. 1925-26 Op. Att'y Gen. 171.

Board of supervisors had authority to improve part of a county road leading from corporation line of city to cemetery grounds, where plans, profiles and specifications were properly submitted and engineers' estimate showed improvements were necessary. 1918 Op. Att'y Gen. 513.

10. Vacation, secondary roads

County board of supervisors' vacation of a road pursuant to provisions of law, after application was filed, notice was given to objecting landowner, hearing was granted, and a thorough investigation was not arbitrary, capricious or unreasonable, but proper exercise of the board's discretion. Crowley v. Johnson County, 234 Iowa 142, 12 N.W.2d 244 (1944).

The provisions governing the procedure for county board of supervisors' establishment and alteration of highways are also applicable to the vacation of highways. Magdefrau v. Washington County, 228 Iowa 853, 293 N.W. 574 (1940).

County board's failure to serve notice of intention to abandon county road did not deprive abutting property owner of right to file claim for damages or appeal to the district court. Furgason v. Woodbury County, 212 Iowa 814, 237 N.W. 214 (1931).

In absence of showing that attempted dedication was ever accepted formally or by user, the board of supervisors was not authorized to vacate street shown on plat of unincorporated village. Bowersox v. Board of Supervisors, 183 Iowa 645, 167 N.W. 582 (1918).

Section 409.22 giving owners of any tract of land which has been platted into lots a right to vacate does not deprive boards of supervisors of their power to vacate highways. Chrisman v. Brandes, 137 Iowa 433, 112 N.W. 833 (1907).

Road terminating at countyline was established by independent action of the county board in which it was situated could be vacated by the independent action of such board. Lamansky v. Williams, 125 Iowa 578, 101 N.W. 445 (1904).

10. Vacation, secondary roads (cont.)

Attorney General Opinions:

Board of supervisors' power to vacate roads that had been established many years before but which had never been improved and used as roads was governed by predecessor to this section, not by section 306.48 (repealed, now see section 306.27). 1938 Op. Att'y Gen. 677.

When board of supervisors decide to vacate a county road already established, it must proceed strictly in accordance with former chapter. 1932 Op. Att'y Gen. 100.

Board of supervisors can abandon a county road and make it part of the township road system by proceeding according to statutory provisions. 1928 Op. Att'y Gen. 246.

11. Municipalities

Statute conditionally providing that jurisdiction and control over municipal street systems "shall be vested in the governing bodies of each municipality" is not intended to grant exclusive jurisdiction to municipalities in enforcement of motor vehicle laws, including weight restrictions; intent and purpose of statute is to establish jurisdiction and control of municipalities in establishing, altering and vacating roadways within municipal limits. Cedar Rapids v. State, 478 N.W.2d 602 (1991).

Since State did not have jurisdiction and control over road upon which motorist was traveling, it was not responsible for railroad grade crossing located on that road, and thus not liable for motorist's death. Harrington v. Chicago & Northwestern Transportation, 452 N.W.2d 614 (Iowa Ct. App. 1989).

Township officers must improve highways under their jurisdiction in such a way the surface waters will flow in natural drainage course. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

It was immaterial whether plaintiff was a city employee or whether work was within or outside the city in an action against the city for personal injuries to employees on work done by the county, at the direction of the city; where plaintiff was not city employee, there was no liability against the city. Teeters v. Des Moines, 173 Iowa, 154 N.W. 317 (1915).

Attorney General Opinions:

A county board, at its discretion, may use county road funds to finance work to establish, construct and or maintain extensions of secondary roads in cities and towns. 1970 Op. Att'y Gen. 476.

Despite any participation by the county board of supervisors, the city or town retains primary responsibility for maintenance of street which is an extension of secondary road. Id.

11. Municipalities (cont.)

Chapter 28E, relating to joint exercise of governmental powers, authorizes the City of Marshalltown and Marshall County to improve a road which is on the boundary of the city and county and which is one-half in the city and one-half in the county. 1966 Op. Att'y Gen. 134.

Construction plans of local township roads must be approved by board. 1937 Op. Att'y Gen. 711.

Where a township and city have a common boundary, the highway therein does not constitute part of the township road system, and the board of supervisors has no authority to grade and fill the culverts. 1925-26 Op. Att'y Gen. 166.

In view of section 389.1 (repealed, see now section 384.24, 384.37), the board of supervisors had no authority to alter or change any street within corporate city limits. 1923-24 Op. Att'y Gen. 110 .

12. State park roads

Attorney General Opinions:

Operating overloaded truck is illegal operation under section 321.475; damage to secondary bridge may be recovered by board of supervisors. 1970 Op. Att'y Gen. 509.

Board of supervisors has no control over highways outside of cities and towns on or adjacent to land belonging to the state or any state park or state institution; such jurisdiction is conferred on the board or commission in control of park or institution. 1963 Op. Att'y Gen. 211.

306.4 Jurisdiction of Systems

14. Contracts

Proper measure of damages was rental value of equipment, rather loss of profit where Highway Commission failed to have site prepared and refused to allow construction company to remove equipment to nearby site where it could have been used. Hallet Construction v. Iowa State Highway Commission, 261 Iowa 290, 154 N.W.2d 71 (1967).

Attorney General Opinion:

County board of supervisors may enter into agreement with private agency for construction and maintenance of secondary road under the county board's jurisdiction. 1971 Op. Att'y Gen. 140.

306.4 Jurisdiction of Systems

16. Effect of control

County was not relieved of liability on theory that word "authorized" in statute governing erection of stop signs at crossings was merely discretionary. Symmonds v. Chicago, M., St. P. & P. Ry., 242 N.W.2d 262 (Iowa 1976).

17. Delegation of authority

County may be held liable in tort, for commission or omission, where authority over secondary roads had been delegated to it. Symmonds v. Chicago, M., St. P. & P. Ry., 242 N.W.2d 262 (Iowa 1976).

State can delegate control of public highways within municipality to municipal authorities. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

The legalization of previous illegal acts by boards of supervisors to delegate power to their clerks to appoint commissioners to view proposed roads was constitutional. Bennett v. Fisher, 26 Iowa 497 (1868).

The board of supervisors could not use its powers with respect to highways to delegate its duties and powers in relation to the poor to the clerk of the District Court. Cooledge v. Mahaska County, 24 Iowa 211 (1868).

18. Rights of abutting owner

Owner of land adjoining highway acquired no right to it because public convenience or necessity had not required the appropriation of the full width. Rabiner v. Humboldt County, 224 Iowa 1190, 278 N.W. 612 (1938).

Owners of land abutting on highway is not entitled, as against the public, to access to their land at all points in the boundary between their land and the highway; it is sufficient if landowners have free and convenient access to their property and improvement. Wegner v. Kelley, 182 Iowa 259, 165 N.W. 449 (1916).

Abutting landowners have right to ingress and egress to their farms from the highway. Id.

When a public road is established, and the owner of the land through which it passes is given time to take down fences across it, other private citizens have no right, before the fences are down and road formally opened to the public, to undertake it upon themselves to open road and force their way across it. State v. Stoke, 80 Iowa 68, 45 N.W. 542 (1890).

306.4 Jurisdiction of Systems

19. Establishment by prescription

Where a highway or street in a municipal corporation has been acquired by prescription and fee remaining in the landowner, the landowner has right to all things connected to the land, subject only to the public's right of passage and the incidental right of repairing and keeping it in proper condition. Overman v. May, 35 Iowa 89 (1872).

The public acquires the right-of-way only, over lands appropriated for establishing a road; the right of property in the soil and timber remains in the original owner. Deaton v. Polk County, 9 Iowa 594 (1859).

20. Dedication - in general

Highways may be created by dedication. Carstens v. Keating, 210 Iowa 1326, 230 N.W. 432 (1930).

Permissive use of private land for highway does not amount to dedication. Culver v. Converse, 207 Iowa 1173, 224 N.W. 834 (1929).

Dedication of public highway does not have to be in writing and may be worked by an intention to dedicate followed by general public use without objection. Iowa Loan & Trust v. Board of Supervisors, 187 Iowa 160, 174 N.W. 97 (1919).

No particular language is necessary to constitute dedication of land for highway. Bidwell v. McCuen, 183 Iowa 633, 166 N.W. 369 (1918).

Lapse of time is not essential to the establishment of a highway by dedication, it is only necessary to show the dedication by the owner and the acceptance by the public. State v. Birmingham, 74 Iowa 407, 38 N.W. 121 (1888).

The dedication of land for a public highway confers a mere easement for public use as a highway, and the landowner retains the right to use the land for any lawful purpose compatible with the full enjoyment of the public easement. City of Dubuque v. Maloney, 9 Iowa 450 (1859).

Easement of highway gives individuals the right to pass and repass and to keep in repair, but no interest or legal possession in the soil, of which the fee is in the original owner. Id.

22. Acts constituting dedication

Where land is surveyed and a road is fenced off, intending to leave only the public the highway which he believes has been already established, the dedication is binding when third persons have incurred expenses by locating dwellings. State v. Waterman, 79 Iowa 360, 44 N.W. 677 (1890).

22. Acts constituting dedication (cont.)

A dedication has occurred where one induces another to inclose land, thus fencing a road which had been used by then for many years, promising to permit the road to be used as a highway so long as wanted. Hugh v. Haigh, 69 Iowa 382, 28 N.W. 650 (1886).

A dedication has occurred where a road supervisor, in opening a road, turned a little from the line of the road, at landowner's request, and thus road was traveled for 14 years. Ryan v. Kennedy, 62 Iowa 37, 17 N.W. 142 (1883).

A road which has been opened to public travel by landowners, worked and used for that purpose for more than 10 years with their acquiesce constitutes a highway established by dedication. Gerberling v. Wunnenberg, 51 Iowa 125, 49 N.W. 861 (1879).

Public's use of a road as a highway for more than 10 years, with knowledge, consent and permission of owner constitutes a dedication. Gear v. C.C. & D. Ry., 39 Iowa 23 (1874).

Where the public, with knowledge of owner, claims and continuously exercises the right of using land for a public highway for a fixed period of time equal to that fixed by statute for bringing actions of ejectment, the right to this highway is complete, as against such owner, unless the use was by favor, leave or mistake. Onstott v. Murray, 22 Iowa 457 (1867).

Attorney General Opinions:

In view of dedication and acceptance by public, strip of land used as access by public to cemetery was part of secondary road system and must be maintained by board of supervisors. Op. Att'y Gen. Jan. 25, 1966.

Duty of board of supervisors to repair and maintain public road is dependent upon acceptance and dedication. Id.

Highway may be established by proof of use and occupancy of the premises as a highway for a sufficient length of time which is uninterrupted and continued for a period of 10 years; fact that public monies is used for maintenance and repair of highway adds materially to the claim of the public right to use the highway. 1922 Op. Att'y Gen. 238.

27. Acceptance, dedication

No formal record is needed to establish acceptance of dedication of highway but improvements, assumption of control, or general public use may be sufficient. Bowersox v. Board of Supervisors, 183 Iowa 645, 167 N.W. 582 (1918).

Where a road was graded by the dedicator as required as a condition before its approval by the city counsel but later dragged twice and further graded, this was sufficient acceptance of dedication in view of its general use. Valley Junction v. McCurnin, 180 Iowa 510, 163 N.W. 345 (1917).

27. Acceptance, dedication (cont.)

Acceptance of highway dedication to public use may be proven by acts showing the intention of the public to use the road. Carter v. Barkley, 137 Iowa 510, 115 N.W. 21 (1908).
Mere dedication of land to the use of the public will not constitute it a public highway unless there has been an acceptance by the public. Id.

Where a culvert is put in an established highway by the officer having authority to work it, and the road is traveled until plaintiff fence it, the facts are sufficient to show an acceptance of such highway by the public. Devoe v. Smeltzer, 86 Iowa 385, 53 N.W. 287 (1892).

There must be an acceptance by public authorities to constitute a valid common-law dedication of land for a highway. State v. Tucker, 36 Iowa 485 (1873).

Town must accept road dedication before the town is responsible for repairing it. Manderschild v. City of Dubuque, 29 Iowa 73 (1870).

Acceptance may be shown by public use of road as highway and work done thereon by the proper authorities to repair the same. Id.

30. Counties, liability

Counties were not liable to travelers upon highway for negligence in construction, repair or maintenance of highway. Swatzwelter v. Iowa Southern Utilities, 216 Iowa 1060, 250 N.W. 121 (1933).

In absence of a statute, counties were not liable for negligence while engaged in governmental function of making road improvements. Town of Norwalk v. Warren County, 210 Iowa 1262, 232 N.W. 682 (1930).

County was not liable for its negligence in constructing and maintaining a culvert on a county road. Renner v. Buchanan County, 192 Iowa 184, 183 N.W. 320 (1921).

Attorney General Opinion:

County or its agent was not liable for damages caused to property owner through mere negligence in construction and improvement of highway. 1925-26 Op. Att'y Gen. 239.

31. Officers and employees, liability

Independent county culvert contract was liable to third persons for negligent injury. Kehm v. Dilts, 222 Iowa 826, 270 N.W. 388 (1937).

31. Officers and employees, liability (cont.)

The State, as well as, officers and agencies for which the Legislature has provided for the purpose of determining the necessity for and propriety of highway improvements in discharge of their duties are clothed with the exemption against claims for damages. Pillings v. Pottawattamie County, 188 Iowa 567, 168 N.W. 80 (1918).

A county employee is not liable for negligence in dumping gravel on a road as and where directed by a supervisor. Gibson v. Sioux County, 183 Iowa 1006, 168 N.W. 80 (1918).

Where the county is not liable for injuries caused by defected in highways being improved, the officers of the county are not liable either. Id.

County supervisors in charge of road construction are engaged in a public work and not individually liable for injuries caused by negligence. Snethen v. Harrison County, 172 Iowa 81, 152 N.W. 12 (1915).

Generally, counties and other quasi corporations were held not liable to private actions for the neglect of their officers in respect to highways, unless the statute created liability by express provisions. Soper v. Henry County, 26 Iowa 264 (1868).

35. Unreasonable exercise of power

The Highway Commission's general authority to design highways and provide for median strips and breaks in the highways may be interfered with by courts only if Commission's refusal to provide certain breaks is so arbitrary and unreasonable as to be beyond the state's police power. A & S v. Iowa State Highway Commission, 253 Iowa 1258, 116 N.W. 2d 496 (1962).

Where decision not to place breaks in a median strip opposite property of certain plaintiffs was not arbitrary and unreasonable where it was based on experience and opinions of experts in field of highway engineering. Id.

38. Private roads

Attorney General Opinion:

County cannot spend public funds to maintain privately owned farm home lanes. 1990 Op. Att'y Gen. 74.

After passing an appropriate ordinance, county may maintain privately owned farm home lanes for fee sufficient to cover operating costs. Id.

306.4 Jurisdiction of Systems

39. Railroads

Railroad had primary responsibility to reconstruct bridge over railroad tracks separating parcels of land owned by farmer, even though statutes vested control over secondary roads, bridges and culverts in the county. Soo Line Ry. v. Iowa Department of Transportation, 501 N.W.2d 525 (1993).

306.5 Continuity of Systems in Municipalities, Parks and Institutions

1. Construction and application

Attorney General Opinion:

County board of supervisors have authority to aid cities and towns in street repair of secondary road extension. 1974 Op. Att'y Gen. 522.

306.8 Transfer of Jurisdiction

1. In general

Attorney General Opinion:

As a result of road or street reclassification under this chapter, a transfer of control between two jurisdictions will take place regardless of an agreement; this section does not require money transfers be used for repair of transferred road. 1979 Op. Att'y Gen. 255.

306.9 Diagonal Roads

1. In general

Where land owners filed contested case complaint with Department of Transportation on July 26, 1976 challenging selection of route for highway and proceedings in such matter were still pending after September 1, 1977, decision on highway location was not finalized as of September 1, 1977, and was subject to this section relating to protection of farm land in relocation of highway. Pundt Agriculture v. Iowa Department of Transportation, 291 N.W.2d 340 (Iowa 1980).

306.10 Power to Establish, Alter or Vacate

1. In general

County has power and duty to establish, maintain, repair, and rebuild secondary roads and bridges; county also has power to vacate roads. Mulkins v. Board of Supervisors, 330 N.W.2d 258 (Iowa 1983).

Certiorari would not lie to challenge county board of supervisors resolution regarding location of freeway overpass in light of fact that board lacked authority to decide location, thus did not exercise judicial function in adopting resolution. Curtis v. Board of Supervisors, 270 N.W.2d 447 (Iowa 1978).

State has full authority and power over public highways. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Whether roads should be maintained or vacated by county is a question of policy to be determined by authorities responsible for the roads, not a question for the courts. Polk County v. Brown, 260 Iowa 301, 149 N.W.2d 314 (1967).

The auditor has no authority to establish highway where a claim for damages is filed before specified time and already paid. Ressler v. Hirshire, 52 Iowa 568, 3 N.W. 613 (1879).

Attorney General Opinions:

Fee title to streets in unincorporated villages remains with the abutting landowner, subject to an easement for the street. 1980 Op. Att'y Gen. 784.

Counties can only close public roads under county jurisdiction and control. 1980 Op. Att'y Gen. 645.

There must be a dedication and an acceptance for a street or road in an unincorporated village to be public. Id.

Duty of county board of supervisors to maintain road includes any portion of road not vacated and closed. 1980 Op. Att'y Gen. 639.

Under home rule, city may agree to reimburse county for damages paid by county for improvements made to city airport. 1974 Op. Att'y Gen. 534.

The decision to close secondary road bridges over railroad crossings rests with the board of supervisors. 1974 Op. Att'y Gen. 479.

County vacating a road not required to return roadbed to "farmable condition." 1970 Op. Att'y Gen. 640.

County may not maintain road as part of its secondary road system unless such road is legally a "public road"; board of supervisors has jurisdiction and control over all public roads within the county, and is obligated to repair and maintain those considered part of the system. 1969 Op. Att'y Gen. 125.

Roads and highways may be established as provided by statute, by dedication by the owner, or by prescription. 1955 Op. Att'y Gen. 28.

1. In general (cont.)

County board of supervisors did not have authority to establish highway over college grounds against the wishes of board of education and college authorities. 1911-12 Op. Att'y Gen. 844.

2. Abandonment

An established highway may be abandoned by the public and its rights therein lost. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

There was no vacation or abandonment where new section of road was built under easement of defendants' land and the county failed to maintain old road for nine years, there had not been any proceedings to vacate or close old road, and county never intended to abandon old road. Polk County v. Brown, 260 Iowa 301, 149 N.W.2d 314 (1967).

Intent and acts of public are important in determining whether county has abandoned easement for road. Id.

3. Vacation of roads

Attorney General Opinions:

County board of supervisors has authority to establish, alter or vacate roads under its jurisdiction, including section which consists of washed out bridge. 1978 Op. Att'y Gen. 554.

Pursuant to section 4.7, provisions of Chapter 364 (powers and duties of cities), a special provision, prevail over provisions of this chapter regarding vacation and disposal of municipal streets, which is a general provision. 1977 Op. Att'y Gen. 244.

Vacation proceedings are required when board of supervisors decides not to repair or replace an unsafe bridge on its secondary road system. 1976 Op. Att'y Gen. 431.

Vacation proceedings not required for unopened and unaccepted streets in an unincorporated village plat. 1975 Op. Att'y Gen. 126.

Vacation of a secondary road also constitutes a formal closing of the road. 1963 Op. Att'y Gen. 208.

306.10 Power to Establish, Alter or Vacate

4. Duty to maintain and repair

Attorney General Opinions:

Duty of county board of supervisors to maintain road includes any portion of road not vacated and closed. 1980 Op. Att'y Gen. 639.

County would be responsible for maintenance costs and claims arising from use of bridge placed in national register of restored sites, but secondary road funds could be expended for maintenance and repair only if the bridge remained part of the secondary road system. 1977 Op. Att'y Gen. 273.

County has no duty to plow secondary road designated as "snowmobile route" and can not be held liable for injuries. 1974 Op. Att'y Gen. 712.

5. Municipalities

City not permitted to open street upon which it has allowed owner of abutting trailer court to make valuable improvements because owner would suffer substantial damages and general public will not benefit from the opening. Sioux City v. Johnson, 165 N.W.2d 762 (Iowa 1969).

Adverse possession of street which will prevent city from asserting right to public use. Sioux City v. Johnson, 165 N.W.2d 762 (Iowa 1969).

State can delegate control of public highways within municipality to municipal authorities. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

306.11 Hearing - Place - Date

1. In general

Hearing on question of vacating highway must be genuine. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Attorney General Opinions:

County boards of supervisors authorized to grant permits for mining coal underlying a secondary road over which the county owns an easement for road purposes. 1979 Op. Att'y Gen. 417.

The decision to close secondary road bridges over railroad crossings rests with board of supervisors. 1974 Op. Att'y Gen. 479.

Vacation of a secondary road also constitutes a formal closing of the road. 1963 Op. Att'y Gen. 208.

306.12 Notice - Service

1. In general

Landowner who appeared at hearing on proposed closing did not waive jurisdiction nor damages where county's notice of proposes road closing failed to advise landowner of right to claim damages and that that right would be lost if not presented prior to hearing. Miller v. Warren County, 285 N.W.2d 190 (Iowa 1979).

County's notice of proposed road closing to adjacent landowner did not mention necessity of filing claim for damages, therefore, board's order to deny compensation was invalid. Id.

Where two portions of a tract of land considered as a single unit were operatively inaccessible to each other, except by passage over bridge on secondary road, and abutting property was vacated, there was a "severance" of the two portions for which landowners could recover damages. Braden v. Board of Supervisors, 261 Iowa 973, 157 N.W.2d 123 (1968).

Interested parties entitled to notice include property owners who will sustain special damages. Hansell v. Massey, 244 Iowa 969, 59 N.W.2d 221 (1953).

2. Abandonment or vacation

Section concerning question of vacating part of secondary road or payment for partial vacation, section 306A.6, was amended and not affected by sections 306.5 to 306.11 pertaining to power to establish, alter or vacate highway. Christensen v. Board of Supervisors, 253 Iowa 978, 114 N.W.2d 897 (1962).

Highway was properly vacated where it appeared that auditor certified that notice of intended abandonment of highway was published and served upon resident owners and occupants of lands. Paul v. Mead, 234 Iowa 1, 11 N.W.2d 706 (1943).

Supervisors were not required to abandon any part of highway already established in relocating road, but service on record owners was necessary to duly notify them as to which portion would be vacated. Polk v. Irwin, 190 Iowa 1340, 181 N.W. 689 (1921).

Chapter 233, legalizing proceedings of supervisors, did not destroy the effect of the abandonment where county board of supervisors established highways by general order, without proper notice, and afterwards such highways were abandoned. Hatch v. Barnes, 124 Iowa 251, 99 N.W. 1072 (1904).

Attorney General Opinion:

When vacating or closing a primary highway, the State Highway Commission must send the county board of supervisors a notice of time and place of hearing on such vacation by registered mail; State Highway Commission may be required to give such notice to any other state institution having an interest in such highway, also. 1952 Op. Att'y Gen. 99.

306.14 Objections - Claims for Damages

2. Evidence

Landowners were entitled to damages for vacation of road where evidence supported that land connected to vacated county road by property conveyed in quitclaim deed did not abut county road and landowners did not own land abutting vacated road. Neylan v. Clayton County, 390 N.W.2d 611 (Iowa Ct. App. 1986).

306.15 Purchase and Sale of Property

1. In general

Attorney General Opinions:

County board of supervisors and the Highway Commission are not authorized to trade land. 1969 Op. Att'y Gen. 213.

County board may acquire land for fair ground purposes when "necessary" under its general authority or after an election upon petition by 25% of qualified county voters. Id.

Board of supervisors has no authority to make conveyance for flowage easements over county-owned property. Op. Att'y Gen. Dec. 26, 1962.

306.19 Purchase or Condemnation of Right-of-way - Procedure - Closing Driveway - Alternative Access

1. Validity

Statutes available for use in condemnations for secondary road purposes, providing for notice to condemnees and opportunity to be heard, do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

2. In general

The legislature has "plenary" power over the highways and streets in that it may take any needed private property for its establishment, maintenance or improvement, but it must pay just compensation. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Code 1927, section 4755-b27 (see, now this section) authorized the State Highway Commission to condemn right-of-way to straightened primary road. Jenkins v. Iowa State Highway Commission, 205 Iowa 523, 218 N.W. 258 (1928).

2. In general (cont.)

Attorney General Opinions:

Absent bad faith, fraud or manifest abuse of power, the Iowa State Highway Commission may condemn private real estate for future highway purposes. 1970 Op. Att'y Gen. 605.

Where appropriated funds for acquiring maintenance facility site are available to the highway department, the executive council may use its power of eminent domain to assist the Highway Commission in acquiring such property. 1969 Op. Att'y Gen. 269.

County board may acquire land for fair ground purposes when "necessary" under its general authority or after an election upon petition by 25% of qualified county voters. 1969 Op. Att'y Gen. 213.

Board of supervisors had authority to condemn any land within county to obtain gravel with which to improve county highways regardless of whether the real estate to be condemned is a gravel pit. 1928 Op. Att'y Gen. 370.

In constructing primary roads, the county is not obligated to purchase additional right-of-way for purpose of taking care of fences built by abutting property owners. 1925-26 Op. Att'y Gen. 61.

3. Purchase of land

In performing its official duties, the State Highway Commission has authority under this section to purchase, rather than condemn land for highway purposes, and where land is acquired, it may be fairly assumed that the agreed compensation includes all detrimental elements incidental to the "taking." Rhodes v. Iowa State Highway Commission, 250 Iowa 416, 94 N.W.2d 97 (1959).

6. Private roads

Power to establish private roads is not included in the right of eminent domain. Bankhead v. Brown, 25 Iowa 540 (1868).

7. Farm-to-market roads

Attorney General Opinion:

Highway Commission could purchase or condemn necessary right-of-way to farm-to-market roads only when requested by county under section 310.22. 1940 Op. Att'y Gen. 323.

7. Farm-to-market roads (cont.)

Highway Commission's purchase or condemnation of right-of-way for farm-to-market roads for use and benefit of county pursuant to conveyance may be taken. 1940 Op. Att'y Gen. 323.

8. Relocation of highway

Relocation of highway some seven miles in length was not "immaterial change" in primary road within power of Highway Commission. Scharnberg v. Iowa State Highway Commission , 214 Iowa 1041, 243 N.W. 334 (1932).

10. Water courses

Changing natural course of stream to join river crossing under highway, thereby eliminating a bridge upon reconstruction of the highway,was within State Highway Commission's power of eminent domain; however, such power did not extend to the acquisition of an easement for relocation of the channel of the stream on private land. Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (Iowa 1972).

Attorney General Opinion:

The Highway Commission had authority to alter course of a stream or water course where deemed necessary to properly improve primary road and to acquire right-of-way for that purpose. 1944 Op. Att'y Gen. 143.

12. Extent of appropriation

Width of land to be taken for highway purposes is not controlled by civil engineer's opinions concerning amount necessary for drainage, snow control and amount necessary to afford innocent drivers opportunity to get out of the way of reckless drivers. In re Primary Road No. U.S. 30, 230 Iowa 1069, 300 N.W. 287 (1941).

18. Damages - in general

Although legislature has empowered the State Highway Commission to aid in the construction of viaducts on state highways in cities it has not authorized the commission to do so without liability for property taken or damaged. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Destroying or interfering with an abutting owner's access or right of access by a city in constructing a public improvement, such as a viaduct, is a direct injury and damage to owner's special right of access. Id.

306.19 Purchase or Condemnation of Right-of-way - Procedure - Closing Driveway - Alternative Access

18. Damages - in general (cont.)

Damages to land from taking highway right-of-way through it should be considered as whole, not as separate items. Dean v. State, 211 Iowa 143, 233 N.W. 36 (1930).

306.21 Plans, Plats and Field Notes Filed

1. Construction and application

Board of supervisors' general authority to direct the county engineer's work does not nullify the specific statutory provisions requiring approval of rural subdivision road plans by county engineer, as well as board of supervisors before a subdivision road becomes part of the county road system. Spencer's Mountain v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

Board of supervisors lacks statutory authority to bind county engineer by its judgment on road engineering standings; section 358A.3, which gives the board authority to regulate land use, does not give it power to adopt engineering standards which override the county engineer's authority to pass subdivision road plans. Id.

In the absence of any record of the platting of specified area, any survey or field notes, or any claim that lines were run or the road located on the ground by any monuments, a road record with a general road description of area was too indefinite to show legal establishment of a highway. Cohen Brothers Iron & Metal v. Shackleford Brick, 197 Iowa 674, 198 N.W. 318 (1924).

Plat of road is sufficient if it was referred to in the records of the County Court's adjudication confirming establishment of the road, even thought the plat was not referred to or identified in the commissioner's report. State v. Prine, 25 Iowa 231 (1868).

Attorney General Opinions:

County board of supervisors has a duty to approve plat when request meets all state, county and municipal subdivision regulations. 1979 Op. Att'y Gen. 454.

Cities have authority to impose requirements on certain rural subdivisions pursuant to this section and sections 409.14 and 558.65. 1979 Op. Att'y Gen. 96.

Chapter 358A does not provide board of supervisors with authority to adopt subdivision ordinances without notice and hearing. Op. Att'y Gen. Nov. 15, 1978.

Final plat of rural subdivision bearing board's approval and meeting requirements of county zoning ordinance may be recorded, despite county engineer's disapproval. 1978 Op. Att'y Gen. 562.

Board of supervisors cannot compel county engineer to approve a subdivision plat. Id.

1. Construction and application (cont.)

If subdivision platting complies with provisions of section 409.1 and requirements are met, the recorder must record the plat. 1969 Op. Att'y Gen. 311.

Board of supervisors may approve plat and at the same time disapprove roads in the plat. 1964 Op. Att'y Gen. 73.

3. Rejection of plat

The board of supervisors and county engineer approvals are needed before a rural subdivision road becomes part of the secondary road system; engineer has authority to disapprove plans even when they meet engineering standards acceptable by the board of supervisors. Spencer's Mountain v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

County engineer's decision not to approve a serpentine road plan in a rural subdivision because of safety and maintenance considerations was not an abuse of discretion, even if a reasonable engineer may have reached a different conclusion. Id.

Attorney General Opinions:

If board of supervisors disapprove roads in a plat, the road can not be dedicated to the secondary road system. 1969 Op. Att'y Gen. 311.

Board of supervisors does not have authority to require or accept a bond conditioned upon the fulfillment of certain street requirements, but the may reject a proposes plat where the streets platted do not comply with reasonable requirements. 1964 Op. Att'y Gen. 73.

4. Review

The Supreme Court will not substitute itself for the State Highway Commission in the planning and constructing of highways or commission's activities unless in it acts inconsistent with its statutory authority or unless fraud or illegality is shown. Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (1972).

306.22 Sale of Unused Right-of-way

1. In general

Attorney General Opinions:

Sale of county real property is not required according to procedures set out in section 332.3(13) (repealed, see now, section 331.361). 1980 Op. Att'y Gen. 748.

The executive council may approve Iowa State Highway Commission's contract to sell unused right-of-way with restriction; money received shall be credited to the primary road fund which may be used to purchase additional right-of-way. 1970 Op. Att'y Gen. 549.

Where there is full compliance with all provisions of this section, bids have been solicited and none submitted or all bids rejected, the Highway Commission may properly enlist the services of real estate broker and pay a reasonable fee or commission in connection with a proposed sale of excess land under commission's jurisdiction. Id.

County board of supervisors and the Highway Commission were not authorized to trade land. 1969 Op. Att'y Gen. 213.

Executive council's lack of power to adjudicate claim of third party is adverse to approval of the sale of land. Op. Att'y Gen. March 8, 1965.

306.24 Conditions

1. In general

State's restrictive authority prohibiting use of property which would interfere with public highway was not arbitrary and unreasonable. Fort Dodge, D.M. & S. Ry. v. American Community Stores, 256 Iowa 344, 131 N.W.2d 515 (1965).

3. Use interfering with highway

Definite rules for future use of property could not be established through declaration of party's rights under deeds containing restrictions prohibiting use of property which interferes with public highway. Fort Dodge, D.M. and S. Ry. v. American Community Stores, 256 Iowa 1344, 131 N.W.2d 515 (1965).

No preexisting highway access rights in vendor where he consented to restriction in deed prohibiting his interference with use of public highway. Id.

306.27 Changes for Safety, Economy and Utility

1. In general

County board of supervisors have only such powers as are expressly conferred by statute or necessarily implied. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Attorney General Opinions:

Under this section, the county board of supervisors has discretion to change the course of any watercourse, stream, or dry run to prevent encroachment on highway. 1956 Op. Att'y Gen. 172.

The legislature intended that the board of supervisors' power to abandon would apply only to parts of a changed highway which were no longer needed, not an affirmative authority to abandon any highway. 1938 Op. Att'y Gen. 808.

2. Diverting waters

Changing natural course of stream to join river crossing under highway, thereby eliminating a bridge upon reconstruction of the highway,was within State Highway Commission's power of eminent domain; however, such power did not extend to the acquisition of an easement for relocation of the channel of the stream on private land. Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (Iowa 1972).

County board of supervisors may be enjoined from unlawfully diverting surface waters from their natural source and upon landowner's property. Schwab v. Behrendt, 13 N.W.2d 692 (1944).

County liable for damages to landowner caused by cutting banks of drainage ditch while completing highway improvement. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Landowner could not restrain supervisors from building culvert across road to drain surface waters in natural course. Schwartz v. Wapello County, 208 Iowa 1229, 227 N.W. 91 (1929).

Where landowner, without objection, permit highway grade to be established and remain for 12 years to change natural flow of surface water from his land, landowner must be found to have consented and can not open the grade. Geneser v. Healey, 124 Iowa 310, 120 N.W. 66 (1904).

Diverted natural stream running across certain land by consent of all interested parties and a channel conducted along one side of an adjacent highway, where it had run for 10 years, will be regarded as a natural channel. Mier v. Kroft, 80 N.W. 521 (Iowa 1899).

Road supervisors are liable for diversion of stream by negligent construction of crossing, just as municipal corporations are liable for negligent construction of improvements and street repairs. McCord v. High, 24 Iowa 336 (1868).

306.27 Changes for Safety, Economy and Utility

2. Diverting waters (cont.)

In repairing highway, highway supervisor was held personally liable for damages to landowner where an embankment was substituted for a bridge at stream crossing, cutting off the stream from land through which it was accustomed to flow.

Attorney General Opinion:

Counties were not liable to landowners for alleged damages caused from change in course of creek in connection with highway improvements, provided that boards of supervisors complied with statutory provision in making change. 1932 Op. Att'y Gen. 140.

3. Changing course of highway

Highway Commission was not authorized to issue bonds voted for "the primary roads of the county" to be used to improve existing primary road under its power to make "changes in course." Harding v. Board of Supervisors, 213 Iowa 560, 237 N.W. 625 (1931).

This section permits building a three-mile cut-off in a state highway. Jenkins v. Iowa State Highway Commission, 205 Iowa 523, 218 N.W. 258 (1928).

State Highway Commission authorized under statute to condemn right-of-way to straighten primary road. Id.

This section allowed road which was changed to avoid bridging a stream to be constructed within a reasonable distance, not necessarily immediately on the bank of the stream. Stahr v. Carter, 116 Iowa 380, 90 N.W. 64 (1902).

4. Widening highway

This section confers jurisdiction upon supervisors to widen roads. Carstons v. Keating, 210 Iowa 1326, 230 N.W. 432 (1930).

Attorney General Opinion:

Land may be condemned to widen highway for any reason whenever such condemnation is advisable. 1919-20 Op. Att'y Gen. 261.

306.28 Appraisers

1. Validity

State statutes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, 367 F. Supp. 39 (N.D. Iowa 1973).

Statutes for condemnation of secondary roads do not specify elements to be considered in determining compensation and does not constitute denial of due process. Id.

2. Construction and application

Board of supervisors' condemnation proceedings to secure land for a highway and obtain estimate from appraisers does not authorized it to fix damages lower than appraisal, absent specific provision for decreasing damages. Daniel v. Clarke County, 194 Iowa 601, 190 N.W. 25 (1922).

Attorney General Opinion:

County Board of Supervisors must follow provisions in Chapters 471 and 472, relating to eminent domain, to condemn tract of land which is to provide suitable material for highway improvement; demoninating such tract 'right-to-way' does not permit board to proceed under section 306.22. 1953 Op. Att'y Gen. 84.

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS

306A.1 Declaration of Policy

1. In general

Commerce commission retains jurisdiction to determine controversies between railroads and highway authorities dealing with railroad crossings. Chicago R.I. & P. Ry. v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

Establishing a new controlled-access highway through land does not deprive landowner of right of access to land from new highway. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Regulating a means of access is not a "taking." Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

2. Law governing

This chapter is controlling when in conflict with Chapter 489 (now Chapter 478), pertaining to location of utility lines on highways outside of cities and towns. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

3. Telephone cable

Attorney General Opinion:

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner holding underlying fee. 1970 Op. Att'y Gen. 511.

306A.3 Authority to Establish Controlled-Access Facilities

1. In general

City has right to control access to primary highways within its corporate limits only with State Highway Commission's cooperation. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Highway Commission's regulation of access to highway must be reasonable. Fort Dodge, D.M. & S. Ry. v. American Community Stores, 256 Iowa 1344, 131 N.W.2d 515 (1965).

Vendor's ownership of land was restricted by deed provisions that premises could not be used to interfere with use of public highway, endanger public safety, or to materially damage adjacent property. Id.

306A.3 Authority to Establish Controlled-Access Facilities

1. In general (cont.)

Highway authority's right to regulate, restrict or prohibit use of controlled-access facilities includes construction and maintenance of highways and traffic flow. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Attorney General Opinions:

Highway commission may relocate existing secondary road without consent of county board of supervisors when relocation is a realignment to eliminate grade crossings done in conjunction with construction of a controlled-access primary highway. 1971 Op. Att'y Gen. 213.

Iowa State Highway Commission has exclusive authority to control access to portions of National Interstate and Defense Highway System located within corporate limits of cities or towns. 1965 Op. Att'y Gen. 208.

The commission may also control access on extensions of Iowa primary highways within corporate limits of cities or towns with cooperation of the cities or towns. Id.

2. Utility facilities

Utility facilities may not be constructed along controlled-access interstate highways without consent of the State Highway Commission; commission also has right to relocate or remove already existing utility facilities along such right-of-ways. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

3. Police power

It is within Iowa Department of Transportation's police power to construct uncut medians in front of gasoline service station. Ginn Iowa Oil v. Iowa Department of Transportation, 506 F. Supp. 967 (N.D. Iowa 1980).

Where there were no pre-existing highway access rights in vendor or his successors in interest, and vendor consented to restriction in deed prohibiting interference with use of public highway, vendor's complaint about enforcing restriction is not justified. Fort Dodge, D.M. & S. Ry. v. American Community Stores, 256 Iowa 1344, 131 N.W.2d 515 (1965).

Control of access to highway is a necessary exercise of police power. Id.

306A.3 Authority to Establish Controlled-Access Facilities

4. Denial of access

Landowners, as against the public, are not entitled to access to their land at all points between it and the highway. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Highway access is not denied where it would be inconvenient and circuity of travel for some customers. Fort Dodge, D.M. & S. Ry. v. American Community Stores, 256 Iowa 1344, 131 N.W.2d 515 (1965).

306A.6 New and Existing Facilities - Grade-Crossing Eliminations

1. In general

Construction of bridges to span existing gully and creek for controlled-access highway with grant of private interconnecting route to property owners under bridges did not constitute "grade separation," therefor, commission acted within its authority and jurisdiction. Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

Vacation of portion of secondary road to construct interstate highway became effective on date board of supervisors, after hearing, entered order. Christensen v. Board of Supervisors, 253 Iowa 978, 114 N.W.2d 897 (1962).

This section is procedural only and does not grant owners of land abutting on vacated secondary roads a new remedy. Id.

State Highway Commission may close off state and county roads at their intersections with controlled-access facilities under the authority granted by special statutes (sections 306A.1 - 306A.9) and without resorting to the procedures set up by the general statutes (sections 306.1 - 306.31). Warren v. Iowa State Highway Commission, 250 Iowa 473, 93 N.W.2d 60 (1959).

Prohibiting left turns and U turns to cross highway, except at designated points where there are no raised bars, did not constitute "taking" within the law of eminent domain. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Attorney General Opinion:

Realignment to eliminate grade crossings can be done in conjunction with the construction of a controlled-access primary highway. 1971 Op. Att'y Gen. 213.

3. Closing roads

Department of Transportation has authority to close county roads at right-of-way boundary line of freeway. Curtis v. Board of Supervisors, 270 N.W.2d 447 (Iowa 1978).

306A.7 Authority of Local Units to Consent

1. Construction and application

Highway Commission may enter into agreement with United States that federal regulations would govern construction of utility facilities along and upon right-of-ways of interstate highways. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

This section permits but does not coerce authorized cities, towns and highway authorities having jurisdiction over state highways to enter into agreements with each other, or the federal government concerning the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways. Warren v. Iowa State Highway Commission, 250 Iowa 473, 93 N.W.2d 60 (1959).

Attorney General Opinions:

Department of Transportation and cities may enter into valid agreements to improve primary road extensions as controlled-access facilities which includes regulating parking. 1978 Op. Att'y Gen. 699.

Cities and State Highway Commission may enter into joint public improvement project to establish and relocate local city streets. 1969 Op. Att'y Gen. 92.

Section 306A.8 Local Service Roads

1. In general

Occupants of dwelling were deprived of free and convenient access to highway where the only access to the highway was over driveways between gas station and highway, therefor, State Highway Commission should permit driveway to such dwelling or pay just compensation for the "taking" of the right to access. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

In the interest of public safety, the State Highway Commission has right to regulate means of access to abutting property from highway so long as such regulation is reasonable and balances public and private interests. Id.

A driveway should be permitted from a residential site to the highway or just compensation paid for the "taking" of right to access where the only means of ingress and egress for such residential site would be by conducting a private service road parallel to highway. Id.

Attorney General Opinion:

State Highway Commission's authorization, by Chapter 306A, to expand primary extensions include relocations, or reconstructions, or establishments of local service streets. 1969 Op. Att'y Gen. 92.

Section 306A.8 Local Service Roads

2. Authority of highway commission

Commission is entitled to deference because of its superior knowledge of highway and traffic concerns, but its authority is not above that of the courts. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

306A.10 Notice to Relocate - Costs Paid

1. Construction and application

Generally, utility poles and lines must be relocated at owner's expense. Iowa Electric Light & Power v. Iowa State Highway Commission, 231 N.W.2d 597 (Iowa 1975).

Highway authority's full supervision over all controlled-access highways, including planning and regulation, also gives them right to determine location of utility facilities along right-of-ways of such highways. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

2. Costs

Public utilities have right to use highway right-of-ways, and Legislature can regulate use and require relocation at utility's costs. Edge v. Brice, 253 Iowa 710, 113 N.W.2d 755 (1962).

Costs of relocating public utility facilities is a part of constructing highways. Id.

CHAPTER 306B

OUTDOOR ADVERTISING ALONG INTERSTATE HIGHWAYS

306B.3 Rules

1. In general

Attorney General Opinion:

Highway commission can promulgate rules more restrictive than those applicable in the general non-interstate highway systems of the state regarding the nature and safety of this highway system. 1968 Op. Att'y Gen. 754.

306B.6 Misdemeanor

1. In general

Attorney General Opinion:

Advertising devices, including those mounted upon trailers, are prohibited from being placed upon right-of-way of any public highway. 1972 Op. Att'y Gen. 612.

"Mobile promoters" are subject to provisions of sections 306B.1 and 306C.10, whichever stricter; issuance of annual license required by section 321.123 for such trailer does not exempt it from the provisions of Iowa law pertaining to advertising devices. Id.

CHAPTER 307

DEPARTMENT OF TRANSPORTATION

307.1 Definitions

1. In general

Acts which created former State Highway Commission did not impose liability upon county for injuries caused by negligence in road construction. Snethen v. Harrison County, 172 Iowa 81, 152 N.W. 12 (1915).

2. Authority of commission

Former State Highway Commission and Motor Vehicle Department were agents of statutes governing highways and without authority to act, except as authorized by statute. Merchants Motor Freight v. Iowa State Highway Commission, 32 N.W.2d 773 (1948).

307.2 Department of Transportation

1. Utility placements

Department of Transportation (DOT) has authority over utility placements on freeway or interstate right-of-way; however, the DOT does not have authority to require permits and conformance with its specifications over utility companies on other highways. State v. Iowa Public Service, 454 N.W.2d 585 (1990).

District court erred in ordering utility to remove or reconstruct utility lines to comply with DOT rules, where public utility, which complied with rules and regulations of Utilities Board, was not required to comply with DOT's rules and regulations when constructing electric lines and gas pipelines within state highway right-of-way. Id.

307.26 Rail and Water

1. In general

General and special purposes of this section enumerating duties and responsibilities of railroad transportation division, are for a general plan of safety rather than determination of liability. Hines v. Illinois Central Gulf Rd., 330 N.W.2d 284 (Iowa 1983).

This section was not intended to provide "before the fact" determinations of dangerous railroad crossings nor change common law principles concerning liability. Id.

Plaintiff who alleged that railroad crossing was extra hazardous because second train blocked view, preventing motorists from seeing oncoming train, was entitled to prove extra hazardous nature of crossing. Sullivan v. Chicago & Northwestern Transportation, 326 N.W.2d 320 (Iowa 1982).

307.26 Rail and Water

2. Scope of authority

Attorney General Opinion:

The Department of Transportation has no authority to enter into agreement resulting in State's acquiring ownership of all or a portion of a railroad branch line. 1976 Op. Att'y Gen. 646.

CHAPTER 307A

TRANSPORTATION COMMISSION
307A.2 Duties

2. In general

General Assembly has empowered Department of Transportation (DOT) Highway Division to make recommendations regarding location of highway but has empowered the DOT Commission to decide which alternative proposed should be adopted. Pundt Agriculture v. Iowa Department of Transportation, 291 N.W.2d 340 (Iowa 1980).

In absence of fraud, illegality or derogation of statutory authority, the Highway Commission cannot be interfered with when performing official duties for state. Hoover v. Iowa State Highway Commission, 207 Iowa 56, 222 N.W 438 (1928).

Legislation adopted since 1913 abolished the distinction between county and township bridges, and subjected supervisors in construction of bridges within the county to control by the State Highway Commission. Post v. Davis County, 196 Iowa 183, 191 N.W. 129 (1922).

Attorney General Opinions:

Road use tax money may be used for bikeway construction where the path will be built on same right-of-way as a motor highway. 1977 Op. Att'y Gen. 31.

In preparation of plans for a bridge by an engineer or in making changes and modifications, the budget director has no authority to relax, change or modify standard specifications of highway commission. 1925-26 Op. Att'y Gen. 480.

4. Duties - in general

State Highway Commission and its employees have authority concerning size, weight and load of vehicles; they have no authority to enforce laws relating to registration and licenses. Merchants Motor Freight v. Iowa State Highway Commission, 32 N.W.2d 773 (1948).

The State Highway Commission is liable for property taken or damaged in construction of viaducts on state highways in cities. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

State Highway Commission is not a governing body in any county but merely an agency of state for certain purposes. Fuller & Hiller Hardware v. Shannon & Willfong, 205 Iowa 104, 215 N.W. 611 (1927).

Attorney General Opinions:

Highway commission has duty and authority to advise counties concerning snowmobile signs, which are limited to roadways where operation is "without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic." 1974 Op. Att'y Gen. 712.

307A.2 Duties

4. Duties - in general (cont.)

Iowa State Highway Commission has exclusive authority to control access to those portions of National Interstate and Defense Highway System located within corporate limits of cities or towns. 1965 Op. Att'y Gen. 208.

Commission may also control access on extensions of Iowa primary highways within corporate limits of cities or towns in cooperation with the cities or town. Id.

CHAPTER 309

SECONDARY ROADS

309.3 Secondary Bridge System

SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

1. In general

Attorney General Opinions:

Counties may assist certain cities or towns with bridge problems. 1973 Op. Att'y Gen. 147.

Secondary bridge system includes both bridges and culverts; under section 343.11 washed out bridges and culverts can be repaired or reconstructed. 1936 Op. Att'y Gen. 278.

Bridge located on state road within state park is not part of county bridge system. 1934 Op. Att'y Gen. 169.

On vacation of highway, title to bridge remains in county. 1930 Op. Att'y Gen. 333.

3. Damages to bridges

Attorney General Opinion:

Operating overloaded trucks is illegal under section 321.475, and board of supervisors may recover damages to secondary bridge. 1970 Op. Att'y Gen. 511.

4. Railroads

Railroad had primary responsibility to reconstruct bridge over railroad tracks separating parcels of land owned by farmer, even though statute vested control over secondary roads and all bridges and culverts in the county. Soo Line Ry. v. Iowa Department of Transportation, 501 N.W.2d 525 (1993).

309.10 Use of Farm-to-Market Road Fund

1. In general

Attorney General Opinions:

County boards of supervisors may spend farm-to-market road funds for road and bridge construction without submitting resolutions to voters. Op. Att'y Gen. May 21, 1965.

Any farm-to-market road funds not needed to match federal aid may be used for general secondary road purposes. 1942 Op. Att'y Gen. 5.

309.17 Engineer - Term

COUNTY ENGINEER

2. In general

Attorney General Opinions:

County boards of supervisors shall establish policy for road construction and maintenance, allocate funds and inspect work, generally leaving immediate supervision and responsibility for good-faith performance in hands of county engineer. 1948 Op. Att'y Gen. 150.

Mandatory that board employs registered civil engineer. 1934 Op. Att'y Gen. 64.

6. Contracts

Attorney General Opinions:

Corporation in which county engineer is majority stockholder is prohibited from bidding on contracts for highway construction and maintenance in engineer's own county as well as other counties. 1970 Op. Att'y Gen. 479.

County engineer cannot contract for work in other counties. 1919-20 Op. Att'y Gen. 257.

309.21 Supervision of Construction and Maintenance Work

1. In general

Attorney General Opinions:

Final authority for secondary road maintenance rests with county board of supervisors, which establishes policy for and accepts county engineer's recommendations. 1979 Op. Att'y Gen. 424.

County boards of supervisors shall establish policy for road construction and maintenance, allocate funds and inspect work, generally leaving immediate supervision and responsibility for good-faith performance in hands of county engineer. 1948 Op. Att'y Gen. 150.

Contracts by Highway Commission and board of supervisors for secondary road construction procuring federal aid authorized for farm-to-market roads is prohibited. 1938 Op. Att'y Gen. 624.

2. Discretion

Attorney General Opinion:

Board of supervisors cannot compel county engineer to approve a subdivision plat. 1978 Op. Att'y Gen. 549.

309.21 Supervision of Construction and Maintenance Work

4. Liability - in general

County officials and agents have same immunities as county. Swartzwelker v. Iowa Southern Utilities, 216 Iowa 1060, 250 N.W. 121 (1933).

If bridge on township road is not a county bridge, the county is not liable for negligence of

its officers in constructing it. Elgin v. Guthrie County, 194 Iowa 924, 188 N.W. 778 (1922).

Counties are not liable for injuries to travelers caused by obstructions left on bridges by contractors who constructed bridges. Packard v. Voltz, 94 Iowa 277, 62 N.W. 757 (1895).

Approaches to bridge are part of bridge, and where bridge is a county bridge, the county is liable for construction and maintenance of approaches to the same degree that its liable for the bridge. Albee v. Floyd County, 46 Iowa 177 (1877).

County is not released from liability for negligence in construction or maintenance of bridge even if part of the cost of construction was contributed by another corporation. Id.

5. Contractor's liability

County will not be estopped from claiming damages for default against engineer appointed by the county to supervise bridge construction where erection of less valuable structures was permitted. Modern Steel Structural v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

County cannot be estopped by acts of its representative appointed to supervise construction of bridge and who perpetrates a fraud on the county by substituting materials inferior to those specified in the contract. Id.

CONSTRUCTION PROGRAM

309.22 Construction Project - Progress Report by Engineer

1. In general

Board of supervisors are not required to consult trustees of township before deciding to close portion of secondary highway after bridge, which was not part of construction program, collapsed. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Power to aid in the construction of bridges is implied in the board of supervisors' authority to construct bridges. Yant v. Brooks 19 Iowa 87 (1865).

309.22 Construction Project - Progress Report by Engineer

1. In general (cont.)

Attorney General Opinions:

County boards of supervisors shall establish policy for road construction and maintenance, allocate funds and inspect work, generally leaving immediate supervision and responsibility for good-faith performance in hands of county engineer. 1948 Op. Att'y Gen. 150.

County may issue warrants for new bridges and culverts where several were washed out by heavy rains. 1936 Op. Att'y Gen. 112.

309.25 Material Considerations for Farm-to-Market Roads

1. In general

Attorney General Opinions:

State Highway Commission does not have authority to withhold approval of county farm-to-market road project resolutions solely because traffic requirement is not met, rather each factor should be considered and given equal weight with all other factors in determining whether county-proposed projects will effect intra-county and inter-county road connections. Op. Att'y Gen. March 28, 1962.

The proper administrative authorities have discretion in deciding whether to adopt a program for secondary road improvement to improve a certain road rather than a second road, which is a rural route. 1951 Op. Att'y Gen. 11.

Board of supervisors must exercise judgment, foresight and wisdom in proper evaluation of several factors in determining location of roads; no mathematical formula is applied. Id.

Court's judgment not to be substituted for board's judgment to adopt program to improve certain county roads by grading and graveling rather than first improve secondary road, which was a rural mail route, unless board failed to consider certain factors. Id.

309.34 Record Required

1. In general

Attorney General Opinions:

Recording requirements of this section and section 309.43 are not satisfied by enrolling the road information in the minutes of the county board of supervisors. 1977 Op. Att'y Gen. 293.

309.34 Record Required

1. In general (cont.)

Plans and specifications, surveys and reports for improvement of county roads must be submitted to Highway Commission for approval or modification. 1925-26 Op. Att'y Gen. 311.

309.37 Details of Survey

1. Construction and application

Attorney General Opinions:

If a road came within classification of this section and survey was made by engineer, whatever the plan or profile referred to in this section would be the standard to which road must be graded and drained; engineer and board of supervisors would have wide latitude in prescribing standards for roads not within this section. 1952 Op. Att'y Gen. 145.

Plan of construction and sufficient surveys to justify the plan are required under this section. 1938 Op. Att'y Gen. 711.

2. Drainage

Officers have discretion to determine size of culvert under decree modifying injunction affecting drainage easement. Ehler v. Stier, 205 Iowa 678, 216 N.W. 637 (1927).

County is not liable for injury to crops from overflow of ditch along highway. Van De Walle v. Tama County, 198 Iowa 1330, 210 N.W. 44 (1924).

Adjoining landowner is not entitled to have ditches enlarged or constructed and maintained as to fully protect landowner's property from overflow, or to change natural course of drainage. Pate v. Rogers, 193 Iowa 726, 187 N.W. 451 (1922).

MISCELLANEOUS PROVISIONS

309.63 Gravel Beds

1. Validity

This section is not unconstitutional as "taking" of property for other than public use, where roadway is condemned as a conduit for use by county in transportation of gravel to improve public roads, which is a "public use." Merritt v. Peet, 237 Iowa 1200, 24 N.W.2d 757 (1946).

309.63 Gravel Beds

2. Construction and application

Attorney General Opinions:

Board of supervisors initiates purchase of gravel pit on its own motion; filing petition is not necessary. 1936 Op. Att'y Gen. 214.

County has power to purchase or condemn land to acquire dirt for construction of highways. 1930 Op. Att'y Gen. 340.

Board of supervisors' right to purchase or condemn land is restricted to lands within its county limits outside county or in cities and towns. 1925-26 Op. Att'y Gen. 420.

Township has right to enter, take or use gravel from county pit for purpose of its improving highways and roads without paying county anything. 1925-26 Op. Att'y Gen. 394.

7. Roadway

Landowners' consent to maintenance of roadway where county condemned roadway to secure access to gravel pit for removal of gravel did not establish a public highway by any means of prescription, dedication, adverse possession or estoppel. Merritt v. Peet, 237 Iowa 1200, 24 N.W.2d 757 (1946).

309.67 Duties of County Board of Supervisors and the County Engineer

1. Construction and application

This section pertaining to maintenance of roads was inapplicable for alleged pollution of artificial farm pond. Conrad v. Board of Supervisors, 199 N.W.2d 139 (Iowa 1972).

County board of supervisors have only such powers as are expressly conferred by statute or necessarily implied. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Where new highway grade interrupted natural course of water, county highway authorities were required to open grade and allow water to escape. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

Attorney General Opinions:

County board of supervisors, which establishes policy for and accepts the recommendations of the county engineer, has duty to maintain secondary roads. 1977 Op. Att'y Gen. 424.

County has no duty to plow secondary road designated snowmobile route, and therefore not liable for injuries. 1974 Op. Att'y Gen. 712.

309.67 Duties of County Board of Supervisors and the County Engineer

1. Construction and application (cont.)

County may not maintain a road as part of secondary road system unless such road is legally a "public road." 1969 Op. Att'y Gen. 125.

Board of supervisors has power to hire or discharge county road employees without engineer's approval; however, the supervisory responsibility of the county engineer should not be undercut. 1969 Op. Att'y Gen. 46.

The county engineer is responsible for immediate supervision and good-faith performance, whereas the county board of supervisors establish policy for road construction and maintenance, allocate funds and inspect work. 1948 Op. Att'y Gen. 150.

7. Duty to repair

County's duty to keep county roads open, in repair and free from nuisance did not extend to persons outside road and owning property adjoining road, only to persons using road. Conrad v. Board of Supervisors, 199 N.W.2d 139 (1972).

Counties have statutory duty to keep bridges and their approaches, which form part of any secondary road system within their boundaries, in a reasonably safe condition. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

County is required to repair county bridge and its approaches if road supervisor fails to do so. Roby v. Appanoose County, 63 Iowa 113, 18 N.W. 711.

County is required to repair its bridges which cost an extraordinary expense beyond the means of the road districts and are constructed by the county. Chandler v. Fremont County, 42 Iowa 58 (1875).

County is responsible for constructing and maintaining proper condition for public use all "county bridges" within its limits, and is liable for all injuries caused by its negligent construction or maintenance. Id.

Attorney General Opinions:

Board of supervisor has prerogative to close secondary road bridges over railroad crossings. 1974 Op. Att'y Gen. 479.

A strip of land used as access by public to cemetery is part of secondary road system and must be maintained by board of supervisors. Op. Att'y Gen. Jan. 25, 1966.

County is not obligated to repair drainage tile installed by private party across farm-to-market road. Op. Att'y Gen. March 17, 1961.

If road dedication has been accepted by public and is a public road, the board is charged by this section with duty of repair and maintenance of such road. 1955 Op. Att'y Gen. 28.

309.67 Duties of County Board of Supervisors and the County Engineer

13. Notice of defects as affecting liability

County held liable for injuries caused by defects in approach to bridge from washout, where supervisor had notice but took no action. Doke v. Davis County, 167 Iowa 114, 149 N.W. 75 (1914).

County not held liable for injuries caused by fall of a defective bridge, unless its condition was known or should have been known to a county board member in time before the accident to have been repaired or taken other precautions. Escher v. Carroll County, 159 Iowa 627, 141 N.W. 38 (1913).

If bridge maintained by county became weakened to the point of danger from natural decay, the exercise of reasonable care and inspection would have revealed the condition; county could not rely on lack of notice to excuse it from being negligent. Perry v. Clark County, 120 Iowa 96, 94 N.W. 454 (1897).

14. Bridges, liability of county

County is not liable for injuries to travelers caused by obstructions left on bridge by contractor who constructed it. Grennell v. Cass County, 193 Iowa 697 (1922).

County could not delegate its duty to keep an approach to a bridge in reasonable repair as to relieve itself from liability. Clark v. Sioux County, 178 Iowa 176, 159 N.W. 664 (1916).

Counties were held liable for injuries caused by negligent construction of bridges or failure to keep them in repair, even in absence of a statute. Huston v. Iowa County, 43 Iowa 456 (1876).

County not liable for default of road district or its officers on account of defective bridge, unless the bridge was classified as a county bridge, which the county would be bound to build and repair or one in which county officers exercised jurisdiction. Morland v. Mitchell County, 40 Iowa 394 (1875).

309.68 Intercounty Highways

1. Construction and application

Attorney General Opinions:

Greene County secondary road funds may be used to assist in the opening of a connecting road in Guthrie County. 1970 Op. Att'y Gen. 636.

This section does not authorize construction of road entirely within one county. 1969 Op. Att'y Gen. 158.

Where public highway was located on corporate line and only half of finished grade was in the

city, the city had a duty to maintain that part of street within its city limits and the county had duty to maintain that which was outside the city limits. 1938 Op. Att'y Gen. 346.

309.68 Intercounty Highways

1. Construction and application (cont.)

Two counties may agree to improve inter-county highway after a suitable division of cost has been assessed in accordance with statute. 1928 Op. Att'y Gen. 375.

2. Withdrawal from undertaking

Agreement by adjoining counties to construct bridge bound both counties, and neither could withdraw without the other county's consent. Bremer County v. Walstead, 130 Iowa 164, 106 N.W. 352 (1906).

3. Joint city-county bridges

Attorney General Opinion:

Under Chapter 28E, a city, which controlled its own bridge funds and a county may enter into agreement to construct bridge and approaches, provided that they be constructed under plans and specifications jointly agreed by the city council and board of supervisors and approved by highway commission. 1967 Op. Att'y Gen. 307.

309.74 Width of Bridges and Culverts

1. Construction and application

No negligence in the fact that a bridge was constructed with a central truss where the width exceeded the required feet. Shannon v. Council Bluffs, 194 Iowa 1294, 190 N.W. 951 (1922).

Bridges erected or maintained by the public constitute parts of the highway which would fall within "city's streets or sidewalks". Sachs v. Sioux City, 109 Iowa 224, 80 N.W. 336 (1899).

Supervisor not justified in erecting bridge that did not meet the 16 feet minimum width as required since Code 1873, section 1001. Gould v. Schermer, 101 Iowa 582, 70 N.W. 697 (1897).

Supervisors had no authority, in absence of a statute directly conferring it, to construct bridge over navigable lake owned by state. Snyder v. Foster, 77 Iowa 638, 42 N.W. 506 (1889).

309.74 Width of Bridges and Culverts

2. Width of bridges in general

Bridges and public highways should be wide enough to permit passage of all vehicles and farm machinery on the highways. Quinton v. Burton, 61 Iowa 471, 16 N.W. 569 (1883).

2. Width of bridges in general (cont.)

Contract by board of supervisors for bridge of less than required width in a revised statute did not render the action void. Mallory v. Montgomery County, 48 Iowa 681 (1878).

Road district may construct bridges wider than the required width. Rusch v. City of Davenport, 6 Iowa 443 (1858).

3. Repairs

City is not relieved from negligence in failing to keep a wider bridge than required in repair when such a bridge was necessary. Rusch v. City of Davenport, 6 Iowa 443 (1858).

4. Contracts

Contractor's right of action not avoided because contract was for bridge less than 16 feet wide. Mallory v. Montgomery County, 48 Iowa 681 (1878).

CHAPTER 310

FARM-TO-MARKET ROADS

310.2 Supervisor's Agreement

2. Contracts

Town may enter into agreements with county for street improvements in order to obtain federal aid. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1924).

Attorney General Opinions:

County may legally enter into agreement with the state of Iowa to construct a local farm-to-market road to primary standards. 1971 Op. Att'y Gen. 114.

Counties may enter into agreements and arrangements with state or federal authorities assigning a portion of their share of the farm-to-market road fund to be used to match federal funds for highway planning. 1963 Op. Att'y Gen. 204.

310.10 Farm-to-Market Road System Defined

1. Construction and application

Attorney General Opinions:

Although not required to do so, county board of supervisors may lawfully establish, construct and/or maintain extensions of secondary roads in cities and towns irrespective of any contribution by cities or town. 1970 Op. Att'y Gen. 476.

Regardless of any participation by county board of supervisors in maintaining extensions of secondary road, a city or town retains chief responsibility for maintenance of such streets. Id.

State Highway Commission does not have authority to withhold approval of county farm-to-market road project resolutions solely because traffic requirement is not met, rather each factor should be considered and given equal weight with all other factors in determining whether county-proposed projects will effect intra-county and inter-county road connections. Op. Att'y Gen. March 28, 1962.

Farm-to-market fund may be used on additions to the farm-to-market system as well as the original farm-to-market system. 1956 Op. Att'y Gen. 164.

310.14 Bids - Department or County Supervisors

1. Construction and application

Engineering and administrative claims arising under contract negotiated by board for farm-to-market road project are subject to Highway Commission's discretion. 1948 Op. Att'y Gen. 160.

CHAPTER 311

SECONDARY ROAD ASSESSMENT DISTRICTS

311.1 Power to Establish

ATTORNEY GENERAL OPINIONS

1. Construction and application

County cannot spend public funds to maintain privately owned farm home lanes. 1990 Op. Att'y Gen. 74.

Operation of this section did not include grading and widening but was limited to surfacing secondary roads. 1949 Op. Att'y Gen. 105.

The words "otherwise modify" in former section 311.3 were not broad enough to allow boards of supervisors to add roads to those described in a petition to establish road improvement district. 1928 Op. Att'y Gen. 136.

Board of supervisors was not authorized to contract for construction or road improvement if the collectible revenues payable out of the public funds were less than the portion of the cost of constructing improvement. 1925-26 Op. Att'y Gen. 88.

311.2 Width of District

1. Construction and application

Stated width is maximum rather limitation, and the secondary road assessment district may be established with less than one-half mile on each side of the road. 1949 Op. Att'y Gen. 120.

311.4 County Line Road

1. Construction and application

One county may pay half of construction cost where abutting landowners on both sides of county line agree to cover part of the surfacing cost. 1950 Op. Att'y Gen. 144.

311.5 Project in City

1. Construction and application

County may or may not surface a secondary road with concrete pavement when petitioned for under section 311.7. 1976 Op. Att'y Gen. 810.

County board of supervisors have authority to aid cities and towns in street repair of secondary road extensions. 1974 Op. Att'y Gen. 522.

City or town retains chief responsibility for maintenance of street which is an extension of a secondary road. 1970 Op. Att'y Gen. 476.

311.7 Improvement by Private Funds

ATTORNEY GENERAL OPINIONS

1. Construction and application

County may or may not surface secondary road with concrete pavement when petitioned under this section. 1976 Op. Att'y Gen. 810.

Where federal funds are involved, the Bureau of Public Roads, Department of Public Works and Iowa State Highway Commission have to concur when petition involves farm-to-market road and is filed under this section or section 311.6. 1950 Op. Att'y Gen. 120.

Change in construction program from three-year to one-year program is not required, but existing program must be modified to include new work under this section. 1950 Op. Att'y Gen. 105.

2. Preference

Deposits to secure priority in improvement must be made in cash. Op. Att'y Gen. 48 (1952).

A petition providing for improvement of secondary road by private funds can not exceed secondary funds available to the county in any three-year period in order to retain its preference status. Id.

Board of supervisors could not limit number of petitions granted preference so long as funds were available. Op. Att'y Gen. 105 (1950).

4. Road construction

Cubic yards surfacing requirement imposed by board can be modified by board. 1950 Op. Att'y Gen. 152.

Upon filing petition signed by 75% of owners adjacent to or abutting upon any secondary road, board of supervisors are required to permanent grade road before surfacing it. 1950 Op. Att'y Gen. 145.

Same standard of grading and draining applies to accommodating road as heavily traveled farm-to-market roads or county trunk roads. Id.

311.8 County Engineer's Report

1. Construction and application

County engineer employed by the board of supervisors was a "public officer," not an "employee" entitled to workmen's compensation for injuries received in performing duties of position. McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940).

311.8 County Engineer's Report

1. Construction and application (cont.)

Attorney General Opinion:

Engineer must advise board on permanent grade and drainage upon filing of petition. 1950 Op. Att'y Gen. 145.

CHAPTER 312

ROAD USE TAX FUND

312.1 Fund Created

ATTORNEY GENERAL OPINIONS

1. Construction and application

Billboards, signs and junkyards outside the right-of-way on lands adjacent to public highways are not part of highways, and use of primary road funds to purchase such is prohibited. 1972 Op. Att'y Gen. 362.

2. Use of fund

Road use tax money may be used for bikeways constructed on same right-of-way as a motor highway. 1977 Op. Att'y Gen. 31.

Neither the secondary road research fund nor any other road use tax fund may be used to pay for a research project insurance survey to determine the risks and insurance needs of the several counties. 1972 Op. Att'y Gen. 380.

Safety rest areas are part of public highways and use of primary road fund for their construction is not prohibited. 1968 Op. Att'y Gen. 494.

312.2 Allocations from Fund

1. Validity

Subdivision nine of this section, authorizing expenditure of road use tax funds for planning or maintenance of wind erosion control barriers, is constitutional. 1979 Op. Att'y Gen. 109.

2. Construction and application

Functional classification and jurisdiction of highways bill does not require a change in distribution of the road use tax fund. 1973 Op. Att'y Gen. 131.

Neither the secondary road research fund nor any other road use tax fund may be used to pay for a research project insurance survey to determine the risks and insurance needs of the several counties. 1972 Op. Att'y Gen. 380.

Road use tax funds allocated to cities and towns cannot be used for sidewalk construction which is not part of a street construction project. 1970 Op. Att'y Gen. 509.

Primary road fund is available for development of roads surfaced with gravel or crushed rock. 1953 Op. Att'y Gen. 72.

312.2 Allocations from Fund

ATTORNEY GENERAL OPINIONS

3. Alleys

City or town's alley is not as the same highway. 1973 Op. Att'y Gen. 147.

Cities and towns cannot use road use tax fund for construction or maintenance of alleys. Op. Att'y Gen. Dec. 13, 1961.

4. Safety rest areas

Safety rest areas are part of public highways and use of primary road fund for their construction is not prohibited. 1968 Op. Att'y Gen. 492.

312.5 Division of Farm-to-Market Road Funds

1. Construction and application

Attorney General Opinions:

County boards of supervisors may spend farm-to-market road fund for road and bridge construction without submitting their resolution to the voters. Op. Att'y Gen. May 21, 1965.

In distributing equalization farm-to-market funds under this section, it is not necessary to take into consideration the additional mileage added by counties to farm-to-market system in 1956. Op. Att'y Gen. July 17, 1958.

Use of the equalization farm-to-market fund referred to in this section is not limited to the original farm-to-market system referred to in section 310.10 but may be expended on additions to the farm-to-market system. 1956 Op. Att'y Gen. 164.

Advancement of county road funds for farm-to-market roads authorized providing approval and concurrence obtained from Highway Commission. 1952 Op. Att'y Gen. 102.

312.6 Limitation on Use of Funds

1. Construction and application

City authorized use of road use tax fund to pay for preliminary engineering services in contemplation of building an expressway through the city. Slapnicka v. Cedar Rapids, 139 N.W.2d 179 (Iowa 1965).

1. Construction and application (cont.)

Attorney General Opinions:

Municipalities may use street funds to erect a garage and house to maintain road construction, machinery and equipment. 1969 Op. Att'y Gen. 181.

Road use tax fund may be used for maintenance of roads and streets. Op. Att'y Gen. Dec. 13, 1961.

4. Parking

Expenditure of road use tax fund for repair, surfacing or maintenance of off-street parking area permissible depending upon its character. Douglass v. Iowa City, 218 N.W.2d 908 (Iowa 1974).

Road use tax fund for acquisition or improvement of real estate for parking purposes is prohibited. Id.

Attorney General Opinion:

Road use tax fund is not available for on or off-street parking. Op. Att'y Gen. Dec. 13, 1961.

5. Traffic control signals

Attorney General Opinion:

Road use tax fund is not available for signs and traffic signals which control or direct traffic; signs and traffic signals are paid out of public safety fund. Op. Att'y Gen. Dec. 13, 1961.

6. Sidewalks

Attorney General Opinions:

Road use tax fund cannot be used for sidewalk construction which is not part of a street construction project. 1970 Op. Att'y Gen. 508.

Road use tax fund is not available for sidewalk purposes. Op. Att'y Gen. Dec. 13, 1961.

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

313.1 Federal and State Co-operation

1. In general

State has right to regulate and control highways, however, it may delegate powers to boards, commissions, and public or municipal corporations. Central States Electric v. Pocahontas County, 231 N.W. 468 (1930).

Highway Commission's authority is plenary, and court will interfere only in case of manifest abuse of such power and authority. Porter v. Iowa State Highway Commission, 241 Iowa 1208, 44 N.W.2d 682 (1950).

Attorney General Opinions:

Cost of manpower and equipment to assist in flood prevention should be reimbursed to primary road fund. 1969 Op. Att'y Gen. 162.

No authority in Highway Commission to require payment of prescribed minimum wage scale on non-federal participation highway construction projects. 1968 Op. Att'y Gen. 813.

Use of primary road fund for statewide highway planning was proper. 1940 Op. Att'y Gen. 235.

4. Widening projects

Attorney General Opinion:

Highway Commission may use primary road fund to widen pavement at approach. 1938 Op. Att'y Gen. 518.

313.2 "Road Systems" Defined - Roadside Parks

4. Right-of-ways

Highway retained unpreferred status of local secondary road where there was no evidence showing that any formal steps had been taken to establish old state highway. Lemke v. Mueller, 166 N.W.2d 60 (Iowa 1969).

Attorney General Opinion:

State Conservation Commission has authority to remove structures privately owned by railroad employees, located upon railroad right-of-ways owned in fee by state. 1965 Op. Att'y Gen. 205.

313.2 "Road Systems" Defined - Roadside Parks

7. Reversion of secondary road system

Attorney General Opinion:

Where highway has been designated as a primary road and subsequent improvements eliminated portions of the road, the portions removed would revert to the secondary road system if the primary road was originally part of a secondary road system. 1932 Op. Att'y Gen. 100.

8. Elimination of roads

Attorney General Opinion:

The former State Highway Commission could eliminate a particular road from the primary road system with consent of the federal authorities. 1925-26 Op. Att'y Gen. 324.

313.3 Primary Road Fund

2. In general

Attorney General Opinions:

Transportation Commission was not authorized to use road use tax fund for development of a motor vehicle ferry service. 1977 Op. Att'y Gen. 270.

Where Highway Commission furnishes manpower and equipment to assist in flood prevention activities, its cost should be reimbursed to the primary road fund. 1969 Op. Att'y Gen. 162.

Former State Highway Commission did not have authority to contract with county boards of supervisors to construct secondary road projects, with hopes of procuring federal aid authorized for farm-to-market roads. 1938 Op. Att'y Gen. 624.

Primary road fund is available for secondary road system improvements after the primary road system is completed. 1925-26 Op. Att'y Gen. 926.

3. Legislative powers

Primary road funds are subject to legislative control by existing General Assembly. State v. Executive Council, 207 Iowa 923, 223 N.W. 737 (1929).

313.3 Primary Road Fund

4. Primary road fund

Attorney General Opinions:

Available primary road fund, under this section, included motor vehicle taxes already submitted to treasurers of respective counties of the state. 1934 Op. Att'y Gen. 151.

County may do such acts as might be necessary to improve its secondary roads upon the basis of their estimated receipts. 1925-26 Op. Att'y Gen. 45.

7. Right-of-way, purchase of

Attorney General Opinion:

Primary road fund may be used for the purchase of right-of-way for secondary system after it becomes available for use on the secondary system. 1925-26 Op. Att'y Gen. 296.

313.4 Disbursement of Fund

1. Construction and application

Pledge of state's general credit is proper where interstate bridge would become part of primary road system. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

Attorney General Opinions:

Road use tax money may be used for bikeways constructed on same right-of-way as a motor highway. 1977 Op. Att'y Gen. 31. Claims relating to support of the Highway Commission for engineering and administration of highway work or maintenance of the primary road system are payable through primary road fund. 1970 Op. Att'y Gen. 459.

Executive Council may use its power of eminent domain to assist Highway Commission in acquiring maintenance facility site. 1969 Op. Att'y Gen. 269.

Where Highway Commission furnishes manpower and equipment to assist in flood prevention activities, its cost should be reimbursed to the primary road fund. 1969 Op. Att'y Gen. 162.

This section authorizes use of primary road fund for establishment, construction and maintenance of primary road system. Op. Att'y Gen. Jan. 9, 1968.

Former State Highway Commission did not have authority to contract with county boards of supervisors to construct secondary road projects, with hopes of procuring federal aid authorized for farm-to-market roads. 1938 Op. Att'y Gen. 624.

313.4 Disbursement of Fund

3. Use of primary road fund

Attorney General Opinions:

Transportation commission not authorized to use road use tax funds for motor vehicle ferry service. 1977 Op. Att'y Gen. 270. Billboards, signs and junkyards outside the right-of-way on lands adjacent to public highways are not part of highways and use of primary road funds to purchase such is prohibited. 1972 Op. Att'y Gen. 362.

Executive Council may approve restricted sale of unused right-of-way; money received credited to the primary road fund. 1970 Op. Att'y Gen. 549.

No allocation of the primary road fund may be used to pay tort claims filed under Chapter 25A. 1970 Op. Att'y Gen. 459.

Primary road fund is available for development of roads surfaced with gravel or crushed rock. 1953 Op. Att'y Gen. 72.

Primary road fund is available for secondary road system improvements after the primary road system is completed. 1925-26 Op. Att'y Gen. 926.

Primary road fund should be used only for actual improvement, construction and maintenance of primary roads; attorney fees incurred by the county for primary road improvements payable from general county fund. 1925-26 Op. Att'y Gen. 162.

6. Bridges and culverts

Attorney General Opinions:

County entitled to reimbursement from primary road fund for bridges or culverts built and paid for out of county road or bridge fund. 1932 Op. Att'y Gen. 60.

County not entitled to a refund for costs of bridge or culvert unless it was built on a primary road. Id.

Bridges built on primary roads since April 19, 1919, entitle county to refund even though primary road has been relocated or abandoned. 1932 Op. Att'y Gen. 30.

7. Viaducts

Railroad and city had duty to maintain viaduct in reasonably safe condition. Harris v. Chicago, M. St. P. & P. Ry., 224 Iowa 1319, 278 N.W. 338 (1938).

313.8 Improvement of Primary System

2. Regulation and control of highways

State has right to regulate and control highways. Iowa Ry. & Light v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930).

Attorney General Opinions:

To equalize the condition of the primary roads, the Highway Commission must build roads to established grade and insure that they are bridged and surfaced. 1974 Op. Att'y Gen. 671.

Highway Commission must consider the conditions of the primary road to make their conditions equal as possible. 1974 Op. Att'y Gen. 537.

Former State Highway Commission had control of primary roads for construction and maintenance purpose, but the county had control for police purposes. 1925-26 Op. Att'y Gen. 194.

3. Materials for highway

Attorney General Opinion:

Road authorities had authority to take all gravel necessary for proper improvement of highway adjacent to land. 1913-14 Op. Att'y Gen. 141.

313.9 Surveys, Plans and Specifications

1. Construction and application

This section and section 313.26 (repealed, see now section 306.1) are not applicable in determining if plat of project was part of contract to purchase right-of-way. State v. Butka, 230 Iowa 928, 299 N.W. 420 (1941).

313.14 Claims

1. Construction and application

Cost of primary road construction on Highway Commission's contracts held not payable by warrants drawn on county auditor. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

2. Claims

Subcontractor's claim for materials furnished should be filed with county auditor. Fuller & Hiller Hardware v. Shannon & Willfong, 205 Iowa 104, 215 N.W. 611 (1927).

313.16 Payment of Awards or Judgments

1. In general

Attorney General Opinion:

Const. Art. 7, section 8 does not prohibit payment of tort claims against the Department of Transportation from the primary road fund pursuant to this section. Op. Att'y Gen. Sept. 26, 1984.

313.21 Improvements in Cities

1. In general

No statutory authority existed that would allow Department of Transportation to share jurisdiction with city, and thus city could be assessed for benefits derived from construction of culvert by drainage district within city limits. Drainage District No. 119 v. City of Spencer, 268 N.W.2d 493 (Iowa 1978).

"Bridges" do not include "culverts," and thus section 313.27, allowing State Highway Commission to construct or maintain bridges on primary road extensions, did not provide statutory authority over culverts. Id.

Former Highway Commission's authority to improve any street which was a continuation of primary road system within cities did not make streets part of "primary roads of county." Wallace v. Foster, 213 Iowa 1151, 241 N.W. 9 (1932).

Attorney General Opinions:

Highway Commission has authority to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. 1973 Op. Att'y Gen. 98.

Chapter 306A authorizes the State Highway Commission to expand the concept of primary extension to include relocations, reconstructions or establishments of local service streets. 1969 Op. Att'y Gen. 92.

Neither city nor Highway Commission can forbid laying of railroad tracks across city street. 1923-24 Op. Att'y Gen. 187.

313.21 Improvements in Cities

4. Payment for construction

Cost of primary road construction on contracts made by Highway Commission were not payable by warrants drawn on county auditor. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

4. Payment for construction (cont.)

Attorney General Opinions:

Primary road funds may be used to widen approach to city viaduct. 1938 Op. Att'y Gen. 518.

Cost of bridge on primary road in town could be paid from primary road fund. 1922 Op. Att'y Gen. 214.

3. Bonds, use of proceeds of

City may pledge its credit for "taking" or damage to homes for purposes of widening public street and relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1956).

Board of supervisors could not divert proceeds of road bonds for improvement of primary roads to improvement of city streets which were continuations of primary roads. Wallace v. Foster, 213 Iowa 1151, 241 N.W. 9 (1932).

4. Salvage

Attorney General Opinion:

Where Highway Commission is permitted to extend primary road system through a city or town, sections 391.6 and 391.7 are applicable. Op. Att'y Gen. 199 (1938).

6. Liability of cities

City has duty to maintain streets. Smith v. Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

7. Reconstruction and improvement

Action to restrain allegedly illegal diversion of surface water onto landowners property was sustained. Johnson v. Iowa State Highway Commission, 250 Iowa 521, 94 N.W.2d 773 (1959).

Attorney General Opinion:

City or town retains chief responsibility for maintenance of street which is an extension of a secondary road. 1970 Op. Att'y Gen. 476.

Although not required to do so, county board of supervisors may lawfully establish, construct and/or maintain extensions of secondary roads in cities and towns irrespective of any contribution by cities or town. Id.

313.21 Improvements in Cities

8. Widening streets

Statute which empower city to improve highways within its limits also authorize city and commission to take or damage homes for purposes of widening public street and relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1956).

313.22 Paving of Whole Street by Department

1. In general

State Highway Commission and city may enter into an agreement for highway construction project within the city to condemn property and take title in city's name. Halweg v. Sioux City, 189 N.W.2d 623 (Iowa 1971).

Attorney General Opinion:

Chapter 306A authorizes the State Highway Commission to expand the concept of primary extension to include relocations, reconstructions or establishments of local service streets. 1969 Op. Att'y Gen. 92.

313.23 Reimbursement by City

1. In general

Attorney General Opinion:

Where former Highway Commission proposed to construct highway extension and to pay for its work out of city funds without levying assessments against abutting property, the commission could not complete the work in exchange for city's promise to reimburse for expense incurred. 1938 Op. Att'y Gen. 769.

313.27 Bridges, Viaducts, Etc., on Municipal Primary Extensions

1. In general

City could be assessed for benefits derived from construction of culvert by drainage district within city limits. Drainage District No. 114 v. City of Spencer, 268 N.W. 2d 493 (Iowa 1978).

"Bridges" do not include "culverts," and thus section 313.27, allowing State Highway Commission to construct or maintain bridges on primary road extensions, did not provide statutory authority over culverts. Id.

313.27 Bridges, Viaducts, Etc., on Municipal Primary Extensions

1. In general

Attorney General Opinions:

Highway Commission has authority to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. 1973 Op. Att'y Gen. 98.

Former Highway Commission's widening of pavement to viaduct was payable out of primary road fund. 1938 Op. Att'y Gen. 518.

313.36 Maintenance - Limitation in Cities

1. In general

State's statutory duty to make highways safe must be judicially reviewed on tort requirement to act as reasonable and prudent Department of Transportation would act; reasonableness requires fact finder to balance danger of outmoded device, increase in new device safety or design, cost, available resources, and other hazards which pose danger to motorists. Butler v. State, 336 N.W.2d 416 (Iowa 1983).

Statutory provisions impose duty upon State to maintain highways in safe condition and warn the traveling public of conditions endangering travel, whether caused by a force of nature or by act of third persons. Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

State has duty to place proper barriers, railings, guards and danger signals at obstructions in dangerous places on a highway when necessary for travelers' safety; performance of that duty is measured by a reasonableness standard in light all circumstances. Id.

4. Duty of care

State is required to exercise ordinary care to maintain highways in safe condition and to warn traveling public of conditions endangering travel, whether caused by a force of nature or by the act of third persons. Hunt v. State, 252 N.W.2d 715 (Iowa 1977).

Rule that possessor of property is not obligated to eliminate known and obvious dangers does not apply to city's mandatory duty to keep its thoroughfares and public places safe. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

State was negligent in failing to eliminate hazard caused by water accumulation in frost heave after receiving notice of problem; posting "bump" sign near frost heave area did not excuse State from performing its duty to repair such defect. Id.

313.36 Maintenance - Limitation in Cities

5. Weather information

State's failure to place sand or other abrasive over frost on bridge deck was negligence. Hunt v. State, 252 N.W.2d 715 (Iowa 1977).

Those who have the duty to maintain highways are required to make reasonable use of weather information to anticipate adverse road conditions. Id.

6. Snow and ice removal

State was not negligent in failing to remove snow drift from public highway where other highways remained unopened despite continuing efforts by state employees. Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

State will be liable for damages where a way has large quantity of snow and ice, negligently permitted to remain there by municipal authorities after a sufficient length of time. Id.

313.37 Road Equipment

ATTORNEY GENERAL OPINIONS

1. In general

The Governor and state car dispatcher has sole authority and responsibility for the purchase, assignment, control and sale of all state owned motor vehicles. 1969 Op. Att'y Gen. 361.

Former Highway Commission could authorize State to release interest in paving machine patents to company in exchange for company's use of methods, an apparatus in the patents on public works, without royalty payments. 1950 Op. Att'y Gen. 137.

Contracts with foreign corporations for purchase of road material or equipment were subject to restrictions pursuant to section 494.9. 1934 Op. Att'y Gen. 390.

2. Use of equipment

Highway Commission may permit board to use machinery acquired from the United States government in building and maintaining highways at state institutions. 1919-20 Op. Att'y Gen. 267.

313.65 Approval of Taxing Bodies

INTERSTATE BRIDGES - GIFT OR PURCHASE

1. Construction and application

Attorney General Opinion:

This section applies only to those cases involving acceptance of bridges owned and operated by an individual or private corporation; this section is not applicable to acceptance of bridge from bridge commission. 1946 Op. Att'y Gen. 118.

CHAPTER 313A

INTERSTATE BRIDGES

313A.1 Definitions

1. Validity

Highway Commission's authority to acquire, purchase and construct interstate bridges and approaches; to reconstruct, complete, improve, repair, remodel control, maintain and operate interstate bridges; and to establish toll and charges for interstate bridges is not unconstitutional. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

Where primary road fund was made up partially from sources which could be used only within state, provisions of Interstate Bridge Act, permitting commission to advance funds from primary road funds to any part of construction costs for interstate bridge located in another state, is a violation of Const. art. 7, sections 1 and 8. Id.

Interstate Bridge Act could be used only when construction involved bridge in Iowa and a sister state. Id.

313A.2 Bridge to be Controlled by Department

1. Construction and application

Attorney General Opinion:

Revenue bonds issued by the Highway Commission to finance interstate toll bridge acquisition not subject to taxation by or within the state. 1972 Op. Att'y Gen. 433.

313A.30 Bridges as Part of Primary Roads

1. Construction and application

Provisions of Interstate Bridge Act permitting commission to advance funds from primary road funds for interstate bridge, part of which would lie in another state, violated the Const. art. 7, sections 1 and 8. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

CHAPTER 314

GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.1 Bidders' Statements of Qualifications - Basis for Awarding Contracts

1. In general

Attorney General Opinions:

Construction and material contracts for secondary roads and bridges are within purview of section 309.40 must be advertised and let at a public letting. 1972 Op. Att'y Gen. 574.

Supervisors may reject bids and proceed to construction in accordance with this section. Id.

Construction of a sewage disposal lagoon is an improvement requiring a contract to be let after bidding. Op. Att'y Gen. Oct. 28, 1965.

Advancement of county road funds for farm-to-market construction is limited in reimbursement to funds actually expended. 1952 Op. Att'y Gen. 102.

Where two counties received sealed bids for improvements of county road, part of which was in each county, and lowest bids received by each county was different, counties were authorized to let work to two contractors. 1932 Op. Att'y Gen. 53.

State Highway Commission has power to prescribe contract for road work to be done in sections and accept bonds to cover each section. 1919-20 Op. Att'y Gen. 287.

3. Day labor or private contract work

Attorney General Opinion:

Construction of sewage disposal lagoon is an improvement which requires a contract to be let after bidding. Op. Att'y Gen. Oct. 28, 1965.

5. Extra work

Attorney General Opinion:

Where engineer in charge did not order any extra excavation work, the Highway Commission had no authority to adjust prices of its work on highway project. 1934 Op. Att'y Gen. 162.

314.1 Bidders' Statements of Qualifications - Basis for Awarding Contracts

6. Bonds - in general

Highway contractor's bond containing agreement to pay all just claims for material, supplies, tools, labor and all other just claims did not by its terms include claims for personal injuries damages, although it also requires liability insurance to be carried to indemnify the public for injury. Schisel v. Marvill, 198 Iowa 725, 197 N.W. 662 (1924).

The whole of the writings, bond and contract for the work must be considered to determine the meaning of any part of the bond of surety for a contractor with a county to build bridges. Clinton Bridge Works v. Kingsley, 188 Iowa 218, 175 N.W. 976 (1920).

9. Liability on bond

Road contractor's liability for labor and materials furnished to subcontractor may not be predicated on provisions of a statutory bond which are broader than the requirements of the statute. Nebraska Culver & Manufacturer v. Freeman, 197 Iowa 720, 198 N.W. 7 (1924).

Contractor's surety could not claim that it was discharged where county did not consent to or have knowledge of bridge contractor's substitution of lighter material than those specified in the contract. Van Buren County v. American Surety, 137 Iowa 490, 115 N.W. 24 (1908).

10. Notice of surety of default

Where county bridge contractor corrupted county's engineer and obtained engineer's agreement in the substitution of lighter materials than those contracted for, the county was not charged with notice because of engineer's knowledge. Van Buren County v. American Surety, 137 Iowa 490, 115 N.W. 24 (1908).

11. Liens

No liens exist where materials are only remotely connected with construction of public improvement. Standard Oil v. Marvill, 201 Iowa 614, 206 N.W. 37 (1926).

314.2 Interest in Contract Prohibited

1. Construction and application

Contracts with highway superintendents to hire their own teams and men to fix repairs were not prohibited by statute, providing that officers were not interested in contracts for construction of bridges, culverts or improvements. Liggett v. Shriver, 181 Iowa 260, 164 N.W. 611 (1917).

314.2 Interest in Contract Prohibited

1. Construction and application (cont.)

Boards of supervisors were statutorily prohibited from being parties, directly or indirectly, in any contract to furnish supplies, materials or labor to county. Nelson v. Harrison County, 126 Iowa 436, 102 N.W. 197 (1905).

Attorney General Opinions:

Contracts between Highway Commission and legislators may be invalidated by the commission. 1972 Op. Att'y Gen. 468.

A corporation in which county engineers are majority stockholders is prohibited from bidding on contracts for highway construction and maintenance in their own county as well as in other counties. 1970 Op. Att'y Gen. 479.

Contracts involving direct or indirect interest to the contracting supervisor are prohibited by this section. 1965 Op. Att'y Gen. 202.

314.3 Claims - Approval and Payment

1. In general

Attorney General Opinion:

Secondary road claims for construction, reconstruction, improvement, repair or maintenance do not require notarization; such unliquidated claims against the county in excess of $25 require notarization. 1968 Op. Att'y Gen. 632.

2. Filing of claims

Claims arising in primary road construction under contract with State Highway Commission were required to be filed with state auditor, not the commission. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

Surety of contractor constructing primary road under contract with State Highway Commission was not liable for claims not filed with state auditor. Id.

4. Warrants

Cost of primary road construction on contracts made by State Highway Commission was not payable by warrants drawn by county auditor. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

314.5 Extensions in Certain Cities

1. Construction and application

City cannot recover damages from county as a result of county's act in replacing culvert in street which was part of county road system. Town of Norwalk v. Warren County, 210 Iowa 1262, 232 N.W. 682 (1930).

Attorney General Opinions:

Highway Commission is authorized to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. 1973 Op. Att'y Gen. 98.

County board of supervisors may improve secondary road extension lying entirely in a city, but the boards act cannot bind future boards to appropriate or maintain the same project. Op. Att'y Gen. July 27, 1962.

A town is not authorized to let a contract for town and county work within town to be reimbursed by county. Op. Att'y Gen. May 31, 1962.

2. Street improvements

Attorney General Opinions:

County board of supervisors has authority to aid cities and towns in street repair of secondary road extensions. 1974 Op. Att'y Gen. 522.

A county board, at its discretion, may use county road funds to finance work to establish, construct and/or maintain extensions of secondary roads in cities and towns. 1970 Op. Att'y Gen. 476. Agreement between town and its county whereby town may have advantages of county facilities and services regarding street improvements are not prohibited. Op. Att'y Gen. May 31, 1962.

Grading, draining, bridging, graveling and maintaining costs of any road or street, which is a continuation of the county trunk system, should be paid out of funds available for such purposes on local county roads. 1930 Op. Att'y Gen. 271.

3. Duty to maintain and repair

City owes primary duty in relation to safety of street. Town of Norwalk v. Warren County, 210 Iowa 1262, 232 N.W. 682 (1930).

Attorney General Opinions:

Highway Commission has authority to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. 1973 Op. Att'y Gen. 98.

314.5 Extensions in Certain Cities

3. Duty to maintain and repair (cont.)

Town had duty to maintain its own streets; the obligation to build, grade and surface was no longer board of supervisors' duty. 1950 Op. Att'y Gen. 176.

In respect to roads or streets which are continuations of county trunk system or local county road, the board of supervisors has mandatory duty to grade, drain, bridge, gravel or maintain them. 1940 Op. Att'y Gen. 163.

Where public highway was located on corporate line and only half of finished grade was in the city, the city had a duty to maintain that part of street within its city limits and the county had duty to maintain that which was outside the city limits. 1938 Op. Att'y Gen. 346.

4. Police control

Contract between county and town for improvement of streets, as part of county road system and county's construction of culvert within town, would not deprive police control over streets. Town of Norwalk v. Warren County, 210 Iowa 1262, 232 N.W. 682 (1930).

314.7 Trees - Ingress or Egress - Drainage

1. Construction and application

This section should be construed liberally and in harmony with public interest. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

The test to determine whether reasonable ingress or egress to any property should be destroyed is whether entry had existed and had been used for many years prior to its destruction. Perkins v. Palo Alto County, 245 Iowa 310, 60 N.W.2d 562 (1953).

Adjoining landowners could not require removal of culverts and ditch blocks, where county supervisors complied with this section prohibiting those in charge of work on secondary roads from turning natural drainage of surface water. Owens v. Fayette County, 241 Iowa 740, 40 N.W.2d 602 (1950).

Statutory permission granted to those in charge of work on secondary roads to enter upon adjoining lands and remove obstructions from natural channel of surface water did not authorize making an opening from ditch onto that land. Id.

Farmer could not compel county and drainage district trustees to install highway ditch where there was no showing that any water had entered farmer's land from nearby river of newly constructed highway. Droegmiller v. Olsen, 40 N.W.2d 292 (1950).

Diverting natural course of large quantity of surface water to public highway, causing deposit of silt, is an obstruction and nuisance which county may have abated without showing injury or monetary damage. Id.

314.7 Trees - Ingress or Egress - Drainage

2. Drainage

Property owner was entitled to relief where highway construction caused excess water to flow onto landowner's property. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

This section does not preclude board of supervisors from digging extension ditch along roadside to provide a shortcut for water to reach drainage ditches at a lower point. Morrow v. Harrison County, 250 Iowa 725, 64 N.W.2d 52 (1954).

Acquiescence of landowner to existence of roadside ditch converts it into natural water course. Perkins v. Palo Alto County, 245 Iowa 310, 60 N.W.2d 562 (1953).

Highway authorities should place openings in highway drains to allow water to escape in its natural course from higher to lower land. Owens v. Fayette County, 241 Iowa 740, 40 N.W.2d 602 (1950).

Where upper proprietor diverted surface water from natural water course to highway, county supervisors were prohibited from constructing a culvert causing large volume of water on others' land. Anton v. Stanke, 217 Iowa 166, 251 N.W. 153 (1933).

Landowners are not entitled to have ditches along the highway constructed and maintained as to fully protect their land from the natural flow of surface water or to change the natural course of drainage. Id.

Once established, permanent drainage easement is not merely a license but is a perpetual right which cannot be disregarded, except by the consent of all concerned. Ehler v. Stier, 205 Iowa 678, 216 N. W. 637 (1928).

Attorney General Opinions:

Landowners are allowed to drain in the same general course of natural drainage by constructing tile lines, connected along or across public highway, where connections with highway ditch are made in accordance with specifications furnished by highway authorities. 1974 Op. Att'y Gen. 364.

Road authorities have discretion in determining the depth of ditches on any particular road. 1938 Op. Att'y Gen. 184.

State Highway Commission had authority to enter upon adjoining land for purpose of removing obstructions from a natural water course. 1925-26 Op. Att'y Gen. 413.

Culvert or crossing should be construed where town cuts a ditch two feet deep along side of graded street to avoid liability for damage to property owner. 1911-12. Op. Att'y Gen. 220.

314.7 Trees - Ingress or Egress - Drainage

5. Trees

Sixteen evergreen trees in front of farmer's property and along a federal-aid secondary road, which was being widened and improved, caused material obstruction to highway and interference with improvement and maintenance. Carstensen v. Clinton County, 250 Iowa 487, 94 N.W.2d 734 (1959).

Trees may be destroyed if they materially interfere with improvement of road by obstructing drainage. Harrison v. Hamilton County, 284 N.W. 456 (1939).

County authorities were permitted to remove trees which were within limits of highway and prohibited highway improvements. Rabiner v. Humboldt County, 224 Iowa 1190, 278 N.W. 612 (1938).

When public authorities sought to remove trees as obstructions, the public was not prevented from asserting its rights to entire width of highway, where an abutting owner to highway planted part of an orchard on the ground set apart for the highway and made and maintained other improvements within the highway. Quinn v. Baage, 138 Iowa 426, 114 N.W. 205 (1908).

Young trees and shrubs at the side of and located in the middle of a highway and which do not obstruct or interfere with public use of highway should be permitted to stand. Quinton v. Burton, 61 Iowa 471, 16 N.W. 569 (1883).

Road supervisor's decision to remove trees in highway for convenience of public travel is subject to review. Bills v. Belknap, 36 Iowa 583 (1873).

Attorney General Opinion:

Apple trees on highway should not be destroyed unless they interfere with proper improvement of highway. 1925-26 Op. Att'y Gen. 352.

6. Ingress and egress

Four-month street closing preventing access to restaurant owner's property was not a "taking" of property as contemplated by the Constitution. Blank v. Iowa State Highway Commission, 252 Iowa 1128, 109 N.W.2d 713 (1961).

The test to determine whether reasonable ingress or egress to any property should be destroyed is whether entry had existed and had been used for many years prior to its destruction.

Perkins v. Palo Alto County, 245 Iowa 310, 60 N.W.2d 562 (1953).

Attorney General Opinion:

County board of supervisors should furnish and place drain tile or pipe approaches at driveways and field gates to provide farmers with reasonable ingress and egress to homes and fields. 1930 Op. Att'y Gen. 339.

314.7 Trees - Ingress or Egress - Drainage

7. Fences

Where landowner's highway fence, which was not a boundary fence, extended into the highway, the county was not prevented by lack of its efforts to have fence removed to claim it was an obstruction of the highway. Quinn v. Monona County, 140 Iowa 105, 117 N.W. 1100 (1908).

10. Injunctions

County was not required to build wing-dike to redirect water into natural course to prevent water from depositing silt on highway where landowner build dike to divert water originating in natural depression from its natural course and direct it under highway bridge; county was entitle to injunction to prevent landowner from maintenance of dike. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

Highway officials can be enjoined from improving highway so as to divert water from natural course of drainage and cause it to flow upon landowner's property in an unusual and unnatural manner. Jacobson v. Camdem, 236 Iowa 976, 20 N.W.2d 407 (1945).

314.10 State-line Highways

1. In general

Attorney General Opinion:

Iowa State Highway Commission had authority to enter into an agreement with Missouri highway authorities to pay its share of cost of interstate connection; such agreement could provide for payment by the state of Iowa a sum in excess of improvement within Iowa. 1940 Op. Att'y Gen. 545.

314.20 Utility Easements on Highway Right-of-Way

1. Freeways

Although this section, requiring Department of Transportation to develop accommodation plan for longitudinal use of freeway right-of-way in consultation with Utilities Board refers to highway right-of-way, the requirement extends only to freeway right-of-way. State v. Iowa Public

Service, 454 N.W.2d 585 (1990).

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS

316.4 Moving and Related Expenses

1. In general

Lessee, who was entitled to relocation assistance benefits when Department of Transportation routed new road over leased property, was required to elect to receive either "actual loss" benefit or "in lieu" business relocation benefit, not both. Lickteig v. Iowa Department of Transportation, 356 N.W.2d 205 (1984).

316.8 Housing Replacement by Department as Last Resort

1. In general

Department of Transportation did not abuse its discretion in calculating replacement housing supplemental benefit to lessee who was forced to leave leased property when new highway was routed over lessee's property. Lickteig v. Iowa Department of Transportation, 356 N.W.2d 205 (1984).

316.9 Rules Adopted

1. Construction and application

Attorney General Opinion:

The Iowa Relocation Assistance Act provides for payments separate from and in addition to just compensation payable in condemnation proceedings. 1970 Op. Att'y Gen. 755.

Adjustments in relocation assistance payments are required to prevent unjust enrichment when a property has been condemned, and departmental rules may be formulated as provided in this section. Id.

CHAPTER 317

WEEDS

317.1 Noxious Weeds

ATTORNEY GENERAL OPINIONS

1. In general

Section 319.14, relating to changes in right-of-way, does not prevent the burning or spraying of right-of-way, nor does chapter 317 prevent such actions, although they may be restrained by the board of supervisors. 1980 Op. Att'y Gen. 666.

2. Cities and towns, duties of

Cities and towns have duty to destroy all noxious weeds growing within parking areas, streets and alleys in the corporate limits and any other weeds that cause streets and alleys to be unsafe for public travel. 1938 Op. Att'y Gen. 802.

Cities and towns had mandatory duty to keep streets and alleys free of ordinary weeds, open for travel, and accessible ingress and egress to properties. Id.

Weed law, with certain exceptions, does not apply to extermination of ordinary types of weeds within incorporated limits of cities and towns. 1938 Op. Att'y Gen. 408.

3. Streets and alleys

Board of supervisors had authority to cut ordinary weeds growing along streets, alleys and highways. 1938 Op. Att'y Gen. 408.

4. Vacant lots

Supervisors have no authority to go upon vacant lots within the city or town to mow weeds, other than noxious weeds. 1938 Op. Att'y Gen. 408.

317.3 Weed Commissioner

4. Duties of weed commissioners

Weed commissioner has duty to enter upon property of defaulting property owner and proceed to destroy weeds 10 days after date set for destruction of weeds in published notice and after property owners received notice. 1938 Op. Att'y Gen. 762.

317.3 Weed Commissioner

ATTORNEY GENERAL OPINIONS

5. Expense of destroying weeds

Expense of destroying all primary noxious weeds was payable either from county general fund or State Highway Commission general fund. 1938 Op. Att'y Gen. 497.

County was not liable to tenant or landlord for loss of tenant caused by spraying weeds. 1940 Op. Att'y Gen. 398.

317.4 Direction and Control

1. In general

Under the provisions of section 317.5 (repealed, see now this section), the weed commissioner had authority to destroy weeds, notwithstanding the fact that doing so would cause damage or loss to crops. 1940 Op. Att'y Gen. 202.

317.6 Entering Land to Destroy Weeds - Notice

1. Construction and application

County-owned weed eradicating equipment and materials may not be used on private lands except as prescribed in this chapter. 1948 Op. Att'y Gen. 206.

317.10 Duty of Owner or Tenant

1. Construction and application

Owner of fee title to land occupied by waste banks of an open drainage ditch has statutory duty to destroy all noxious weeds growing thereon. 1948 Op. Att'y Gen. 191.

Weed law, with certain exceptions, does not apply to extermination of ordinary types of weeds within incorporated limits of cities and towns. 1938 Op. Att'y Gen. 408.

2. Cities and towns, weeds in

Cities and towns have duty to destroy all noxious weeds growing within parking areas, streets and alleys in the corporate limits and any other weeds that cause streets and alleys to be unsafe for public travel. 1938 Op. Att'y Gen. 802.

Cities and towns had mandatory duty to keep streets and alleys free of ordinary weeds, open for travel, and accessible ingress and egress to properties. Id.

Township trustees and city council have authority to compel destruction. 1919-20 Op. Att'y Gen. 295.

317.10 Duty of Owner or Tenant

ATTORNEY GENERAL OPINIONS

3. Railroad right-of-way

Abutting landowner must destroy noxious weeds growing on land intervening between highway and railroad right-of-way. 1925-26 Op. Att'y Gen. 148.

Railroad has duty to destroy weeds along highways on side adjoining railroad right-of-way, where railroad right-of-way parallels public highway with no intervening privately owned land. 1916 Op. Att'y Gen. 34.

4. Highways, weeds on

Landowners or persons in possession or control of lands have duty to keep highways free from growth of weeds, other than Canada thistles, sow thistles and quack grass, by mowing weeds along the highway. 1932 Op. Att'y Gen. 56.

Adjoining landowner to primary road must cause all noxious weeds growing on highway opposite such premises to be cut, and if landowners prevent such, then cost of cutting and destroying may be assessed against landowner. 1930 Op. Att'y Gen. 179.

5. Ditches, weeds in

Landowner has duty to cut weeds in ditch as well as those adjoining the highway. 1930 Op. Att'y Gen. 152.

317.11 Weeds on Roads or Highways

1. Construction and application

Counties are not liable for damages to trees, shrubs and crops growing on private property which may be caused by spray solutions used to destroy weeds. 1948 Op. Att'y Gen. 242.

Landowners or persons in possession or control of lands have duty to keep highways free of weeds. 1932 Op. Att'y Gen. 56.

Township trustees and city council have authority to compel destruction of noxious weeds. 1919-1920 Op. Att'y Gen. 295.

317.17 Additional Noxious Weeds

1. Construction and application

Where new weeds are declared noxious and their destruction or control is part of adopted program of which the landowner has notice, cost for destruction or control may be assessed against landowner who fails to destroy weeds. 1938 Op. Att'y Gen. 766.

317.21 Cost of Such Destruction

ATTORNEY GENERAL OPINIONS

3. Assessment of cost of destruction

County treasurer could not assess property under section 443.12 to realize cost of destruction of weeds where board of supervisors failed to prepare plat or schedule showing parcels to be accessed, fix time for assessment hearing and assess cost of destroying weeds. 1963 Op. Att'y Gen. 100.

In preparing assessments for destroying weeds, board of supervisors had to add an amount equal to 25% of actual cost of destruction on each tract or parcel of land; proceeds were to be placed in a general fund. 1948 Op. Att'y Gen. 242.

Assessment of costs for destruction of weeds is dependant entirely upon the platting. 1940 Op. Att'y Gen. 191.

Where destruction of weeds is part of road maintenance, the cost of destruction of noxious weeds could not be assessed against abutting landowner but must be paid from the secondary road maintenance fund. 1932 Op. Att'y Gen. 93.

Adjoining landowners of primary road must destroy all noxious weeds growing on highway opposite their premises, otherwise have cost assessed against them. 1930 Op. Att'y Gen. 179.

CHAPTER 319

OBSTRUCTIONS IN HIGHWAYS

319.1 Removal

1. Construction and application

County's duty to keep its roads open, in repair and free from nuisance does not extend to persons outside road and owning property adjoining road. Conrad v. Board of Supervisors, 199 N.W.2d 139 (Iowa 1972).

County may be liable to users of the road if it violates its duty to maintain roads. Id.

Attorney General Opinions:

County and township officials have authority to remove signs and billboards from highway, although legislature has not specifically granted them such authority. 1919-1920 Op. Att'y Gen. 291.

County attorneys do not have a duty to remove obstructions from highways. 1911-12 Op. Att'y Gen. 500.

Road supervisors have jurisdiction over public roads in their districts, and adjoining landowner has no obligation to cut brush growing in highway. 1909 Op. Att'y Gen. 239.

2. Obstructions in general

An obstacle in the way or an impediment or hindrance which impedes, embarrasses, opposes or interferes with free passage along the highway is considered an "obstruction". Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

Cattleway across a public highway may be removed if it is an obstruction. Davis v. Pickerell, 139 Iowa 186, 117 N.W. 276 (1908).

An excavation in highway may be removed if it constitutes an obstruction. Patterson v. Vail, 43 Iowa 142 (1876).

3. Right to obstruct highway

Encroachments on highway, regardless of length of time, do not give party so encroaching any right within limit of highway. Dickson v. Davis County, 201 Iowa 741, 205 N.W. 456 (1925).

Highway cannot be obstructed because it is less than statutory width. State v. Robinson, 28 Iowa 514 (1870).

4. Motives in removing obstructions

County authority's motive for removing certain trees along highway adjacent to landowner's property is immaterial so long as the authorities acted legally. Rabiner v. Humboldt County, 244 Iowa 1190, 278 N.W. 612 (1938).

5. Snow

Attorney General Opinion:

Township trustees' duty to remove snow, which makes roads impassable, is contingent upon funds available for road purposes. 1928 Op. Att'y Gen. 297.

6. Water

Landowner, who constructed embankment and ditch to divert water flowing naturally onto land to the public highway, could not compel highway officials to change the road after it had been regraded and a culvert was not large enough to carry the water. Brightman v. Hetzel, 183 Iowa 385, 167 N.W. 89 (1918).

7. Poles on highways

Section 306A.3 gives highway authorities right to determine whether utility facilities shall be placed upon and along right-of-ways of controlled-access highways. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Railroad commissioners were authorized to grant franchise to erect electric transmission lines, designate routes and location of lines. Iowa Ry. & Light Corp. v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930).

Attorney General Opinion:

Highway officials are authorized to relocate telegraph poles so as not to interfere with public's use of highway, notwithstanding federal regulation. 1928 Op. Att'y Gen. 184.

8. Fences

County officials have duty to remove abutting landowner's fence which intrudes onto the highway. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939).

Prior to removing a fence not directly obstructing travel, supervisors must give owner reasonable notice in writing, not exceeding six months. Cook v. Gaylord, 91 Iowa 219, 59 N.W. 30 (1894).

Landowner, upon discovering that fence is encroaching upon use and improvement of road, has right to move fence to highway boundary line. State v. Schieb, 47 Iowa 611 (1878).

Owner may not fence travelled road obstructed by natural means. State v. McGee, 40 Iowa 595 (1875).

A fence along highway which endangers public travel is a direct obstruction, although it does not extend across track or require removal in order for the road to be safe for public use. Mosher v. Vincent, 39 Iowa 607 (1874).

319.1 Removal

9. Dikes

A dike is a public nuisance and must be maintained, despite the fact that less water would be diverted upon public highway. Meyers v. Priest, 145 Iowa 81 (1909).

10. Expense of removal

Attorney General Opinion:

Owners of property which constitutes the obstruction must bare the cost for its removal. 1938 Op. Att'y Gen. 318.

11. Acquiescence

Doctrine of acquiescence is not applicable to fixing boundary between abutting landowner and highway because no one representing public is authorized to acquiesce any particular location. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939).

12. Estoppel

County was not estopped from having fence removed where there was continued existence of fence between public highway and abutting landowner. Knight v. Acton, 187 Iowa 597, 173 N.W. 30 (1919).

Public easement belongs to public, and any encroachment upon public right is prohibited and can not form a basis for estoppel against the public. Brightman v. Hetzel, 183 Iowa 385, 167 N.W. 89 (1918).

Where landowner's highway fence, which was not a boundary fence, extended into the highway, the county was not prevented by lack of its efforts to have fence removed to claim it was an obstruction of the highway. Quinn v. Monona County, 140 Iowa 105, 117 N.W. 1100 (1908).

County authorities were not estopped from having fence removed where it permitted hedge to grow after landowner fenced in a portion of highway and planted hedge along bank of stream. Bigelow v. Ritter, 131 Iowa 213, 108 N.W. 218 (1906).

The obstruction of public highway by keeping and using car and placing buildings will not be excused as conduct and operation of a business on land abutting street. Jenks v. Lansing Lumber, 97 Iowa 342, 62 N.W. 231 (1896).

Fact that landowner built fence across road does not prevent landowner from maintaining an action for its obstruction where it appears that the road could be and was traveled regardless of the fence. Miller v. Schenk, 78 Iowa 372, 43 N.W. 225 (1889).

319.1 Removal

13. Mandamus

Board of supervisors has discretion in how it performs its duty to remove dust on a road, which constitutes an obstruction. Shannon v. Missouri Valley Limestone, 255 Iowa 528, 122 N.W.2d 278 (1963).

Mandamus is the appropriate action to compel authorities to remove obstructions in the highway. Patterson v. Vail, 43 Iowa 142 (1876).

14. Injunctions - in general

Departing with ownership of land in which easement was claimed can not enjoin interference with strip as public highway. Rider v. Narigon, 204 Iowa 530, 215 N.W. 497 (1927).

County may enjoin landowners from interfering with the removal of their fences. Webster County v. Wasem Plaster, 188 Iowa 1158, 174 N.W. 583 (1919).

Injunctive relief may be granted to prevent highway closing. Long v. Wilson, 186 Iowa 834, 173

N.W. 76 (1919).

Court will not enjoin landowner from maintaining obstruction in an alleged highway, which permits landowner to reach others, and where there are no less effective barriers between land and main highway. Rose v. Gast, 166 N.W. 683 (1918).

Road superintendents have duty to maintain highways in their districts and are personally liable for damages resulting from nonperformance of such duty; therefore, they can enjoin the construction of a dike which would cause water to be dammed up on the highway making it impassable. Myers v. Priest, 145 Iowa 81, 123 N.W. 943 (1909).

15. Private citizens, injunction

Private citizen can not enjoin the obstruction of a public highway where no special injury different from that suffered by the general public is suffered. Livingston v. Cummingham, 188 Iowa 254, 175 N.W. 980 (1920).

A non-abutting landowner is not entitled to enjoin the obstruction of an alleged highway where landowner suffers the same way, although in a greater degree than the general public. Bradford v. Fultz, 167 Iowa 686, 149 N.W. 925 (1914).

Person who obstructs a highway by means of a fence cannot have another enjoined from maintaining a fence in the highway. Brutsche v. Bowers, 122 Iowa 226, 97 N.W. 1076 (1904).

Person who is specially injured by the obstruction of a highway is afforded relief by directing its removal and enjoining its continuance. Hougham v. Harvey, 33 Iowa 203 (1872).

An injunction may be granted against a nuisance by obstructing a highway where an individual suffers an injury distinct from the public. Ewell v. Greenwood, 26 Iowa 377 (1869).

319.1 Removal

16. Abatement of obstruction

Person suffering a monetary and personal injury from an obstruction to a public highway may maintain an action for abatement of the obstruction. Arbaugh v. Alexander, 151 Iowa 552, 132 N.W. 179 (1911).

17. Actions for removal of obstructions

Township's road supervisor may sue to remove an obstruction from a highway. Ford v. Doolittle, 157 Iowa 210, 138 N.W. 397 (1912).

Where road is the only available access to landowner's property, such interest is distinct from that of the general public, thus entitling landowner to maintain an action for its obstruction. Miller v. Schenck, 78 Iowa 372, 43 N.W. 225 (1889).

24. Damages

Duty of board of supervisors and county engineer to maintain county roads in proper condition runs to all those rightfully using the roads and breach of that duty can occur either by negligent commission or omission. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977), overruled on other grounds.

The effect of an obstruction of a highway upon use and enjoyment of landowner's property and business may be properly considered to determine damages. Park v. Chicago & S.W. Ry., 43 Iowa 636 (1876).

319.2 Fences and Electric Transmission Poles

1. Construction and application

Attorney General Opinions:

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. 1970 Op. Att'y Gen. 511.

Removal of telephone, telegraph or electric transmission line poles from highway right-of-way until improvement is completed so as not to interfere with improvement is not prohibited. 1923-24 Op. Att'y Gen. 182.

County and township officials have authority to remove signs and billboards from highway, although the legislature has not specifically granted them such authority. 1919-20 Op. Att'y Gen. 291.

319.2 Fences and Electric Transmission Poles

2. Obstructions

A fence along highway which endangers public travel is a direct obstruction, although it does not extend across track or require removal in order for the road to be safe for public use. Mosher v. Vincent, 39 Iowa 607 (1874).

3. Notice

Owner does not have to submit to forcible removal of fence until service of statutory notice. Harbacheck v. Moorland Telephone, 208 Iowa 552, 226 N.W. 171 (1929).

Road supervisor is forbidden from removing fences, which do not directly obstruct travel, until landowner has been given notice. Davis v. Pickerell, 139 Iowa 186, 117 N.W. 276 (1908).

Where fences do not directly obstruct public travel, they can not be removed until landowner has received notice, which is not to exceed six months. Blackburn v. Powers, 40 Iowa 681 (1875).

Road supervisor is not authorized to remove fence projecting into the highway without directly obstructing travel, without first notifying the owner. Mosher v. Vincent, 34 Iowa 478 (1874).

319.3 Notice

1. Construction and application

Court held that service of notice by registered mail on landowner to remove fence from highway was insufficient and ineffective. Harbacheck v. Moorland Telephone, 208 Iowa 552, 226 N.W. 171 (1929).

Attorney General Opinions:

If highway officials widen, re-align, regrade or otherwise reconstruct highway so that

telephone, telegraph and electric transmission lines became highway obstruction, statutory notice under this section would be valid and effective to require removal of such lines to a new location designated by the proper authorities. Op. Att'y Gen. June 29, 1950.

County and township officials have authority to remove signs and billboards from highway, although legislature has not specifically granted them such authority. 1919-20 Op. Att'y Gen. 291.

319.4 Refusal to Remove

2. Injunction - in general

Injunction was properly refused in a suit to restrain board of supervisors from removing fences and change highway on land claimed by abutting owner where the fence was within the true line of highway as contend by the board. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939).

Board of supervisors must show it had jurisdiction to establish road in an action to enjoin the board from removing a fence. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

Injunction may be issued to prevent road supervisor from improperly removing fence to the injury of landowner. Bolton v. McShane, 67 Iowa 207, 25 N.W. 135 (1885).

1. Construction and application

Attorney General Opinions:

County engineer or board of supervisors determines where transmission lines are to be located with reference to highway lines; county is not burdened with cost of making expensive surveys. 1940 Op. Att'y Gen. 374.

The only duty imposed upon county engineer by this section, in absence of engineer on board of supervisors, is the designation of lines in highway where poles supporting superstructure should be erected. 1938 Op. Att'y Gen. 318.

2. County engineer's powers

County engineer has complete control of location of electric line on highway, with the exception that construction of poles cannot overhang adjoining land. Iowa Ry. & Light v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930).

The pole and all of the wires, superstructure, etc. from poles must be within the confines of the highway. Id.

3. Application for local line

County engineer's action in locating transmission line on highway for utilities corporation was permissible despite failure to file with county auditor; such requirement is directory and can be waived. Swartzwelter v. Iowa Southern Utilities, 216 Iowa 1060, 250 N.W. 121 (1933).

3. Application for local line (cont.)

Attorney General Opinion:

Electric transmission wires or telephone wires which are intended to cross primary highway are prohibited unless application is made to the Highway Commission to have same located by a state highway engineer. 1936 Op. Att'y Gen. 525.

4. Location of poles

Electric company's transmission lines cannot overhang adjoining private land. Iowa Ry. & Light v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930).

Where engineer conducted survey for locating telephone poles and they were placed as engineer directed, company is not a trespasser, if in obeying engineer's order the poles were placed on landowner's property. Brammer v. Iowa Telephone, 182 Iowa 865, 165 N.W. 117 (1917).

Attorney General Opinion:

County engineers should not be paid extra compensation for locating transmission lines because it's their duty to do so. 1940 Op. Att'y Gen. 236.

County engineer's designation of location should be in form of a written memoranda filed with county auditor. 1938 Op. Att'y Gen 318.

5. Survey

Attorney General Opinion:

An applicant wanting engineer to stake out and survey in connection with designation of the location of new lines bears the expense. 1938 Op. Att'y Gen. 318.

County engineer need only to designate line from center of highway upon which poles may be erected. 1930 Op. Att'y Gen. 224.

6. Expenses

Attorney General Opinion:

Where county has notice of easement on private land upon which transmission lines are placed, it is liable for expense incident to resetting poles because of borrow pit; if poles are placed within highway, it has no such liability. 1940 Op. Att'y Gen. 236.

Expense incident to location of electric transmission lines may not be collected from owner of transmission line. 1940 Op. Att'y Gen. 364.

319.6 Cost of Removal - Liability

1. Construction and application

Generally, utility poles and lines must be relocated at owner's cost. Iowa Electric Light & Power v. Iowa State Highway Commission, 31 N.W.2d 597 (Iowa 1975).

Notice to remove fences does not imply a promise to pay reasonable value of services. Hall v. Union Co., 206 Iowa 512, 219 N.W. 929 (1928).

2. Injunction

Legal establishment of road may be shown by county road records. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

5. Expenses

Even though power company's easement for location of power transmission poles was on private property, it was obligated to pay cost of raising electrical transmission lines to provide statutorily mandated clearance over relocated county roadway, where electrical transmission lines crossed public highway. Interstate Power v. Dubuque County, 391 N.W.2d 227 (1986).

319.7 Duty of Road Officers

1. Construction and application

Township officers are responsible for improving highways under their jurisdiction so that surface waters will flow in their natural course of drainage. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Highway authorities have a legal right to maintain culvert in public highways for the purpose of conveying surface waters across it in the natural course of drainage. Id.

Attorney General Opinion:

Compensation paid to persons or organizations prior to OPP program being held unconstitutional cannot be recovered. Op. Att'y Gen. Oct. 31, 1974.

2. Liability of officer

Duty of board of supervisors and county engineer to maintain county roads in proper condition runs to all those rightfully using the roads and breach of that duty can occur either by negligent commission or omission. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977), overruled on other grounds.

319.7 Duty of Road Officers

2. Liability of officer (cont.)

This section and section 319.8, imposing duty upon officer to remove obstructions from highway and providing punishment if officer knowingly fails to remove obstructions, did not repeal rule that counties and their agents cannot be held for negligence in performance of duties with regard to construction and maintenance of highways. Swartzwelter v. Iowa Southern Utilities, 216 Iowa 1060, 250 N.W. 121 (1933).

3. Mandamus

Board of supervisors has discretion in how it performs its duty to remove dust on a road, which constitutes an obstruction. Shannon v. Missouri Valley Limestone, 255 Iowa 528, 122 N.W.2d 278 (1963).

4. Injunction

Road supervisor's decision to remove trees in highway for convenience of public travel is subject to review. Bills v. Belknap, 36 Iowa 583 (1873).

319.8 Nuisance

2. Ordinances

Imposing penalty for obstruction of public streets does not contravene state law which prescribes similar, though greater, penalties for like obstructions. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

3. Pipelines

Attorney General Opinion:

Only the legislature may grant permit to lay pipeline for transportation of petroleum products across or on roads. 1930 Op. Att'y Gen. 346.

4. Remedies of private persons

An unlawful obstruction of a highway is a public nuisance, and a private person has a right of action only when such person suffers an injury distinct from the public as a consequence of the wrongful act. Ingram v. Chicago & D.M. Ry., 38 Iowa 669 (1874).

319.9 Injunction to Restrain Obstructions

1. Construction and application

Township trustees having a duty to prevent obstruction could bring action to enjoin obstruction. Phillips v. Crawford, 199 Iowa 443, 179 N.W. 937 (1920), modified in other respects.

Where owners declined to permit county officials to remove their fences, the county could maintain suit to enjoin interference with removal of obstruction. Webster Co. v. Wasem Plaster, 188 Iowa 1158, 174 N.W. 583 (1919).

319.10 Billboards and Signs

1. Construction and application

Only expressed power given to city to abate billboards is found in section 657.2, subsection 7, and when construed with this section relates only to the abatement of nuisances. Stoner McCray v. Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956).

Attorney General Opinion:

Jurisdiction of Highway Commission in respect to billboards or advertising signs does not include extensions of primary roads within cities and towns. 1940 Op. Att'y Gen. 180.

319.12 Billboards, Reflectors and Signs Prohibited

1. Construction and application

Attorney General Opinions:

Advertising devices, including those mounted upon trailers, are prohibited from being placed upon right-of-way of any public highway. 1972 Op. Att'y Gen. 612.

Any sign which is not a traffic sign, signal, marking or traffic control device referred to in sections 321.252 to 321.260 is a billboard or advertising sign covered by this section and section. 1940 Op. Att'y Gen. 180.

319.13 Right and Duty to Remove

1. Construction and application

Attorney General Opinion:

Jurisdiction of Highway Commission in respect to billboards or advertising signs does not include extensions of primary roads within cities and towns. 1940 Op. Att'y Gen. 180.

319.14 Permit Required

1. In general

Attorney General Opinion:

This section does not prevent the burning or spraying of right-of-way, nor does Chapter 317 prevent such actions although they may be restrained by the board of supervisors. 1980 Op. Att'y Gen. 666.

CHAPTER 320

USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

320.1 Construction of Sidewalks in Certain School Districts

1. Construction and application

Attorney General Opinion:

County board of supervisors is without authority to install a sidewalk within a city or town leading to a schoolhouse located within the boundaries of the city or town. Op. Att'y Gen. Dec. 30, 1963.

320.2 Assessment of Costs

1. Construction and application

Expense of improving streets and sidewalks has been imposed on abutting property too long without regard to benefits, which now will be called in question. Gatch v. Des Moines, 63 Iowa 718, 18 N.W. 310 (1884).

2. Effect of assessment

Where common council of city authorizes street committee to construct sidewalk, and it is constructed on the order of the committee chairman, the council ratified the construction by assessing the cost against the abutting lot owner. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1879).

3. City charterr

Municipal corporation's charter authorizing it "to regulate and improve all streets, alleys and sidewalks," does not authorize it to levy special assessments against lots for improvement of sidewalks. City of Fairfield v. Ratcliff, 20 Iowa 396 (1866).

4. Injunction against collection

Collection may be enjoined where a city has no power under any form of procedure to impose sidewalk assessments upon property. Northern Light Lodge No. 156 v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).

320.4 Water and Gas Mains, Sidewalks, and Cattleways

1. In general

The legislature granted the county authority to grant easements to local water associations after the Court of Appeals decided that the county was without authority to grant such easements. Schwarzkopf v. Sac County Board of Supervisors, 341 N.W.2d 1 (Iowa 1983).

Neither county or landowner who used bridge could be required to remove debris lodged against the bridge, although landowners on both sides of highway were never granted right to use bridge spanning creek as a causeway. Adams County v. Rider, 205 Iowa 137, 218 N.W. 60 (1928).

2. Pipelines

Attorney General Opinion:

Only the legislature, as a public body, has authority to grant a permit to lay pipe line for transportation of petroleum products across bed of meandered or navigable streams. 1930 Op. Att'y Gen. 364.

3. Cattleways

Landowner was not entitled to peremptory order directing county officials to repair underpass, which was not essential to landowners use but was necessary to make it safe since it was presumed that officials would perform their duty to maintain safe highways. Licht v. Ehlers, 234 Iowa 1331, 12 N.W.2d 688 (1944).

Landowner's stock passing through opening in bridge to highway crossing landowner's pasture does not entitle landowner to prescriptive right to have opening maintained. Roberts v. Madison County, 183 Iowa 915, 167 N.W. 644 (1918).

Permission by supervisors for construction of cattleway furnishes no authority for the construction of another cattleway at a different place. Davis v. Pickerell, 139 Iowa 186, 117 N.W. 276 (1908).

Attorney General Opinion:

Subsequent owner of land may be required to keep cattleway in repair where it crosses a public highway and is established under provisions of this section. 1911-12 Op. Att'y Gen. 380.

CHAPTER 321

MOTOR VEHICLES AND LAW OF ROAD

321.1 Definitions

12. Intersection

Marked crosswalk west of intersection was not "at the intersection" within section 321.327, requiring stopping before entering nearest crosswalk at an intersection. Overturf v. Bertrand, 128 N.W.2d 182 (1964).

Where avenue and highway were open for public use of vehicular traffic, such place where they met was an "intersection" within section 321.304, subdivision 2, and driver was negligent in attempting to pass automobile from rear within 100 feet of place where avenue and highway met. Kroblin Refrigerated X Press v. Ledvina, 127 N.W.2d 133 (1964).

An intersection of a federal highway with a private road was not an "intersection" within section 321.304, proscribing passing at intersections. Herman v. Mughs, 126 N.W.2d 400 (1964).

Highway Commission may place stop signs at all entrances to an intersection, where primary highway is part of that intersection. State v. Wissler, 253 Iowa 792, 113 N.W.2d 721 (1962).

28. Street, highway or roadway

Subsection 50 of this section defines roadway as 'that portion of a highway improved, designed or ordinarily used for vehicular travel'. Kearney v. Ahmann, 264 N.W.2d 768 (1978).

A "street" includes all parts of the right-of-way, including the portion used for parking, sidewalks and pedestrian travel. Id.

Road use tax funds may be used for street maintenance, surfacing, repair and snow and ice removal, but not for acquisition or improvement of real estate for parking purposes. Douglass v. Iowa City, 218 N.W.2d 908 (1974).

Character of on-street parking areas as part of street system remains intact for permissible expenditure of road use tax funds for purposes of repair, surfacing, maintenance, cleaning and snow removal. Id.

Privately owned parking lot of drive-in restaurant was not a "public highway" within section 110.24, prohibiting persons from having or carrying guns in or on any vehicle on a public highway unless exceptions are met. State v. Sims, 173 N.W.2d 127 (1969).

"Public highway" applies to city and town streets, as well as highways outside cities and towns. State v. Lura, 128 N.W.2d 276 (1964).

Section 321.448, requiring stopped truck driver to place fusee on roadway and "as soon thereafter possible" to place three flares on roadway, indicates circumstances might prevent flares being put out immediately. Hayungs v. Falk, 238 Iowa 285, 27 N.W.2d 15 (1947).

321.1 Definitions

28. Street, highway or roadway (cont.)

Sticking fusees in rear of stalled truck so that one fusee protruded over traffic line did not comply with section 321.448, requiring fusees to be placed on roadway. Hayungs v. Falk, 238 Iowa 285, 27 N.W.2d 15 (1947).

Under section 321.326, requiring pedestrians to walk on left side of highway, the word "highway" was applicable to "through highway" traversing street within city. Reynolds v. Aller, 226 Iowa 642, 284 N.W. 825 (1939).

321.1 Definitions

31. "Through highway"

Designating highways as "through highways" must be by ordinance or regulation duly adopted by local authorities. Lemke v. Mueller, 166 N.W.2d 860 (1969).

County road which is a county trunk highway is a "through highway" by legislative mandate, and although the Highway Commission and board of supervisors may place stop signs, traffic-control devices or officers at any intersection with a "through highway," the absence of such devices does not excuse a motorist from stopping before entering county rank trunk highway. Davis v. Hoskinson, 228 Iowa 193, 290 N.W. 497 (1940).

County supervisors determine who has right-of-way at intersection of two arterial highways by erecting a sign. Arends v. De Bruyn, 217 Iowa 529, 252 N.W. 249 (1934).

At intersection of arterial highway and local county road, traffic on arterial highway has right-of-way over traffic on local county road. Id.

FUNDS

321.145 Disposition

1. In general

Maintenance of public roads and highways is "public purpose," within rule that tax for such purpose does not take private property without due process of law; motor vehicle license fees being used for improvement of highways are for public purpose within such rule. McLeland v. Marshall County, 199 Iowa 1232, 201 N.W. 401 (1924), modified on other grounds.

Attorney General Opinion:

Statutory provisions authorizing expenditure of motor vehicle fees and fuel taxes for removal of abandoned vehicles from areas other than public highways are unconstitutional. 1974 Op. Att'y Gen. 641.

321.145 Disposition

2. Road use tax fund

Attorney General Opinion:

Motor vehicle certificate of title fee and lien or encumbrance notation fee are not registration fees and thus are to be placed in the general fund rather than the road use tax fund. 1971 Op. Att'y Gen. 85.

321.236 Powers of Local Authorities

1. In general

Cities have right to enact ordinances in connection with laws affecting operation of motor vehicle where additional regulations do not conflict with statutes. Vinton v. Engledow, 258 Iowa 861, 140 N.W.2d 857 (1966).

Sections 321.319 and 321.345, regarding right-of-way at intersection and stopping before entering arterial highway, must be harmonized if possible. Dikel v. Mathers, 213 Iowa 76, 238 N.W. 615 (1931).

Provision regarding municipalities non-exclusion of owner of automobile from free use thereof on public highway simply means that such owner would have free use of public highways for purposes for which highways are primarily dedicated. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

Attorney General Opinion:

Cities and towns have authority to regulate driving of vehicles within their corporate limits if such regulation is consistent with state statute. 1971 Op. Att'y Gen. 32.

2. Conflict with state law

Ordinances passed providing that cities and towns shall have power to restrain and regulate the riding and driving of horses, livestock, vehicles and bicycles within corporate limits, and prevent and punish fast or immoderate riding or driving, had to comply with requirements of this section and section 321.236 requiring traffic laws to be uniform and ordinances to be consistent with statutes. City of Vinton v. Engledow, 258 Iowa 861, 140 N.W.2d 857 (1966).

Ordinance imposing penalty for obstructing public streets does not contravene state law. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

321.236 Powers of Local Authorities

2. Conflict with state law (cont.)

Attorney General Opinions:

City ordinance which prohibited driving a motor vehicle while intoxicated and prescribed $100 penalty and costs was void because it contravened state law. 1938 Op. Att'y Gen. 309.

Cities and towns cannot enact ordinance requiring traffic to make inside left turn because it conflicts with section 321.311. 1930 Op. Att'y Gen. 355.

3. Closing streets

City could not block street used for coasting, so as to make truck delivering groceries thereon unlawful. Dennier v. Johnson, 214 Iowa 770, 240 N.W. 745 (1932).

4. Parking

City had authority to interfere with public travel by installing parking meters on streets, and such meters would not be classified as "nuisances" unlawfully obstructing use of streets. Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940).

Ordinances creating parking meter zones providing for purchase and installation of parking meters and penalizing improper parking of vehicles in such spaces were not void as unreasonable. Id.

Section 321.361, declaring it unlawful to stop motor vehicle on street unless right side of vehicle is next to curb, was effective in city adopting no ordinance permitting other methods of parking. Trailer v. Schelm, 227 Iowa 780, 288 N.W. 865 (1940).

Attorney General Opinions:

Government official may not park contrary to state and local laws regulating parking while looking for a prospective law violator. 1968 Op. Att'y Gen. 469.

Town council may prescribe parking places by ordinance. 1916 Op. Att'y Gen. 222.

Streets may be used for parking purposes provided that parking may be regulated as to place and time, by ordinance. Id.

6. Buses

City has no implied power to grant interurban bus company right to use street in front of another's property for a stop to load and unload passengers, baggage and freight. Gates v. City Council, 243 Iowa 1, 50 N.W.2d 578 (1952).

321.236 Powers of Local Authorities

9. Use of highways

Designation of highway as "through highway" must be by ordinance or regulation duly adopted by local authorities. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Under legislative investment of general regulatory power, city can regulate public use of highways within the limits of public rights. Gates v. City Council, 243 Iowa 1, 50 N.W.2d 578 (1952).

Attorney General Opinion:

With the exception of single trip permits issued by the Highway Commission for moves on primary highway extensions, permits may be issued by the commission, counties, cities and towns but only for moves on that system of roads for which they are by law responsible to maintain. 1968 Op. Att'y Gen. 95.

10. Traffic control devices

Attorney General Opinions:

Signs and traffic signals used for control or direction of traffic are properly paid for out of public safety fund, not road use tax fund. Op. Att'y Gen. Dec. 13, 1961.

State Highway Commission has power to regulate erection of traffic control devices on primary roads and extensions. 1955 Op. Att'y Gen. 88.

321.237 Posting Signs-Regulating Traffic-Snow Routes

1. In general

Designation of highway as "through highway" must be by ordinance or regulation duly adopted by local authorities. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Driver of motor vehicle has right to assume that an apparently regular traffic sign was placed by legal authority and to act accordingly, in absence of knowledge of the contrary. Geisking v. Sheimo, 252 Iowa 37, 105 N.W.2d 599 (1960).

2. Location and sufficiency of sign

Speed ordinance passed under former statute requiring city or town to post sign on highway where city line crosses, and rate of speed changes, giving notice of change with arrow pointing in direction, was held invalid for failure to comply with statute, which did not require display of an arrow. Town of Decatur v. Gould, 185 Iowa 203, 170 N.W. 449 (1919).

321.237 Posting Signs-Regulating Traffic-Snow Routes

2. Location and sufficiency of sign (cont.)

Purpose of provisions regarding signs indicating speed limits is to warn motorists and protect public in use of the streets; such signs do not have to be exactly where the town line crosses the highway. Pilgrim v. Brown, 168 Iowa 177, 150 N.W. 1 (1914).

321.249 School Zones

1. In general

Attorney General Opinion:

State Highway Commission's permission is required for municipalities to establish school zones and provide for stopping of all motor vehicles by use of movable stop signs. Op. Att'y Gen. Oct. 2, 1959.

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

321.252 Department to Adopt Sign Manual

2. In general

Railroad was not free from tort liability for failing to warn truck driver of low clearance under railroad bridge according to this section, which placed duty to erect such warnings on governmental agencies. Wittrup v. Chicago & N.W. Ry., 226 N.W.2d 822 (Iowa 1975).

Under this section, authorizing Highway Commission to place and maintain traffic control devices, the legislature, not the commission, made it a crime to cross a yellow line while passing. State v. Rivera, 260 Iowa 320, 149 N.W.2d 127 (1967).

Attorney General Opinions:

County could fulfill responsibility with reference to limited load capacity bridges if motorists are advised or warned of existing and potential hazard by posted warning signs. 1977 Op. Att'y Gen. 264.

Highway Commission is responsible for advising counties concerning snowmobile signs; designated snowmobile routes are limited to roadways where operation will not interfere unduly with or constitute an undue hazard to conventional motor vehicle traffic. 1974 Op. Att'y Gen. 730.

Movable stop signs must conform to the manual of uniform traffic control devices adopted by the State Highway Commission. Op. Att'y Gen. Oct. 2, 1959.

Any sign, other than a traffic sign, signal or marker, is a billboard or advertising sign covered by sections 319.12 and 657.2. 1940 Op. Att'y Gen. 180.

321.252 Department to Adopt Sign Manual

3. Local powers

Attorney General Opinions:

City council cannot enact or enforce ordinance providing for yield signs rather than stop signs. Op. Att'y Gen. Sept. 25, 1957. State Highway Commission has power to regulate erection of traffic control devices on primary roads and extensions. 1955 Op. Att'y Gen. 88.

City has implied power to designate a "through street" as a special speed district. 1938 Op. Att'y Gen. 596.

321.253 Department to Erect Signs

1. In general

Unless compelled by statute, there is no reason railroads should be exempt from a duty to warn motorists of obstructions across a highway at a height no higher than the ceiling in the ordinary home. Wittrup v. Chicago & N.W. Ry, 226 N.W.2d 822 (1975).

Cities are authorized to place stop signs upon city streets and railroad crossings. 1974 Op. Att'y Gen. 687.

Highway Commission authorized by legislature to determine what signs are necessary to carry out provisions of this chapter. Op. Att'y Gen. June 1961.

Highway Commission has authority to control erection of traffic signals on primary roads and extensions of primary roads in cities and towns. 1955 Op. Att'y Gen. 88.

321.254 Local Authorities Restricted

1. In general

Attorney General Opinions:

Highway Commission's permission is not needed for municipality to establish school zone and provide for stopping all motor vehicles by use of movable stop signs. Op. Att'y Gen. Oct. 2, 1959.

Highway Commission's permission is required before placing flashing yellow signal at school crossing on an extension to a primary highway not within city's business district with population of 4,000 or more. Id.

The State Highway Commission has power to regulate and must give permission for the erection of traffic control devices on primary roads and extensions of primary roads. 1955 Op. Att'y Gen. 88.

321.255 Local Traffic-Control Devices

1. In general

"Highway" as used in section 321.326 is applicable to a "through highway" traversing a street within the city. Reynolds v. Aller, 226 Iowa 642, 284 N.W. 825 (1939).

Attorney General Opinions:

Sign erected for purposes of limiting traffic which states the substance of the ordinance authorizing it may be proper under section 321.472, notwithstanding the fact the name of the authorizing body is not on the sign. 1971 Op. Att'y Gen. 233.

Signs should be posted at public intersections that segment a road into portions. Id.

Movable stop signs must conform to the manual of uniform traffic control devices adopted by the State Highway Commission. Op. Att'y Gen. Oct. 2, 1959.

2. Defective devices

Where it was not contended that a traffic control device was improper, even if traffic control device had been dangerous and ineffective in its operation, it would not constitute a nuisance, and the city would not be liable on basis of nuisance for injuries received in intersectional automobile accident. Gorman v. Adams, 143 N.W.2d 648 (Iowa 1966).

321.256 Obedience to Official - Control Devices

1. In general

Statute providing that local authorities shall erect and maintain traffic signs "as they deem necessary" to carry out purpose of statute and give warning does not give local authorities absolute discretion as to signs. Malloy v. Guthrie County, 368 N.W.2d 121 (1985).

Authority's decision to place a yield sign, instead of a T-intersection sign, on road leading to T-intersection was not proved so overwhelmingly deficient as to establish it was negligent in violation of statutory requirements. Id.

3. Warning devices, generally

County owed duty of "ordinary care under the circumstances" to motorist with respect to placement of adequate warning signs on dangerous curb; county's signing duty was not to be evaluated according to "reasonable" professional engineering judgement standard. Schmitt v. Clayton County, 284 N.W.2d 186 (Iowa 1979).

321.256 Obedience to Official - Control Devices

3. Warning devices, generally (cont.)

Railroads are liable for failing to install warning device at particularly dangerous crossing despite section 321.342 authorizing governmental units to do so. Symmonds v. Chicago, M., St. P. & P. Ry., 242 N.W.2d 262 (Iowa 1976).

County also held liable for death of passengers in automobile-train accident where the county had jurisdiction of secondary road which was crossed by a particularly dangerous intersection, and where the county had obligation to act under due care. Id.

321.257 Official Traffic Control Signal

2. Right-of-way

Pedestrian's right to enter T-intersection, where there was no signal light governing south to north traffic, was not governed exclusively by this section, providing that pedestrian facing traffic signal may proceed across roadway. State v. Jennings, 261 Iowa 192, 153 N.W.2d 485 (1967).

Automobile driver is obligated to yield right-of-way to any pedestrian lawfully within intersection. Id.

This section gives pedestrian entering intersection at a crosswalk with a green light the right-of-way over a motorist who turns across the pedestrian's path. Arenson v. Butterworth, 243 Iowa 880, 54 N.W.2d 557 (1952).

3. Negligence

Railroad was negligent in failing to warn of low clearance on or near railroad overpass. Wittrup v. Chicago & N.W. Ry., 226 N.W.2d 822 (Iowa 1975).

Driver, who failed to keep proper lookout and yield right-of-way, was negligent in striking pedestrian in crosswalk. Coulthard v. Keenan, 129 N.W.2d 597 (Iowa 1964).

Pedestrian on highway have right to rely on other traveler's compliance with statutes and laws of road, and neither pedestrian nor motorist is required to anticipate other's negligence. Tobin v. Van Orsdol, 241 Iowa 1331, 45 N.W.2d 239 (1951).

321.259 Unauthorized Signs, Signals or Markings

3. Railroad signs or signals

This section, prohibiting the erection or maintenance of unauthorized signs which purport to be official traffic control signs, does not preclude railroad from placing clearance warnings on low railroad bridges and does not excuse railroad from failing to warn motorists of traffic hazard presented by low overhead bridge. Wittrup v. Chicago & N.W. Ry., 226 N.W.2d 882 (Iowa 1975).

SPEED RESTRICTIONS

2. In general

Violation of provision of this section, requiring motorist to drive at a 'careful or prudent speed not greater or less than is reasonable', does not necessarily result in violation of another provision, requiring motorist to operate automobile so as to stop within the "assured clear distance ahead." Wells v. Wildin, 224 Iowa 913, 277 N.W. 308 (1938).

Attorney General Opinions:

State Highway Commission has authority and jurisdiction to set speed limits on primary road extensions. 1973 Op. Att'y Gen. 187.

Highway Commission is authorized to determine, after an engineering and traffic investigation, speed limits other than those set out in subsection 5 of this section, but such determination must be reasonable. Op. Att'y Gen. Nov. 6, 1963.

2. Standard of care

In addition to duties imposed on motorists approaching intersections by this and sections 321.288, 321.297 and 321.319, each motorist had the common-law duty to exercise reasonable care and maintain proper lookout. Beezley v. Kleinholtz, 251 Iowa 133, 100 N.W.2d 105 (1960).

5. Assured clear distance

"Assured clear distance" provides that a driver shall at all times be able to stop car within the distance that discernible objects may be seen ahead of it. Coppola v. Jameson, 200 N.W.2d 877 (1972).

"Assured clear distance ahead" statute is essentially a speed regulation. Demers v. Currie, 258 Iowa 507, 139 N.W.2d 464 (1966).

The "assured clear distance ahead" provision of this section should not be construed to require a motorist to see an object, as a matter of law, when it cannot be seen by exercise of reasonable care. Central States Electric v. McVay, 232 Iowa 469, 5 N.W. 2d 817 (1942).

7. Oncoming traffic

Duty of being able to stop within assured clear distance ahead, imposed by this section, does not ordinarily apply to motor vehicles going in opposite directions. Kemp v. Creston Transfer, 70 F. Supp. 521 (N.D. 1947).

321.285 Speed Restrictions

7. Oncoming traffic (cont.)

Driver approaching truck from opposite direction has no duty to stop but is responsible for yielding one-half of traveled way to approaching vehicle. Weilbrenner v. Owens, 246 Iowa 580, 68 N.W.2d 293 (1955).

On question of speed of driver of one of two automobiles approaching each other on the same highway, the clear distance provision of this section apply to driver traveling on the left side of the highway not the driver traveling the right side of the highway. Gregory v. Suhr, 224 Iowa 954, 277 N.W. 721 (1938).

25. Secondary roads

Attorney General Opinions:

Board of county supervisors has power to reduce speed limits on secondary roads upon basis of an engineering and traffic investigation conducted by State Highway Commission. 1970 Op. Att'y Gen. 557.

The speed limit on secondary roads surfaced with concrete, asphalt or a combination of both would be reasonable and proper, having due regard to traffic, surface and width of highway and other conditions, not greater than will allow vehicle to be brought to a stop within the assured clear distance ahead, and in no case greater than the maximum mile-per-hour limit found in subsection 5 of this section. 1964 Op. Att'y Gen. 329.

The effective speed limit on secondary roads where no signs are posted is the general speed limit, that is, reasonable and proper speed to stop within assured clear distance ahead. Op. Att'y Gen. Jan. 5, 1961.

27. Local speed restrictions

Attorney General Opinion:

Cities and towns had right to establish graduated speed limits in "through" streets from 55 miles per hour down to 20 miles per hour where the municipal authorities seemed proper in various sectors of the street. 1938 Op. Att'y Gen. 596.

321.286 Truck Speed Limits

1. In general

Attorney General Opinion:

In light of the legislative history of prohibiting oversized vehicles from using interstate highway system, the nature of the system, its functions and purposes, and its peculiar traffic safety problems, the Highway Commission could promulgate rules more restrictive than those applicable in the general non interstate highway systems of the state. 1968 Op. Att'y Gen. 95.

321.288 Control of vehicle

2. In general

Motorist on a favored highway is only required to proceed with reasonable care and with vehicle under such control as existing condition which are known or which should have been know to driver may require. Pitz v. Cedar Valley Egg & Poultry, 203 N.W.2d 548 (1973).

Possession of directional right-of-way is not an absolute right but is rather a relative one and is qualified by this section, requiring a person operating a motor vehicle to have it under control and proper rate when approaching and traversing an intersection. Glandon v. Fiala, 261 Iowa 750, 156 N.W.2d 327 (1968).

The statutory rules of the road are cumulative and set a minimum instead of a maximum standard of care. Christensen v. Kelly, 257 Iowa 1320, 135 N.W.2d 510 (1965).

11. Road conditions - in general

Motorists are responsible for their automobiles and required to use commensurate care with dangerous condition of slippery highway. Brinegar v. Green, 117 F.2d 316 (Iowa Ct. App. 1941).

The fact that construction work is being conducted on traveled road does not render the rules of the road inoperative. Pestotnik v. Balliet, 233 Iowa 1047, 10 N.W.2d 99 (1943).

Where roadway of toll bridge was not slippery when dry and motorist knew roadway was wet, motorist had duty to drive automobile with care commensurate with inherent danger of wet, hard-surfaced road. Evans v. Muscatine Bridge, 228 Iowa 811, 293 N.W. 470 (1940).

321.288 Control of vehicle

17. Speed, intersections or crossing

Statutory duty to reduce speed at intersections is in addition to general rule that all motorists must drive at reasonable and proper rate under the then existing circumstances. Wilson v. Jefferson Transportation, 163 N.W.2d 367 (1968).

Additional duty to slow down at intersection, ordinarily, is not applicable to motorist on "through highway" where intersecting traffic has duty to stop and yield. Id.

Failure of motorist to stop or slow down for blind intersection is evident of failure to yield and keep proper lookout and of lack of control within the meaning of this section, providing that person operating motor vehicle shall have it under "control." Mass v. Mesic, 258 Iowa 1301, 142 N.W.2d 389 (1966).

Increasing speed while approaching intersection is not, per se, violative of this section. Carpenter v. Wolfe, 223 Iowa 417, 273 N.W. 169 (1937).

321.289 Speed Signs - Duty to Install

1. In general

Absent proof to the contrary, the court will presume town officers properly performed mandatory duty to erect signs showing points at which rate of speed of automobiles changes and of maximum rate in district. Doherty v. Edwards, 227 Iowa 1264, 290 N.W 672 (1940).

Speed governing automobiles which had just entered corporate limits of municipality but had not yet reached speed sign was that fixed by statutes governing speed on highways outside municipalities. State v. Graff, 228 Iowa 159, 290 N.W. 97 (1940).

The word "highway" as used in section 321.326 is applicable to a "through highway" traversing a street within city. Reynolds v. Aller, 226 Iowa 642, 284 N.W. 825 (1939).

2. Failure to install signs

Speed to be observed in different speed districts fixed by ordinances is not dependent upon placing signs required by this section. Waldman v. Sanders Motor, 214 Iowa 1139, 243 N.W. 555 (1932).

Attorney General Opinion:

Failure to post signs regarding speed limits required by this section does not render the speed limit unenforceable. 1980 Op. Att'y Gen. 751.

321.290 Special Restrictions

ATTORNEY GENERAL OPINIONS

1. In general

Exceptions to the general speed limits set pursuant to this section must be posted to be effective and enforceable. 1980 Op. Att'y Gen. 751.

State Highway Commission has authority and jurisdiction to set speed limits on primary road extensions. 1973 Op. Att'y Gen. 187.

Highway Commission has authority to determine, after an engineering and traffic investigation, speed limits other than those set out in subsection 5 of section 321.285. 1963 Op. Att'y Gen. 209.

The State Highway Commission has power to regulate and must give permission for the erection of traffic control devices on primary roads and extensions of primary roads. 1955 Op. Att'y Gen. 88.

Legislative intent was to confer exclusive authority on Highway Commission to reduce speed limits below those fixed by section 321.285 where after investigation it was obvious the limits provided for at any intersection or other place upon any part of highway was greater than was reasonable or safe under the conditions found to exist at such place. 1942 Op. Att'y Gen. 306.

321.293 Local Authorities May Alter Limits

1. In general

Exceptions to the general speed limits set pursuant to this section must be posted to be effective and enforceable. 1980 Op. Att'y Gen. 751.

The State Highway Commission has power to regulate and must give permission for the erection of traffic control devices on primary roads and extensions of primary roads. 1955 Op. Att'y Gen. 88.

2. Power to establish speed limit

State Highway Commission has authority and jurisdiction to set speed limits on primary road extensions. 1973 Op. Att'y Gen. 187. Cities have implied power to designate a sector of "through street" as a special speed district. 1938 Op. Att'y Gen. 596. Cities and towns had right to establish graduated speed limits in "through streets" from 55 miles per hour down to 20 miles per hour in various sectors of the street, where municipal authorities seemed proper. Id.

321.293 Local Authorities May Alter Limits

3. Validity of ordinance

Ordinance fixing maximum speed for operating motor vehicles was not void because signs notifying travelers of the speed limit were placed a short distance within the city limits. Pilgrim v. Brown, 168 Iowa 177, 150 N.W. 1 (1914).

321.293 Local Authorities May Alter Limits

4. Operation and effect of ordinance

Ordinance fixing speed of "motor vehicles" is not applicable to bicycles. Dice v. Johnson, 187 Iowa 1134, 175 N.W. 38 (1919).

Limited speed for vehicles does not necessarily render a lesser speed careful. Livingstone v. Dole, 184 Iowa 1340, 167 N.W. 639 (1918).

DRIVING ON RIGHT SIDE OF ROADWAY - OVERTAKING AND PASSING

321.297 Driving on Right Hand Side of Roadway - Exceptions

1. In general

This section, providing that operator of vehicle in cities and towns must at all times travel on the right hand side of the center of the street, is applicable to truck and automobile collisions which occur within city limits. Golden v. Springer, 238 N.W.2d 314 (Iowa 1976).

State law does not require motorist to keep automobile on the right side of the road at all times but only under certain described circumstances, one of which is when approaching the crest of a hill. Tillotson v. Schwarck, 259 Iowa 161, 143 N.W.2d 284 (1966).

Motorists approaching uncontrolled intersection must make observations at a time and place to allow them to comply with the requirements respecting right-of-way or to warrant them in assuring they are not required to yield right-of-way. Beezley v. Kleinholtz, 251 Iowa 133, 100 N.W.2d 105 (1960).

2. Obstruction

Parked vehicles may constitute an "obstruction" within meaning of subdivision 1(b) of this section, abrogating duty to drive on right half of roadway when obstruction exists and makes it necessary to drive to left of center of roadway. Kearney v. Ahmann, 264 N.W.2d 768 (1978).

321.297 Driving on Right Hand Side of Roadway - Exceptions

4. Streets

This section does not apply where accidents occur on sidewalk driveways off vehicular roadway of street. Dickeson v. Lzicar, 208 Iowa 275, 225 N.W. 406 (1929).

10. Narrowed roadway

Where two vehicles approach a narrow bridge or other place in the roadway from opposite directions, the vehicle reaching the bridge or place first is generally accorded the right-of-way across it. Brooks v. Dickey, 261 Iowa 1213, 158 N.W.2d 11 (1968).

TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

321.311 Turning at Intersections

4. Alley intersection

A private alley, opening on a public street used for driving from the street, is an alley connected with the street within an ordinance prescribing how vehicles shall enter an intersecting alley from the street. Withey v. Fowler Co., 164 Iowa 377, 145 N.W. 923 (1914).

SPECIAL STOPS REQUIRED

321.342 Stop at Certain Railroad Crossings - Posting Warning

2. Warning devices

This section, authorizing governmental units to erect stop signs at particularly dangerous highway-railroad grade crossings, did not relieve railroad of its obligation to conduct its operations with due care. Symmonds v. Chicago, M., St. P. & P. Ry., 242 N.W.2d 262 (Iowa 1976).

Stop sign did not provide adequate additional warning of proximity of railroad where, while stopped and because of the proximity of a grain elevator, motorist proceeding south to town street was unable to see trains approaching from the west, even though motorist obeyed stop sign which was placed "within 50 feet but not less than 10 feet from the nearest track." Maier v. Illinois Central Ry., 244 N.W.2d 388 (Iowa 1975).

321.345 Stop or Yield at Highways

1. In general

Highway Commission could place stop signs at all entrances to primary highway intersections. State v. Wissler, 253 Iowa 792, 113 N.W.2d 721 (1962).

Attorney General Opinions:

The State Highway Commission had power to regulate and must give permission for the erection of traffic control devices on primary roads and extensions of primary roads. 1955 Op. Att'y Gen. 88.

County board of supervisors could have created a four-way stop at intersection of county local road and county trunk road, but it could not reverse procedure established by the legislature by lifting requirement to stop at county trunk road and impose a requirement to stop before entering local road. 1951 Op. Att'y Gen. 68.

It is mandatory that county board of supervisors furnish, erect and maintain standard signs required for county trunk roads. 1932 Op. Att'y Gen. 106.

321.348 Limitations on Cities and Towns

1. In general

Attorney General Opinion:

The State Highway Commission has power to regulate and must give permission for the erection of traffic control devices on primary roads and extensions of primary roads. 1955 Op. Att'y Gen. 88.

321.349 Exceptions

1. In general

Attorney General Opinion:

Cities with population of 4,000 or more could erect traffic control signals on primary road extensions within city's business district without first securing State Highway Commission's permission. 1955 Op. Att'y Gen. 88.

Traffic control signals referred to in this section are defined in section 321.1(62) and should be distinguished from speed detection devices. Id.

321.350 Primary Roads as "Through Highway"

1. In general

Under section 321.326, requiring pedestrians to walk on left side of highway, the word `highway', was applicable to a "through highway" traversing a street within the city. Reynolds v. Aller, 226 Iowa 642, 284 N.W. 825 (1939).

2. Duty on entering "through highway"

Motorists approaching primary highway are bound to stop and look for travelers at stop sign and continue to observe as they leave the sign and approach paved portion of the highway. Hittle v. Jones, 217 Iowa 598, 250 N.W. 689 (1933).

Motorist on county highway has duty to yield right-of-way to motorist approaching intersection on paved primary highway in such a manner as not to endanger latter driver. Id.

Automobile driver must cross primary or arterial highway in a manner as not to interfere with the right-of-way of travelers on such highway. Id.

Motorists on highway intersecting with arterial highway were required to stop where stop sign was erected. Hogan v. Nesbit, 216 Iowa 75, 246 N.W. 270 (1933).

321.352 Additional Signs - Cost

1. In general

Where signs erected on county trunk roads by county board of supervisors conflict with general statute, relating to preference at intersections, such signs govern. Rogers v. Jefferson, 224 Iowa 324, 275 N.W. 874 (1937), overruled on other grounds.

STOPPING, STANDING AND PARKING

321.354 Stopping on Traveled Way

1. Validity

State Highway Commission's authorization to adopt rules and regulations as to stopping cars on paved highways was unconstitutional as delegation of legislative power. Goodlove v. Logan, 217 Iowa 98, 251 N.W. 39 (1933).

2. In general

This section requiring stopped vehicles to leave 20 feet of highway unobstructed applies to highway less than 20 feet in width and leaves no part of such traveled portion of highway available for stopping if it is less than 20 feet wide. Pinckney v. Watkinson, 254 Iowa 144, 116 N.W.2d 258 (1962).

321.358 Stopping, Standing or Parking

1. Parking regulations

Ordinance prohibiting specified obstructions and all "other structures, article, or things of whatsoever kind which hinders or obstructs the free use of sidewalk, street, alley or public place" did not prohibit parking motor vehicles on public streets. Griggin v. McNeil, 198 Iowa 1359, 201 N.W. 78 (1924).

The municipality's right and duty to keep public streets free of nuisances was not lessened by provisions providing that no one shall leave an automobile standing: 1) upon a public street in the business district within 20 feet of a street corner or hydrant, unless attended by someone capable of driving it; 2) within 15 feet of either side of theaters; and 3) on the public street and unattended with motor running. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

321.361 Additional Parking Regulations

2. Parking regulations

Municipalities could prohibit automobiles from parking in its street within a limited area during fixed hours. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

MISCELLANEOUS RULES

321.370 Removing Injurious Material

1. In general

Where owner of property on both sides of street contracted for construction of an office building, those undertaking the construction had no greater right to obstruct street than the owner. Hatfield v. White Line Motor Freight, 223 Iowa 7, 272 N.W. 99 (1937).

2. Knowledge

Actual knowledge of deposit of substance is an element of statute prohibiting deposit of destructive material on highway, for motorists are not aware that duty has arisen to remove it until such persons have actual knowledge that their vehicle has deposited substance upon the highway. Krueger v. Noel, 318 N.W.2d 220 (Iowa 1982).

321.384 When Lighted Lamps Required

LIGHTING EQUIPMENT

6. Liability of county

County supervisors were not liable for damages resulting from the operation of road machinery without lights required by former section 321.399 on the theory that they hired someone who was not competent to run the machinery, as their action in that respect was in the performance of a governmental duty and could not be the basis of an action. Shirkey v. Keokuk County, 225 Iowa 1159, 281 N.W. 837 (1938).

MISCELLANEOUS EQUIPMENT

321.442 Projections on wheels

3. Conflict between state and municipal regulations

Municipal ordinance declaring it unlawful to operate tractor or traction engine on towns' oiled streets, except as necessary to cross it to reach destination, was invalid as violative of former provisions of this section expressly declaring state's policy with respect to such matters and making certain exception. Town of Randolph v. Gee, 199 Iowa 181, 201 N.W. 567 (1925).

A municipality could not require state law to allow traction engines to move over bridges and street crossings without planks being kept under their wheels. Town of Hedrick v. Lanz, 170 Iowa 427, 152 N.W. 610 (1915).

SIZE, WEIGHT AND LOAD

321.452 Scope and Effect

3. Permits

Attorney General Opinions:

Section 321E.1 requires Highway Commission and local authorities to issue permits for the movement of vehicles of excess size and weight to all applicants, except where such a move will in their judgment cause undue hazard to public safety or undue damage to public or private property, and to issue permits to all vehicles falling within the same statutory classification. Op. Att'y Gen. July 9, 1968.

With exception of single trip permits issued by the Highway Commission for moves on primary highway extensions, permits may be issued by the commission, counties, cities and towns, but only for moves on that system of roads for which they are by law responsible to maintain. 1968 Op. Att'y Gen. 754.

321.453 Exceptions

2. Construction and application

This section, establishing exceptions to motor vehicle load limitation section, is an exemption statute and as such must be strictly construed against one claiming exemption. State v. Ricke, 160 N.W.2d 499 (Iowa 1968).

Attorney General Opinion:

Temporary movements of implements on a highway when the load exceeds the maximum width of eight feet must be in accordance with the last clause of this section. 1940 Op. Att'y Gen. 114.

3. Purpose

The purpose of this section is to permit temporary movement of those vehicles specified without penalty for failure to conform to the requirements as to maximum size, weight and load. 1940 Op. Att'y Gen. 114.

321.456 Height of Vehicles

1. Construction and application

This section, authorizing highway travel by vehicles five feet higher than particular overpass maintained by railroad, did not require railroads or public authorities to raise overpasses to that height and abrogate railroad's obligation to warn of low clearance under railroad bridge. Wittrup v. Chicago & N.W. Ry., 226 N.W.2d 822 (1975).

321.457 Maximum Length

1. Validity

Iowa's 60-feet truck length limitation, which was more stringent than restrictions imposed by other states, was an unconstitutional burden on interstate commerce, insofar as interstate highway system was concerned. Consolidated Freightways of Delaware v. Kassell, 612 F.2d 1064 (8th Iowa 1979).

3. Overall length

Attorney General Opinion:

Kassell v. Consolidated Freightways, 101 S. Ct. 1309, does not require Iowa to allow 65 feet twin trailers on all primary highways in Iowa; it only requires Iowa to allow 65 feet twin trailers on certain interstate highways. Op. Att'y Gen. May 14, 1981.

321.463 Maximum Gross Weight

1. In general

The purpose of this section is to prevent overloading of trucks and resulting deterioration of paving, as well as to avoid danger to persons traveling on highways. State v. Balsey, 242 Iowa 845, 48 N.W. 287 (1951).

321.471 Local Authorities May Restrict

1. Construction and application

Municipality could not block street used for coasting, so as to make presence of truck delivering groceries to residences unlawful. Dennier v. Johnson, 214 Iowa 770, 240 N.W. 745 (1932).

Attorney General Opinion:

Board of supervisors had authority to prohibit operation of school buses and milk and cream trucks when in its opinion, the roads would be seriously damaged or destroyed by such trucks because of climatic conditions. 1948 Op. Att'y Gen. 173.

321.473 Limiting Trucks - Rubbish Vehicles

1. In general

Attorney General Opinions:

County could fulfill its responsibility with reference to limited load capacity bridges if motorists were advised or warned of existing and potential hazards by posted warning signs. 1977 Op. Att'y Gen. 264.

The commission, counties, cities and towns may issue permits for moves on that system of roads, with exception of single trip permits, for which they are by law responsible to maintain. 1968 Op. Att'y Gen. 754.

Board of supervisors could prohibit school buses and milk trucks from using the roads when such use might damage or destroy the road because of climatic conditions. 1948 Op. Att'y Gen. 173.

321.474 Department May Restrict

1. In general

Attorney General Opinion:

The State Highway Commission was not authorized to prohibit vehicles from stopping on traveled portion of primary road unless disabled. Op. Att'y Gen. Dec. 9, 1974.

321.475 Liability for Damage

1. In general

Where farmer's lost of access to land was caused by destruction of bridge, and county refused to rebuild bridge, county board of supervisors could assign its cause of action against defendant for damages to bridge caused by negligence. Schmitter v. Kauffman, 274 N.W.2d 723 (Iowa 1979).

Attorney General Opinion:

Operating overloaded truck is an "illegal operation" under this section, and damage to secondary bridge may be recovered by board of supervisors. 1970 Op. Att'y Gen. 509.

2. Bridges

This section did not authorize State Highway Commission to maintain suit for common-law negligence for damage to bridge caused by alleged negligence in driving a truck and trailer into corner of bridge. State v. F.W. Fitch Co., 263 Iowa 208, 17 N.W.2d 380 (1945).

321.476 Weighing Vehicles by Department

2. Authority of commission

State Highway Commission has concurrent authority under this and the following sections to enforce sections 321.452 through 321.481, as to size, weight and load of motor vehicles on trailers, but its authority is limited to such matters. Merchants Motor Freight v. Iowa State Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

CHAPTER 327F

CONSTRUCTION AND OPERATION OF RAILWAYS

327F.1 Crossing Railway, Canal or Watercourse

1. Construction and application

Congressional acts providing for the erection of certain railroad bridges across the Mississippi river, and acts authorizing railroads to connect with roads of other states to form continuous lines of transportation are merely permissive, not mandatory. Richmond v. Dubuque & S.C. Ry., 33 Iowa 422 (1872).

2. Crossing another railroad

This section, former section 477.1, gave railroad corporation absolute right to carry its railway across, over, or under another when it was necessary; such right, however, was subject to the limitation that the crossing could not be made necessarily to interfere with the use of the railroad. Humeston & S. Ry. v. Chicago, St. P. & K.C. Ry., 74 Iowa 554, 38 N.W. 413 (1988).

327F.2 Maintenance of Bridges - Damages

1. Construction and application

Railroad had primary responsibility to reconstruct bridge over railroad tracks separating parcels of land owned by farmer, even though statute making railroads responsible for bridges contained exception for cases otherwise provided for by law, and another statute vested control over secondary roads and all bridges and culverts in the county. Soo Line Ry. v. Iowa Department of Transportation, 501 N.W.2d 525 (1993).

This section is not applicable where railroad has properly taken care of water in its right-of-way and built bridge which was needed solely because of construction of drainage district. Mason City & Ft. D. Ry. v. Board of Supervisors, 116 N.W. 805, reversed on other grounds, 144 Iowa 10, 121 N.W. 39 (1909).

2. Highway bridge

Although destruction of bridge may have produced de facto closing of road, secondary road continued to exist as public highway, obviating necessity of formal county action before railroad was obligated to rebuild bridge. Soo Line Ry. v. Iowa Department of Transportation, 501 N.W.2d 525 (1993).

Railroad not required to construct and maintain railing on approach to highway bridge over its tracks strong enough to resist automobile striking it; only required that bridge be constructed and maintained so as to be reasonably safe for the ordinary needs of travel. Medema v. Hines, 273 F. 52 (Iowa Ct. App. 1921).

3. Grade crossing

Railroad has duty to construct and maintain reasonably safe crossings at points where track intersects highways. Monson v. Chicago, R.I. & P. Ry., 181 Iowa 1354, 159 N.W. 679 (1916), rehearing denied and modified on other grounds, 165 N.W. 305.

4. Flooding adjoining lands - in general

To recover damages for flooding of their lands caused by insufficiency of openings in railroad bridges, landowners must show their insufficiency, that the bridges caused the overflow, and that the injuries complained of resulted from the overflow. Thompson v. Illinois Central Ry., 177 Iowa 328, 158 N.W. 676 (1916).

In constructing its embankment, culverts or bridges over a natural water course, a company subjects to the state's rights to provide for such use of the water course as it may become necessary and proper for public interest. Mason City & Ft. D. Ry. v. Board of Supervisors, 144 Iowa 10, 121 N.W. 39 (1909).

5. Duty to provide adequate water course

Railroad could not refuse to construct culverts necessary for conduct of water in natural course. Hinkle v. Chicago, R.I. & P. Ry., 208 Iowa 1366, 227 N.W. 419 (1929).

Railroad has duty to provide openings beneath its bridges sufficient for the passage of water streams crossing its right-of-way and to keep them unobstructed. Thompson v. Illinois Central Ry., 177 Iowa 328, 158 N.W. 676 (1916).

6. Obstructing natural flow of water, flooding adjoining lands

A street railway company has no right to construct and maintain its embankments for track purposes so as to flood the land above it. Nelson v. Omaha & C.B. St. Ry., 158 Iowa 81, 138 N.W. 831 (1912).

Railroad company has no right to collect surface water by the construction of a solid roadbed and discharge it on adjacent land. Albright v. Cedar Rapids & I.C. Ry. & Light, 133 Iowa 644, 110 N.W. 1052 (1907).

In procuring right-of-way, railroad company does not acquire the right to divert a stream of water from its natural channel to the injury of landowner. Stodghill v. Chicago, B. & Q. Ry., 43 Iowa 26 (1876).

327F.2 Maintenance of Bridges - Damages

7. Unprecedented floods, flooding adjoining lands

Railroad maintaining bridges over its stream is not required to provide for such floods as are unprecedented, and which could not have been reasonably foreseen in the exercise of ordinary care. Thompson v. Illinois Central Ry., 177 Iowa 328, 158 N.W. 676 (1916).

In building railroad tracks across a stream or low land, railroad company must provide passageways for the water reasonably sufficient for its flow through and make provisions for such floods as may occur in the ordinary course of nature and unusual storms. Blunck v. Chicago, & N.W. Ry, 115 N.W. 1013 (1908), reversed on other grounds, 142 Iowa 146, 120 N.W. 737.

327F.4 Rights of Riparian Owners

2. Control by governmental authorities

The bed of the Mississippi River and its banks to high-water marks belong to the state, and authorities have a right to build wharves and levees on the bank of that river below the high water mark and make other improvements necessary to navigation or public passage by railways or adjacent owner. Barney v. City of Keokuk, 94 U.S. 324 (1876).

Bayous and sloughs of the Mississippi River, not required in interests of commerce, are subject to state or municipal control. Ingraham v. Chicago, D. & M. Ry., 34 Iowa 249 (1872).

CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS AND REVERSION

DIVISION I. FENCES, CROSSINGS AND INTERLOCKING SWITCHES

327G.2 Crossings - Signs

3. Crossings - in general

Where a terminal railroad company only operating lines in one city is granted a certain number of feet in width in which to cross a city street, such grant is not exclusive, and the road may use a greater width, since a railroad company has the right to cross the streets of a municipality without consent of the city's authorities. Morgan v. Des Moines Union Ry., 113 Iowa 561, 85 N.W. 902 (1901).

Crossing becomes part of the railroad itself, to which individuals and the public have rights that cannot be defeated by changes of ownership of the railroad. Swan v. Burlington, C.R. & N. Ry., 72 Iowa 650, 34 N.W. 457 (1887).

4. Nature and sufficiency, crossings

A railroad company crossing city streets at grade is not prohibited or restricted from crossing at an angle as long as its tracks are not laid in front of other's property. Morgan v. Des Moines Union Ry., 113 Iowa 561, 85 N.W. 902 (1901).

5. Duty to construct and maintain safe crossings

Railroad company and city, which maintained viaduct over railroad tracks, had duty to maintain it in a condition reasonably safe and convenient for use of those traveling on public road and to meet changes in needs of the public having occasion to use road. Harris v. Chicago, M., St. P. & P. Ry., 224 Iowa 1319, 278 N.W. 338 (1938).

A railroad is not required to keep public crossing absolutely safe; maintenance in reasonably safe condition is sufficient. Peterson v. Chicago, M. & St. P. Ry., 185 Iowa 378, 170 N.W. 452 (1919).

Absent express legislation, a railroad company cannot be required to construct crossings over its right-of-way in order to prolong or connect streets established after the location and acquisition of the right-of-way. City of Albia v. Chicago, B. & Q. Ry., 102 Iowa 624, 71 N.W. 541 (1897).

Railway company is responsible for keeping both the bridge and approaches in safe conditions where the railway crosses city street below grade and when bridge and approach are erected by the company to carry the travel upon the street above the track. City of Newton v. Chicago, R.I & P. Ry., 66 Iowa 422, 23 N.W. 905 (1885).

5. Duty to construct and maintain safe crossings (cont.)

Railway companies are required to repair and keep their crossings in safe condition for travel; this requirement, however, does not relieve the road districts from their duty of maintaining highways in good condition. Farley v. Chicago, R.I. & P. Ry., 42 Iowa 234 (1875).

6. Obstructions at crossings

Railroad company's authorization to operate its roads over a public highway was not a defense in an action against a lumber company for obstructing the highway by keeping cars on such road in conducting its business located on property abutting highway. Jenks v. Lansing Lumber, 97 Iowa 342, 66 N.W. 231 (1895).

8. Approaches to crossings

Railroad is required to maintain only that part of crossing structure made necessary by existence of tracks and roadbed, not approaches which are not required by presence of such. Gable v. Kriege, 221 Iowa 852, 267 N.W. 86 (1936).

An approach to a crossing located on a railroad company's right-of-way is part thereof and within the statutory duty imposed on the company of erecting and maintaining a good and sufficient crossing. See v. Wabash Ry., 123 Iowa 443, 99 N.W. 106 (1904).

The embankment which is constructed as a necessary approach to the railway track is considered part of the crossing. Farley v. Chicago, R.I. & P. Ry., 42 Iowa 234 (1875).

12. Warning signs

Additional signalling devices are required at extra hazardous crossing. Kuper v. Chicago & Northwestern Transportation, 290 N.W.2d 903 (Iowa 1980).

Railroad's failure to post warning sign on south side of railroad crossing, in violation of this statute, did not render the railroad strictly liable for injuries sustained by motorist when automobile struck train engine at railroad crossing. Bradwell v. Illinois Century Ry., 562 F.2d 561 (Iowa Ct. App. 1977).

No warning is necessary when motorist has actual knowledge of existence of railway crossing. Illinois Century Ry. v. Kean, 365 F.2d 785 (Iowa Ct. App. 1966).

11. Nature and sufficiency, warning signs

Railroad company must install additional signalling at extra hazardous crossings, although it is not required to do so at every crossing. Kuper v. Chicago & Northwestern Transportation, 290 N.W.2d 903 (1980).

327G.2 Crossings - Signs

11. Nature and sufficiency, warning signs (cont.)

Installing automatic crossing bells or other signal warnings at approach of train is required only where crossing is more than ordinarily dangerous, or where ordinary statutory signals are insufficient. Hammarmeister v. Illinois Century Ry., 254 Iowa 253, 117 N.W.2d 463 (1962).

Stop sign did not provide adequate warning of proximity of railroad where motorist while stopped could not see trains approaching from west due to the proximity of a grain elevator to the railroad crossing. Maier v. Illinois Century Ry., 234 N.W.2d 388 (Iowa 1975).

15. Flagman

Whether the omission of keeping flagman at every street or highway crossing at any given hour of day or night is negligence per se depends upon frequency of trains passing, amount of travel and opportunities or the lack thereof for travelers to observe approaching trains. Hammarmeister v. Illinois Century Ry., 254 Iowa 253, 117 N.W.2d 463 (1962).

327G.3 Railway Fences Required

1. Construction and application

The manner of construction of a gate in railroad right-of-way fence is not prescribed. Hughes v. Chicago, B. & Q. Ry., 215 Iowa 741, 246 N.W. 769 (1933).

Railroad corporation does not have a right to fence its tracks in cities and towns where it is intersected by streets and alleys, notwithstanding that the statutory language requiring fencing where the road passes through improved land, or where the same person owns the land on both sides of the track is unqualified. Blanford v. Minneapolis & St. L. Ry., 71 Iowa 310, 32 N.W. 357 (1887).

A steep bluff, hedge or ditch which has effectual security to the inclosure as the fence prescribed by statute, may be regarded as a lawful fence. Hilliard v. Chicago, & N.W. Ry., 37 Iowa 442 (1873).

Railroad company fully performs its duty as to fencing when it erects a fence that is reasonably sufficient to prevent livestock from coming upon the track. Shellabarger v. Chicago, R.I. & P. Ry., 66 Iowa 18, 23 N.W. 158 (1885).

Railroad must construct and maintain fence. Bennett v. Wabash, St. L. & P. Ry., 61 Iowa 355, 16 N.W. 210 (1883).

Attorney General Opinion:

This section requires railroad companies to fence their right-of-ways. 1980 Op. Att'y Gen. 79.

327G.3 Railway Fences Required

3. Defects in fences

Railway company must exercise reasonable diligence and care in rebuilding or repairing railway fence when it is destroyed or becomes impaired. McCormick v. Chicago, R.I. & P. Ry., 41 Iowa 193 (1875).

5. Gates

Railroad company is not liable for stock killed on its tracks unless it has actual or implied notice that a gate in the fence was open and had reasonable time thereafter to correct it. Dewey v. Chicago & N.W. Ry., 31 Iowa 373 (1871).

327G.3 Railway Fences Required

8. Depot and station grounds, places fences required

Railway company was not required to fence part of its depot grounds necessarily used by the public and the company in transacting its business. Chicago, M. & St. P. Ry. v. Hanken, 140 Iowa 372, 118 N.W. 527 (1908).

327G.6 Failure to Fence

3. Right to fence - in general

Railroad company is not liable for death of animals trespassing upon its right-of-way in violation of city ordinance, where such right-of-way crossed various streets and alleys which were open to public travel. Gibson v. Iowa Century Ry., 136 Iowa 415, 113 N.W. 927 (1907).

Railroad company cannot exclude the public from use of platted streets and alleys of a town or unreasonably interfere with such free use, by fencing across platted streets and alleys against livestock. Lathrop v. Central Iowa Ry., 69 Iowa 105, 28 N.W. 465 (1886).

Railroad company has no right to fence its tracks where they cross a public street in a city or town, regardless if its open to public travel. Long v. Central Iowa Ry., 64 Iowa 657, 21 N.W. 122 (1884).

327G.7 Double Damages

1. Validity

This section imposes double damages upon railroads which willfully refuse to pay, within 30 days, amounts due for cattle injured or killed as a result of railroad's failure to maintain cattle guards at railroad crossings. Burchette v. Chicago, R.I. & P. Ry., 234 N.W.2d 149 (Iowa 1975).

Double damages could be recovered regardless of whether damages proceeded from a defective fence or from a defective cattle guard. Boyer v. Chicago, R.I. & P. Ry., 123 Iowa 248, 98 N.W. 764 (1904).

Double damages may be recovered for failure to keep fence in repair. Bennett v. Wabash, St. L. & P. Ry., 61 Iowa 355, 16 N.W. 210 (1883).

327G.9 Failure to Fence - General Penalty

1. Construction and application

Attorney General Opinion:

Where railway company fails to fence its right-of-way hog tight, landowner's only recourse is under this section, and no procedure is provided to compel railway to erect fence. 1916 Op. Att'y Gen. 110.

327G.11 Private Crossings

1. In general

Statute requiring railroad to construct and maintain private farm crossing where land is divided by railway simply set forth who was to bear construction and maintenance costs of farm crossing. Peters v. Burlington Northern Ry., 492 N.W.2d 399 (1992).

Railroad corporation does not have a right to fence its tracks in cities and towns where it is intersected by streets and alleys, notwithstanding that the statutory language requiring fencing where the road passes through improved land, or where the same person owns the land on both sides of the track is unqualified. Blanford v. Minneapolis & St. L. Ry., 71 Iowa 310, 32 N.W. 357 (1887).

2. Duty to construct

Statute addressing railroad's duty to install and maintain adequate roadway when person's land is divided by railway does not require railroad to construct and maintain private crossing for non-farming use. Peters v. Burlington Northern Ry., 492 N.W.2d 399 (1992).

327G.11 Private Crossings

2. Duty to construct (cont.)

Property owner whose land is divided by railroad right-of-way has absolute right to have at least one crossing between the two tracts, and the company has the duty of furnishing an adequate crossing. O'Malley v. Chicago, M. & St. P. Ry., 183 Iowa 749, 165 N.W. 1002 (1918).

Railroad company whose line runs through the land of an owner is only required to provide a crossing when its in the owner's interest and required by convenience. Henderson v. Chicago, R.I. & P. Ry., 498 Iowa 216 (1878).

6. Location of crossings

Landowner is entitled only to an adequate crossing, the location and character of which must be determined with due regard for all interests involved in its construction and maintenance. Klopp v. Chicago, M. & St. P. Ry., 175 Iowa 534, 157 N.W. 230 (1916).

327G.13 Signals at Road Crossings

1. Construction and application

Railroads are not required to install signalling devices or station flagmen at every railroad crossing. Wickman v. Illinois Century Ry., 114 N.W.2d 627 (1962).

Statutory requirement that bell be rung continuously until "crossing is passed" requires ringing only while engine is passing crossing. Butters v. Chicago, M. St. P. & P. Ry., 214 Iowa 700, 243 N.W. 597 (1932).

7. Crossings in municipalities

Provision that railroad may omit blowing whistle in cities and towns unless required by ordinance or resolution did not relieve it of its duty to sound whistle. Coonley v. Lowden, 234 Iowa 731, 12 N.W.2d 870 (1944).

8. Private crossings

This section is not applicable to private crossings, in which case the duty to warn is dependent upon circumstances. Hawkins v. Interurban Ry., 184 Iowa 232, 168 N.W. 234 (1918).

Where a railway company obstructs the use of a highway crossing and diverts the travel to a private crossing, the latter must be treated as a public crossing as to require the use of statutory signals by approaching trains. Hartman v. Chicago Great Western Ry., 132 Iowa 582, 110 N.W. 10 (1906).

327G.15 Railway and Highway Crossing at Grade

1. Construction and application

In enacting statutes dealing with authority of Commerce Commission in regard to railroad and highway crossings, legislature's intent was to retain jurisdiction in the Commerce Commission over all such crossings, whether existing or created by new facilities. Chicago, R.I. & P. Ry. v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

327G.21 Condition After Change - Temporary Ways

2. Repairs

Where bridge over tracks was necessary at street crossing, the railroad company was liable for expense of keeping the bridge and approaches in repair. City of Newton v. Chicago, R.I. & P. Ry., 66 Iowa 422, 23 N.W. 905 (1885).

327G.23 Grade Crossings

1. Construction and application

The law requires a warning or signal by a railroad train approaching a grade crossing commensurate with the train's speed. Daly v. Illinois Century Ry., 250 Iowa 110, 93 N.W.2d 68 (1959).

Commerce Commission has power to require railroads to furnish adequate protection and supervision of railroad crossings for benefit of traveling public, but it cannot legally require anything more than such protective devices as are adequate under the circumstances. Chicago, R.I. & P. Ry. v. Long, 243 Iowa 514, 51 N.W.2d 135 (1952).

327G.32 Blocking Highway Crossing

1. In general

Statute allowing cities to limit blockage of street by ordinance and Administrative Procedure Act do not require promulgation of rules to govern notice given by Transportation Regulation Board. Chicago & Northwestern Transportation v. Iowa Transportation Regulation Board, 322 N.W.2d 273 (Iowa 1982).

327G.64 Spur Tracks

DIVISION II. PRIVATE BUILDINGS AND SPUR TRACKS

1. Validity

Statutes authorizing railroad to condemn right-of-way for spur track requires successful operation of existing industry, and condemning land for track construction to manufacturer, warehouse, are not unconstitutional as "taking" of private property. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

4. Eminent domain

Test of public character use of proposed branchline, whereby railroad seeks to condemn right-of-way, is the character of use to which it will be put; use of railroad spur track is public. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

Railroad spur tack is opened to public for use and is subject to governmental control under general laws; use of such track is a public use in the same manner as railroad's main lines. Id.

This section authorizes condemnation of right-of-way for spur track, though originally intended to serve but one private industry. Id.

7. Discontinuation of service

Public policy did not preclude Department of Transportation's (DOT) decision to refuse to allow railroad to discontinue service along spur track to industrial customer even if service was no longer viable where DOT's decision was not unreasonable. Chicago & Northwestern Transportation v. Golden Sun Feeds, 462 N.W.2d 689 (Iowa Ct. App. 1990).

327G.68 Failure of Company to Act

1. Construction and application

This section contemplates that railroad company may be compelled to acquire spur track right-of-way in appropriate cases on application to Commission. Reter v. Davenport, R.I. & N.W. Ry., 243 Iowa 1112, 54 N.W.2d 863 (1952).

327G.76 Time of Reversion

DIVISION III. REVERSION TO OWNERS UPON ABANDONMENT

2. Construction and application

Statutory provisions governing reversion of railroad right-of-way are not applicable when railroad has acquired fee simple interest in land. Notelzah v. Destival, 489 N.W.2d 744 (1992).

Failure of city to comply with Marketable Title Act barred its claim to reversionary interest in land which had ceased to be used for railway purposes. Chicago & N.W. Ry. v. City of Osage, 176 N.W.2d 788 (1970).

4. Abandonment

Road lost title to land where fence was erected encroaching on a railroad's right-of-way, and road recognized it and acquiesced in boundary where occupant was established for 10 years and made improvements. Helmick v. Davenport, R.I. & N.W. Ry., 174 Iowa 558, 156 N.W. 736 (1916).

327G.77 Reversion of Railroad Right-of-Way

4. Use, operation, abandonment and breach of condition

Strip of land condemned for railroad's use would go to persons who were owners of farm from which strip had been taken unless use of strip for railroad purposes resumes before January 1, 1988. McKinley v. Waterloo Ry., 368 N.W. 2d 131 (1985).

Upon abandonment or nonuse of easement for period required by this section, railroad's easement reverted to owner of land from which easement was taken. Byker v. Rice, 360 N.W.2d 572 (Iowa Ct. App. 1984).

5. Reversion

Cessation of service by railroad caused extinguishment of railroad's easement for its right-of-way, and thus, property reverted to owner of adjacent land at time of abandonment. Estate of Rockafellow v. Lihs, 494 N.W.2d 734 (Iowa Ct. App. 1992).

Upon abandonment of railroad, owner on each side of right-of-way was entitled to share the reversion; one-half to each where party which owned the entire lot through which the railroad condemned its right-of-way had conveyed the property to two different parties. C.H. Moore Trust Estate v. Storm Lake, 423 N.W.2d 13 (1988).

CHAPTER 327I
(Transferred from Chapter 307B, Code 1991)

RAILWAY FINANCE AUTHORITY

327I.1 Short Title

1. Validity

Legislation establishing the Iowa Railway Finance Authority (Authority) does not unconstitutionally delegate legislative power to the Authority or lend the state's credit to obligations of the Authority. Train Unlimited v. Iowa Ry. Finance Authority, 362 N.W.2d 489 (1985).

Iowa Railway Finance Authority Act does not create local or special law or irrational classification of taxing character in violation of equal protection and uniform taxation clauses. In the Matter of Chicago, M., St. P. & P. Ry., 334 N.W.2d 290 (Iowa 1983).

CHAPTER 335
(Transferred from Chapter 358A, Code 1991)

COUNTY ZONING

335.1 Where Applicable

1. In general

Monetary expenditures for improvement of the real estate is an element to be considered, though not necessarily determinative, in determining whether any zoning enactment containing an amortization program calling for termination of nonconforming uses within a specified period constitutes "taking" of property without due process as to particular landowner. Board of Supervisors v. Miller, 170 N.W.2d 358 (Iowa 1969).

335.2 Farms Exempt

1. Construction and application

Farm exemption to platting requirement was inapplicable where evidence did not indicate that 30-acre parcel was adapted for agricultural purposes while former landowners owned property. Johnson v. Linn County Zoning Board of Adjustment, 347 N.W.2d 441 (Iowa Ct. App. 1984).

Attorney General Opinion:

This section describes land for use for agriculture purposes together with farm buildings and other attributes; entitlement to exemption from county zoning law depends upon whether use is primarily as means of livelihood, not on area that might constitute a farm. 1953 Op. Att'y Gen. 96.

335.3 Powers

1. Construction and application

Where restriction wording on free use of property is ambiguous, the rule of strict construction is applicable. Jersild v. Sarcone, 260 Iowa 288, 149 N.W. 179 (1967).

The same rules which govern the legislative authority of a municipal corporation under zoning law apply to and govern a county. Gannett v. Cook, 245 Iowa 750, 61 N.W.2d 703 (1954).

Attorney General Opinion:

County zoning regulations are not applicable to land acquired and maintained by the state for governmental purposes, provided such immunity is exercised reasonably as not to arbitrarily override all important legitimate local interests. Op. Att'y Gen. Oct. 23, 1973.

2. Powers of board of supervisors

Board of supervisors lacks statutory authority to bind county engineer by its judgment on road engineering standings; this statute gives the board authority to regulate land use but does not give it the power to adopt engineering standards which override the authority of the county engineer to pass on subdivision road plans. Spencer's Mountain v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

County boards of supervisors have only such powers as are expressly conferred or necessarily implied by statute. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Attorney General Opinion:

Board of supervisors may establish county zoning law without vote of the people. 1972 Op. Att'y Gen. 380.

3. Duty of board of supervisors

Attorney General Opinion:

When a submitted plat request meets all state, county and municipal subdivision regulations, county board of supervisors has a duty to approve the plat. 1979 Op. Att'y Gen. 454.

4. Vested interests in property

Landowners, who acquired vested interest in property prior to effective date of zoning ordinance by obtaining permit to move houses to tract, placing septic tank underground, laying concrete footings, entering cement contract, and placing substantial amount of materials for their houses, were permitted to finish their houses, develop their yards and prepare homes for occupancy. Board of Supervisors v. Paaske, 250 Iowa 1293, 98 N.W.2d 827 (1959).

5. Discrimination

Zoning ordinance providing for building or setback lines must be reasonable, clear and unambiguous, uniform in operation and not unfairly discriminatory. Jersild v. Sarcone, 260 Iowa 228, 149 N.W.2d 179 (1967).

Amendment to ordinance which reclassified tract from rural to light industrial uses was discriminatory and illegal "spot zoning", where 20-acre tract had been placed in rural zoning district under comprehensive county zoning ordinance, was similar in character and adaptable to surrounding property. Keppy v. Ehlers, 253 Iowa 1021, 115 N.W.2d 198 (1962).

335.3 Powers

7. Conditional use

"Conditional use" in zoning ordinance is the provisional use for a purpose designated by the ordinance itself; a grant of right for any use specified by the ordinance subject to board's finding that the use is proper, essential, advantageous or desirable to public good, convenience, health or welfare. Schultz v. Board of Adjustment, 258 Iowa 804, 139 N.W.2d 448 (1966).

8. Nonconforming uses

Where legislation did not contain express authorization for counties to eliminate nonconforming uses or to regulate land use retrospectively, counties lacked authority to adopt zoning ordinance eliminating such uses by means of amortization. State v. Bates, 305 N.W.2d 426 (1981).

Adoption of ordinance permitting erection of canopy in front yard did not authorize erection of canopy to a nonconforming building. Stan Moore Motors v. Polk County Board of Adjustment, 209 N.W.2d 50 (1973).

9. Building or setback provisions

Under setback provisions of zoning ordinance, the yard or setback area when abutting street or road was to the dividing line between lot and right-of-way of street lot, not to middle of the street, even though it was not deeded or dedicated to the public. Jersild v. Sarcone, 260 Iowa 288, 149 N.W.2d 179 (1967).

Setback provisions of zoning ordinance are invalid if they clearly appear arbitrary and unreasonable. Id.

335.4 Areas and Districts

1. Purpose of statute

Zoning decisions are exercise of police power to promote health, safety, order and morality. Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687 (1980).

2. Delegation of legislative function

Establishment of zoning districts is a legislative function delegated by state Legislature to county board of supervisors, who in turn may not delegate function to zoning board of adjustment. Zilm v. Zoning Board of Adjustment, 260 Iowa 787, 150 N.W.2d 606 (1967).

Zoning ordinance provision directing zoning board of adjustment to interpret boundary of two districts in case of variance was proper delegation of authority to the board. Id.

335.4 Areas and Districts

3. Authority of board

This section authorizes the county board of supervisors to divide a portion of county into zoning districts without dividing the entire county. Op. Att'y Gen. Aug. 7, 1967.

4. Boundary lines

Fixing boundary between two adjoining zoning districts is a legislative function conferred onto the county board of supervisors. Zilm v. Zoning Board of Adjustment, 260 Iowa 787, 150 N.W.2d 606 (1967).

Under zoning ordinance providing that "boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines," boundary line of abutting districts was center line of avenue which divided districts. Jersild v. Sarcone, 260 Iowa 288, 149 N.W.2d 179 (1967).

Attorney General Opinion:

Zoning commission has authority to make recommendations as to boundaries of zoning districts within counties and to recommend appropriate regulations under section 335.8 but do not have authority to enforce such regulations. Op. Att'y Gen. Aug. 7, 1967.

335.5 Objectives

1. Comprehensive plan

If county has enacted a written comprehensive plan, requirement that zoning be in accordance with such plan means that zoning ordinance must be designed to promote goals of individualized plan. Webb v. Giltner, 468 N.W.2d 838 (Iowa Ct. App. 1991).

Consider needs of public, changing conditions, similarity of other land in same area when determining whether zoning decision made by county board of supervisors has been made in accordance with comprehensive plan. Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687 (Iowa 1980).

Attorney General Opinion:

Counties establishing county zoning must have a "comprehensive plan" which is a general statement of policy of the result to be achieved in the community as a whole. Op. Att'y Gen. July 14, 1972.

335.5 Objectives

2. Spot zoning

Size of spot zoned is of less importance when dealing with county zoning of wide open spaces as opposed to relatively congested urban areas. Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687 (Iowa 1980).

Although disfavored by courts, spot zoning is not necessarily illegal; spot zoning is valid if there is a rational basis for it considering the size of spot zoned, prior use of the property, its suitability for various uses and uses of surrounding property. Id.

3. Rezoning

County board's rezoning decision must be in accordance with the county's comprehensive plan, if such plan is in writing; merely rezoning in accordance with 'any' comprehensive plan is not sufficient; plan must be specific plan adopted by the board. Webb v. Giltner, 468 N.W.2d 838 (Iowa Ct. App. 1991).

335.6 Public Hearings

2. Public notice and hearing

County board of supervisor's failure to provide public notice and hearing as required under statute regarding zoning changes forfeited its jurisdiction to rezone land. Bowen v. Story County Board of Supervisors, 209 N.W.2d 569 (1973).

Statutory requirement of public hearing prior to zoning change is mandatory and jurisdictional. Id.

Attorney General Opinion:

This chapter authorizes board of supervisors to adopt subdivision ordinances, which may not be adopted without notice an hearing. Op. Att'y Gen. Nov. 15, 1978.

335.12 Rules

1. In general

County board of adjustment's failure to adopt rules, as mandated by statute and ordinance duty, invalidated board's grant of conditional use permit for operation of sanitary landfill. Citizens v. Pottawattamie County Board of Adjustment, 277 N.W.2d 921 (Iowa 1979).

335.15 Powers of Board

2. Special exceptions

Under ordinance making provisions for landfill operation in an agricultural district if specified conditions are met, application for county board's approval to establish and operate sanitary landfill was a "special use," request rather than request for variance. Buchholz v. Bremer County Board of Adjustment, 199 N.W.2d 73 (1972).

"Special use" permit for sanitary landfill granted to metropolitan area solid waste agency was a "special exception" within this section, not a variance. Vogellar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860 (1971).

3. Variance

Hardship supporting grant of variance is never presumed but must be proven by persons seeking variance. Build-A-Rama v. Peck, 475 N.W.2d 225 (Iowa Ct. App. 1991).

Variance is authority extended to owner to use property in manner forbidden by zoning enactment, where literal enforcement would cause owner hardship; an exception allows owner to use property for use enactment expressly permits. Vogellar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860 (1971).

335.24 Conflict with Other Regulations

1. In general

Attorney General Opinion:

County zoning regulations do not apply to land acquired and maintained by the state for governmental purposes, provided such immunity is exercised reasonably as not to arbitrarily override all important legitimate local interests. Op. Att'y Gen. Oct. 23, 1973.

335.27 Agricultural Land Preservation Ordinance

1. In general

Attorney General Opinion:

A county which has adopted county zoning pursuant to this chapter is required by this section to adopt an agricultural land preservation ordinance pursuant to its zoning authority before imposing use restrictions on land; county which has not adopted zoning pursuant to this chapter may not required to adopt such ordinance. Op. Att'y Gen. May 4, 1983.

CHAPTER 346

COUNTY BONDS

346.24 Limit on Indebtedness for General Purposes

1. Construction and application

Fact that performance of contract resulted in deficiency due contractor in excess of special assessments of statutory limit of indebtedness did not render contract void where there was nothing in contract terms rendering deficiency necessary. Waller v. Pritchard, 201 Iowa 1364, 202 N.W. 770 (1925).

Attorney General Opinions:

County's indebtedness for relief purposes is to be considered as indebtedness for "general and ordinary purposes", rather than for "for special and extraordinary purposes." 1936 Op. Att'y Gen. 82.

No municipal corporation may become indebted in the aggregate beyond five percent of actual value of its taxable property unless addition is authorized by affirmative vote. 1916 Op. Att'y Gen. 211.

2. Debts subject to limitation

Indebtedness incurred for urban renewal under authority to urban renewal law is not incurred for general and ordinary municipal purposes, but rather falls within constitutional provisions limiting indebtedness for any purpose to five percent of actual property value. Webster Realty v. Fort Dodge, 174 N.W.2d 413 (1970).

Attorney General Opinions:

A loan constitutes city indebtedness if city's general tax revenues are pledged as security for repayment of the loan. Op. Att'y Gen. July 9, 1990.

Municipalities may enter into lease-purchase agreements so long as the debt limit is not exceeded; city councils may bind future councils with such an agreement for a reasonable length of time. Op. Att'y Gen. Sept. 26, 1972.

Board of supervisors could not enter into contract to purchase additional land where county had reached its constitutional and statutory limit of indebtedness. 1940 Op. Att'y Gen. 38.

Under section 368.41 (repealed), cities and towns are authorized to join with township authorities in building and equipping city halls under mutually agreed terms, but they are limited in indebtedness by former section. 1938 Op. Att'y Gen. 498.

Warrants issued in anticipation of revenue collectable within biennial period and payable therefrom do not create a debt within the meaning of this section. 1922 Op. Att'y Gen. 169.

346.24 Limit on Indebtedness for General Purposes

3. Computation of debt or limit

Total amounts of indebtedness of municipalities do not include unaccrued interest. Pennington v. Town of Sumner, 222 Iowa 1005, 270 N.W. 629 (1937).

Where a board of trustees in charge of the city waterworks purchases coal for the waterworks plant, the city's liability to pay for coal is not affected by its general indebtedness, because the coal is a current expense. Martin-Strelau v. City of Dubuque, 149 Iowa 1, 127 N.W. 1013 (1910).

Constitution, art. 11, section 3, prohibiting municipal corporations from becoming indebted in an amount exceeding five per centrum on the value of taxable property located therein, was to prevent the municipality's improper expenditure of public money. N.W. Halsey & Co. v. Belle Plaine, 128 Iowa 467, 104 N.W. 494 (1905).

Attorney General Opinions:

Poor warrants representing incurred indebtedness within constitutional and statutory limitations could be refunded by bond issue although county was indebted over the limit. 1936 Op. Att'y Gen. 299.

The actual value of moneys and credits must be taken into consideration in determining the debt limit of a municipality or county. 1928 Op. Att'y Gen. 120.

4. Bona fide purchasers

The issue of excessive indebtedness does not arise when an innocent purchaser buys from other than the municipality and its agents. Independent School District v. Rew, 111 F. 1 (1901).

Contract of guaranty is not negotiable, and when executed by a municipal corporation in excess of its constitutional inhibition against contraction of indebtedness, is void in the hands of the original owner and against subsequent assignees. Carter v. City of Dubuque, 35 Iowa 416 (1872).

346.27 "Authority" for Control of Joint Property

1. Construction and application

Legalization by statute of city's acts in erecting a city hall makes the acts legal and binding. City of Ida Grove v. Ida Grove Armory, 146 Iowa 690, 125 N.W. 866 (1910).

Cities are authorized to purchase necessary grounds for public buildings and pay for such out of the general fund. Brooks v. Town of Brooklyn, 146 Iowa 136, 124 N.W. 868 (1910).

346.27 "Authority" for Control of Joint Property

1. Construction and application (cont.)

Cities are authorized to levy special taxes to pay for necessary buildings and grounds and to issue bonds in anticipation of such tax, providing that there is a majority vote in favor of the same. Beaner v. Lucas, 138 Iowa 215, 112 N.W. 772 (1907).

Attorney General Opinions:

The provisions of section 345.1, providing that an election is not needed where payment is made from funds on hand and the cost does not exceed $100,000, is applicable to joint county and city projects. Op. Att'y Gen. July 7, 1975.

County board of supervisors may transfer county funds as an outright gift to a joint county-city authority only if the board deems it proper and appropriate to aid county-city authority to effectuate its purposes. Op. Att'y Gen. July 9, 1964.

CHAPTER 355

STANDARDS FOR LAND SURVEYING

355.3 Rules

1. Construction and application

Boundaries established by government survey, whether right or wrong, control over county surveyor's survey. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

Surveys in Iowa are to be made in accordance with rules established by Congress. Hootman v. Hootman, 133 Iowa 632, 111 N.W. 60 (1907).

The center of a section which has not been fixed by the government survey must be determined by the "intersecting" method, which entail running straight lines from the east and west quarter corners and from the north and south quarter corners with the center as the intersecting point. Gerke v. Lucan, 92 Iowa 79, 60 N.W. 538 (1894).

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

362.2 Definitions

1. Construction and application - in general

Street construction and repair and sewage collection and disposal constitute local affairs which cities are authorized to handle under home rule amendment. Green v. City of Cascade, 231 N.W.2d 882 (Iowa 1975).

7. Street intersections

Attorney General Opinion:

While city street intersections, with other roads and local service-street facilities, may be established, constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the State Highway Commission working together. 1969 Op. Att'y Gen. 92.

362.5 Contract Defined

8. Effect of violation of statute

Ordinance of an incorporated town vacating a highway was void because of interest of council member voting for it with an understanding that it would be deeded to council member. Kreuger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

CHAPTER 364

POWERS AND DUTIES OF CITIES

I. POWERS IN GENERAL

364.1 Scope

2. Construction and application

Municipality acts in representative capacity for abutting property owners in special assessment proceeding for street improvements. Sioux City v. Western Asphalt Paving, 223 Iowa 279, 271 N.W. 624 (1937).

4. Municipal powers, generally

City has power to enact ordinance on matter which is also subject to state statute if ordinance and statute can be harmonized and reconciled. Sioux City Police Officers v. Sioux City, 495 N.W.2d 687 (1993).

6. Delegation of power to city, generally

Iowa's legislature can authorize municipal corporations to subscribe for stock in aid of railways and to issue bonds in payment therefor. Rogers v. City of Keokuk, 154 U.S. 546 (1866).

11. Classes of powers and functions

The functions of a municipality are governmental and proprietary, and in exercising its powers to light street, a town acts in its governmental capacity. Miller v. Town of Milford, 224 Iowa 753, 276 N.W. 826 (1934).

17. Ordinances

City ordinance prohibiting the collection and marching of crowds and processions, and the making of noise with musical instruments on the streets and sidewalks, so as to obstruct travel, frighten horses, interfere with business, or disturb others is not unreasonable and invalid because it makes it the duty of the mayor or city marshall first to order the offenders to desist. City of Chariton v. Fitzsimmons, 87 Iowa 226, 54 N.W. 146 (1893).

II. PARTICULAR POWERS

51. In general

City has no power to interfere with the right of the owner of lots to maintain their surface at any grade, so long as the owner does not create or maintain a nuisance by doing so. Bush v. City of Dubuque, 69 Iowa 233, 28 N.W. 542 (1886).

54. Agents, consultants and employees, power to employ

Where city needed right-of-way and was unable to obtain it advantageously, it was within its power to employ and contract for payment of services of a third person to secure right-of-way. Stewart v. Council Bluffs, 58 Iowa 642, 12 N.W. 718 (1882).

65. Contracts - in general

Town could contract with electric company and establish necessary transmission lines or grant company an easement to furnish and maintain street lighting. Miller v. Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

69. Propriety capacity, contracts in

In granting franchise to a public service corporation for the use of its streets, a city acts as an agent for the state; but in contracting with water companies for water for fire and other purposes, and with an electric light company for lighting its streets, a city acts in a private capacity. State v. Des Moines City Ry., 159 Iowa 249, 140 N.W. 437 (1913).

79. Purposes for which property may be acquired or used

Where a city is permitted to use land for "a public highway and other public purposes," the land may be used to facilitate the business of a railway. Tomlin v. Cedar Rapids & I.C. Ry. & Light, 141 Iowa 599, 120 N.W. 93 (1909).

82. Condemnation

Right of owners of property abutting on street to ingress and egress from their premises by way of such street is a property right which cannot be denied without just compensation. Hathaway v. Sioux City, 57 N.W.2d 228 (Iowa 1953).

Where city council establishes new street grade but annuls appraisement of damages, property owner may obtain action against city to recover injury to property. Hempstead v. Des Moines, 52 Iowa 303, 3 N.W. 123 (1879).

84. Improvements, generally

Where the entire procedure for the construction of a municipal improvement is regulated by statute and nothing is left to be determined by general ordinance, an assessment made in accordance with the statute will be valid without any ordinance. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905).

84. Improvements, generally (cont.)

Power to regulate and improve roads and highways given by statute to city government does not carry with it right to condemn and open them, or take away the general power conferred upon county court to establish highways. Knowles v. City of Muscatine, 20 Iowa 248 (1866).

Where a town is authorized to construct bridges over a stream dividing its streets, it has no power to erect toll bridges. Mullarky v. Cedar Falls, 19 Iowa 21 (1865).

85. Streets and alleys - in general

Where plat was made of land dividing it into lots, streets, and alleys prior to incorporation of town embracing the land platted, the streets and alleys became county roads. Chrisman v. Brandes, 137 Iowa 433, 112 N.W. 833 (1907).

Act authorizing and creating roads refers not only to roads and highways, but also to roads which lie within limits of cities and towns. City of Newton v. Board of Supervisors, 135 Iowa 27, 112 N.W. 167 (1907).

Board of supervisors is not authorized, under its general powers over highways, to lay out highway over land within limits of a corporate town. Gallaher v. Head, 72 Iowa 173, 33 N.W. 620 (1887).

Cities and incorporated towns are authorized to vacate streets or alleys by ordinance, without notice to owners of abutting property. Dempsey v. City of Burlington, 66 Iowa 687, 24 N.W. 508 (1885).

86. Contracts and contractors, streets and alleys

Contractor and bondsman not liable under statutory bond for ordinary wear and tear on the pavement caused by ordinary use of street. Charles City v. Rasmussen, 210 Iowa 841, 232 N.W. 137 (1930).

Paving contract requiring seven years guaranty was proper and placed no additional burden on abutting owners. Hedge v. Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

The following requirements in a contract for municipal improvements do not invalidate the contract: requiring contractor to meet all loss arising out of the nature of the work done and repair or replace all permanent sidewalks, streets, etc.; indemnifying the city from all claims growing out of injury to persons or property as a result of the work; obligating contractor to pay for all injuries done to water, gas or sewer pipes; and requiring contractor to keep pavement in repair for one year. Diver v. Keokuk Savings Bank, 126 Iowa 691, 102 N.W. 542 (1905).

88. Sidewalks

Resolution ordering construction of sidewalk was not void because it did not designate material and mixture to be used. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).

A town ordinance, which provided that a cement sidewalk should be built by the town 30 days after notice to the owner, agent or occupying tenant of property abutting on certain streets, if not built within that time, but which contained no express reference to trees located in the sidewalk space, conferred no duty on town's street committee to remove the trees, especially until after the 30 days' notice was given to abutting owner. Waterbury v. Morphew, 146 Iowa 313, 125 N.W. 205 (1910).

Attorney General Opinions:

An incorporated town could construct a temporary sidewalk at an elevation other than upon the natural surface of the ground, where no regular grade had been established. 1916 Op. Att'y Gen. 53.

Town may construct temporary walks, but not permanent walks, where no grade is established and cost is within statutory limit. 1909 Op. Att'y Gen. 274.

89. Ditches

City, through its council, may authorize purchase of right-of-way for ditch and be bound to reimburse party who procures it, but city cannot enter into agreement that it will construct ditch. Stewart v. Council Bluffs, 50 Iowa 668 (1879).

94. Wharves, docks and piers

Any construction of timber or stone upon the bank of a non-tidal stream that allows vessel to lie alongside it with its broadside to the shore constitutes a wharf, and a paved street extending to the water's edge may be designated. City of Keokuk v. Keokuk Northern Line Packet, 45 Iowa 196, affirmed 95 U.S. 80 (1876).

A piece of land dedicated to the use of the public as a street may be used for purposes of a wharf without any infringement of the right of the owner in fee of the land. Haight v. City of Keokuk, 4 Iowa 199 (1857).

108. Weeds, destruction of

Attorney General Opinion:

Cities and towns required to destroy all noxious weeds growing within parking areas, streets and alleys in corporate limits, and other weeds unsafe for public travel. 1938 Op. Att'y Gen. 802.

III. SEWERS

215. Street railroad, interference with

City cannot compel street railway company to tear up its track laid in the center of a street pursuant to an ordinance to permit the laying of a sewer under it where the sewer can just as well be laid on one side of the track. Des Moines City Ry. v. Des Moines, 90 Iowa 770, 58 N.W. 906 (1894).

IV. POWER TO REGULATE AND LICENSE

262. Use of streets and alleys, generally

All citizens have right to use the full width and length of streets. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

Care and control of streets and sidewalks are vested in municipalities, and they may adopt ordinances in pursuance of such power which are reasonable and do not conflict with state laws or violate private rights. Pugh v. Des Moines, 176 Iowa 593, 156 N.W 892 (1916).

City, by virtue of its corporate authority, may regulate public use of the streets. City of Dubuque v. Maloney, 9 Iowa 450 (1859).

263. Parking

Any private use of a public street which in any degree prevents its free use as a public way from side to side and end to end is a nuisance and may be prohibited by a municipality. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

V. DUTIES AND LIABILITIES

380. Flooding

City has duty to keep its storm sewers clear and free of obstructions. Elledge v. Des Moines, 259 Iowa 184, 144 N.W.2d 283 (1966).

An owner of property below street level on which it abuts cannot recover for the overflow of surface water onto such property if the overflow would not have occurred had the land been filled so as to be level with the street. Knostman & Peterson Furniture v. City of Davenport, 99 Iowa 589, 68 N.W. 887 (1896).

364.1 Scope

383. Public works

City which constructed bridge according to competent engineer's specifications not liable for damages resulting from the flooding of adjacent property because the bridge obstructed the outlet of the stream. Tackberry Co. v. Simmons Warehouse, 170 Iowa 203, 152 N.W. 779 (1915).

City undertaking construction and maintenance of public work assumes liability for its failure to exercise reasonable skill and care. Hines v. City of Nevada, 150 Iowa 620, 130 N.W. 181 (1911).

384. Improvements, generally

Engineering expertise is not imputed to city council members adopting plans prepared by competent engineer for city improvement construction. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

City's power to order or provide for the establishment, construction and maintenance of public improvements is a governmental function. Hines v. City of Nevada, 150 Iowa 620, 130 N.W. 181 (1911).

388. Streets, alleys and sidewalks

Municipality's duty to maintain streets and alleys does not relieve property owners or others from duty not to obstruct them so as to endanger safety of public rightfully using them nor from liability for damage occasioned thereby. Smith v. J.C. Penney, 260 Iowa 573, 149 N.W.2d 794 (1967).

City must exercise reasonable and ordinary care to maintain streets in safe condition for travel in the usual and ordinary modes of travel, which includes use by pedestrians. Engman v. Des Moines, 255 Iowa 1039, 125 N.W.2d 235 (1964).

City has duty of reasonable care in properly maintaining extensions of primary road system in city. Smith v. City of Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

Municipality under duty to remove ice and snow from sidewalks, but no corresponding duty in reference to streets and highways, and hence, municipality not generally liable to respond in damages for injuries sustained by reason of accumulation of ice and snow in traveled portion of streets. Bahner v. Des Moines, 230 Iowa 13, 296 N.W. 728 (1941).

Smoothing down private way at juncture with street did not make city liable for maintenance thereof as city road. Archip v. Sioux City, 213 Iowa 1198, 241 N.W. 300 (1932).

City's duty to maintain street in reasonably safe condition for travel not affected by fact that defective grade in street was constructed by county, and constituted an approach to a bridge. Whitlatch v. Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

364.2 Vesting of Power

II. FRANCHISES, GENERALLY

115. Use of streets, generally

Cities and towns are authorized to grant franchises for construction of telephone lines in public streets. City of Emmetsburg v. Central Iowa Telephone, 250 Iowa 768, 96 N.W.2d 445 (1959).

Municipalities hold streets in trust for the public and cannot put them to any use inconsistent with street purposes and have no implied authority to grant privileges to use streets for private purposes. Cowin v. City of Waterloo, 237 Iowa 202, 21 N.W.2d 173 (1929).

Where the fee title to streets and alleys in a city is held by the city in trust for the general public and not for itself, the city is not entitled to compensation for use of its streets. Des Moines v. Iowa Telephone, 181 Iowa 1282, 162 N.W. 323 (1917).

Municipality has power to regulate placing of telephone poles in streets but it cannot authorize the placing of poles in such a manner as to cast surface water upon the property of an abutting owner. Wendt v. Town of Akron, 161 Iowa 338, 142 N.W 1024 (1913).

116. Rental for streets

City could not recover rental for streets and public places used by telephone system after franchise had expired. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

City can collect rent for use of its streets by telephone fixtures only if it is authorized to do by an ordinance. Des Moines v. Iowa Telephone, 181 Iowa 1282, 162 N.W. 323 (1917).

117. Street railways, generally

City has power to authorize or forbid the construction of interurban railways upon the street and to prescribe the conditions and regulations under which they shall be constructed and operated within the city limits. Anhalt v. Waterloo, C.F. & N. Ry., 166 Iowa 479, 147 N.W. 928 (1914).

Where a city vacates a street for the use of a street railway company, the company may construct its own road without the usual franchise necessary. Tomlin v. Cedar Rapids & I.C. Ry. & Light, 141 Iowa 599, 120 N.W. 93 (1909).

364.2 Vesting of Power

III. FRANCHISE ELECTIONS

201. Validity

The right to use the streets of town for telephone lines is a privilege and not an absolute right, whereby a town may vote to grant such privileges to one telephone company and refuse it to another. East Boyer Telephone v. Town of Vail, 166 Iowa 226, 147 N.W. 327 (1914).

364.7 Disposal of Property

2. In general

City acquires fee simple title of land dedicated for street use, but when land is dedicated with limitations on the dedication and city accepts the plat as dedicated, such action is not void and the limitations have been recognized. Leverton v. Laird, 190 N.W.2d 427 (Iowa 1971).

City has wide discretion in opening, control and vacation of streets and alleys, and interference with that discretion by courts is justified only in a clear case of arbitrary and unjust exercise of discretion. Stoessel v. City of Ottumwa, 227 Iowa 1021, 289 N.W. 718 (1940).

Town which acquired title to allegedly dedicated street had authority to vacate it and could convey title to individuals only if street was properly accepted, opened and used by the public. Patrick v. Cheney, 226 Iowa 853, 285 N.W. 184 (1939).

Municipality may deed property on vacating street. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1920).

City may vacate street and make use of the ground for any legitimate purpose not constituting a nuisance. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

364.8 Overpasses or Underpasses

1. Construction and application

In the absence of express legislation, a railroad company cannot be required to construct crossings over its right-of-way in order to prolong or connect street established after the location and acquisition of the right-of-way. City of Albia v. Chicago, B. & O. Ry., 102 Iowa 624, 71 N.W. 541 (1897).

3. Maintenance of viaduct

A railroad company and a city, which maintained a viaduct over railroad tracks, had duty to maintain it in a condition reasonably safe and convenient for use. Harris v. Chicago, M. St. P. & P. Ry., 224 Iowa 1319, 278 N.W. 338 (1938).

364.9 Flood Control - Railway Tracks

1. Construction and application

Attorney General Opinion:

This section relates to the building of railway bridges which is rendered necessary by the construction of the improvement. 1925-26 Op. Att'y Gen. 245.

2. Liability

If a street railway negligently obstructed a proper flow of surface water in the street by removing a bridge, it was liable for damages. Hoppes v. Des Moines City Ry., 147 Iowa 580, 126 N.W. 783 (1910).

364.11 Street Construction by Railways

1. Validity

Statute imposing duty on street railways to pave between tracks was valid. Marshalltown Light, Power & Ry. v. City of Marshalltown, 127 Iowa 637, 103 N.W. 1005 (1905).

2. Construction and application

Attorney General Opinion:

Railway companies are required to construct and repair street improvements between rails of their tracks and foot outside thereof at their own expense, and a municipal corporation has no power to relieve street railway from its statutory duty. 1934 Op. Att'y Gen. 362.

3. Street railways

Statutory requirement that street railway companies must pave between the rails of their tracks was applicable only to street improvements undertaken in pursuance of the authority conferred by the Code itself. Fort Dodge Electric Light & Power v. Fort Dodge, 115 Iowa 568, 89 N.W. 7 (1902).

364.12 Responsibility for Public Places

I. IN GENERAL

1. Construction and application

Duty of governmental body to maintain streets or highways includes duty to repair. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

364.12 Responsibility for Public Places

1. Construction and application (cont.)

Municipal councils exercise large discretion in control of streets, but unreasonable and arbitrary exercise thereof may be restrained. Des Moines City Ry. v. Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Where the title to the fee of a street is in the city, that title carries with it the obligation to keep the street in repair, free from obstructions, and reasonably safe. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188 (1915).

2. Drains and sewers - in general

City's statutory authority to provide sewage disposal plants, when exercised, carries with it a duty to use ordinary care or exercise due diligence to maintain and operate such disposal system in a safe manner. McGuire v. Cedar Rapids, 189 N.W.2d 592 (1971).

Citys' have duty to provide waterways sufficient to carry off the water that might reasonably be expected to accumulate. Powers v. Council Bluffs, 50 Iowa 197 (1878).

As an incident to empowering municipalities to open, grade, pave, curb and otherwise improve their streets, alleys and highways, surface water could be diverted from its natural course. Cole v. Des Moines, 212 Iowa 1270, 232 N.W. 800 (1930).

Attorney General Opinion:

A municipality may extend sewer, gas and water facilities beyond its corporate limits. Op. Att'y Gen. March 28, 1974.

3. Care and maintenance, drains and sewers

When a storm sewer is installed by a city or town, it becomes the property of the municipality and its care, maintenance and continuance devolves wholly upon the city. Elledge v. Des Moines, 259 Iowa 284, 144 N.W.2d 283 (1966).

7. Billboards

Attorney General Opinion:

Highway Commission's jurisdiction with respect to billboards or advertising signs is not extended to cover extensions of primary roads within cities and towns. 1940 Op. Att'y Gen. 180.

II. TORTS

1. Nature of tort liability

City's liability for injury allegedly caused by defective sidewalk depends upon peculiar facts and circumstances of particular case. Alber v. City of Dubuque, 251 Iowa 354, 101 N.W.2d 185 (1960).

Municipality liable for failure of street maintenance or negligent street construction. Mardis v. Des Moines, 34 N.W.2d 620 (Iowa 1948).

Municipality cannot be held liable for inability to protect citizens against all accidents occurring in streets for reasons other than defect therein. Armstrong v. Waffle, 212 Iowa 335, 236 N.W. 507 (1931).

An organized town cannot surrender the control of its streets so as to escape its obligation to keep them in a reasonably safe condition. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

City could not escape liability for defect in street on fact that defect did not amount to a nuisance. Raine v. City of Dubuque, 169 Iowa 388, 151 N.W. 518 (1915).

102. Duty to repair or maintain

Cities and towns have care, supervision, and control of all public streets and alleys and duty to keep them open and free from nuisances. Smith v. J.C. Penney, 260 Iowa 573, 149 N.W.2d 794 (1967).

Town's duty to keep sidewalks in safe condition is identical to its duty to maintain the roadway in proper condition. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 784 (1957).

City has duty only to maintain streets in reasonably safe condition and is not liable for unforeseen consequences. McCormick v. Sioux City, 243 Iowa 35, 50 N.W.2d 564 (1952).

Municipality's duty to maintain its sidewalks in reasonably safe condition extends beyond the surface of the walk to things within its control which may endanger the safety of those using the walk. Krska v. Town of Pocahontas, 200 Iowa 594, 203 N.W. 39 (1925).

Municipality must keep streets open to public travel free from obstructions interfering with ordinary public travel. Wolford v. City of Grinnell, 179 Iowa 689, 161 N.W. 686 (1917).

103. Care required of municipality

Municipality has statutory duty to exercise reasonable care to keep its sidewalk reasonably safe for use by pedestrians. Mester v. St. Patrick's Catholic Church, 171 N.W.2d 866 (1969).

103. Care required of municipality (cont.)

Municipal corporation, in exercise of powers and duties delegated by legislature, are held to strict observance of this section dealing with care in control of streets and public grounds. Lindstrom v. Mason City, 256 Iowa 83, 126 N.W.2d 292 (1964).

This section requires city to exercise reasonable and ordinary care to maintain streets in a safe condition; city not required to keep streets in condition of absolute safety. Pietz v. City of Oskaloosa, 250 Iowa 374, 92 N.W.2d 577 (1958).

Cities must keep street crossing and sidewalks in reasonably safe condition for travel and use all reasonably practical means available. Staples v. City of Spencer, 222 Iowa 1241, 271 N.W. 200 (1937).

If a crosswalk is rendered more dangerous at a particular time and place by reason of its use by vehicles, reasonable care for the safety of travelers requires city to be more diligent. Blackmore v. Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

City must exercise reasonable care to keep sidewalks along thoroughfares which are open and used safe, regardless of whether there has been a formal acceptance of dedication as a street. Dunn v. City of Oelwein, 140 Iowa 423, 118 N.W. 764 (1908).

Care and control of streets and sidewalks vested in municipalities, and they may adopt ordinances in pursuance of such power which are reasonable and do not conflict with state laws or violate private rights. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

Where paving in the middle of a street was torn up for laying railway tracks, city must maintain strip left for travel in a safe condition consistent with work of improvement. Asher v. Council Bluffs, 164 Iowa 661, 146 N.W. 457 (1914).

104. Governmental functions

A municipality's statutory duty to supervise streets and keep them in repair and free from nuisances is a governmental function, and hence it is not liable for injuries resulting from city employee's negligence in operating truck. Mardis v. Des Moines, 34 N.W.2d 620 (1948).

Town council of municipality has discretion to adopt plan for street construction recommended by competent engineer. Dodds v. West Liberty, 225 Iowa 506, 281 N.W. 476 (1938).

105. Property owners, liability of

Statutory duty of municipality to maintain sidewalks in safe condition does not relieve property owners of such duty. Updegraff v. City of Ottumwa, 210 Iowa 382, 226 N.W. 928 (1929).

105. Property owners, liability of (cont.)

Owner of lot, who has the sewer trench dug in the street in front of lot, owes duty to public of using proper care to see that the excavation was reasonably safe. Spurling v. Town of Stratford, 195 Iowa 1002, 191 N.W. 724 (1923).

Property owner may be held liable for negligence in the maintenance of an obstruction on the sidewalk, though permitted by the municipality to maintain it. Edwards v. Hasel, 157 Iowa 416, 138 N.W. 501 (1912).

106. Person causing defects or dangerous condition, liability of

Duty to exercise due care to avoid injury to traveling public using streets rests not only on municipality but on others making excavations in or near streets. Leonard v. Mel Foster Co., 244 Iowa 1319, 60 N.W.2d 532 (1953).

Water company's granted right to use city's streets for construction of water system has duty to insure that instrumentalities used to distribute its water supply to patrons be constructed and maintained with reasonable care for safety of those using street. Des Moines v. Des Moines Water, 188 Iowa 24, 175 N.W. 821 (1920).

A contractor, authorized to use half of a street during the construction of an adjoining building, is charged with notice that the street would also be used by pedestrians, and is bound to use the highest degree of care to avoid injuring them by falling objects. Meggison v. James Maine & Sons, 160 Iowa 541, 141 N.W. 1074 (1913).

Persons making excavation in street liable for injuries to third persons resulting from failure to erect suitable barriers. City of Ottumwa v. Parks, 43 Iowa 119 (1876).

107. Places to which liability extends - in general

City held liable for injuries to motorist caused by negligent maintenance of city's extension of primary road system. Smith v. City of Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

City, although creating allegedly dangerous condition in private road, was not liable for death allegedly caused because city failed to place barrier across road at intersection with public street. Archip v. Sioux City, 213 Iowa 1198, 241 N.W. 300 (1932).

Municipal councils' control and supervision of municipal streets and duty to maintain them, keeping them free from nuisances and obstructions, also extends to areaways. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

107. Places to which liability extends - in general (cont.)

Public right in streets extends to its full width and upward so that an overhead structure which was dangerous to persons rightfully using the street, is a nuisance, and municipality is liable for injuries resulting therefrom. Wheeler v. Fort Dodge, 131 Iowa 566, 108 N.W. 1057 (1906).

108. Unopened, unimproved or partially opened streets

Duty of municipality to use reasonable diligence to keep streets free from obstructions applies only to parts of streets dedicated to vehicular traffic. Morse v. Town of Castana, 213 Iowa 1225, 241 N.W. 304 (1932).

City is liable for defects in a street and outside of the street that is customarily used by the public. Lamb v. Cedar Rapids, 108 Iowa 629, 79 N.W. 366 (1899).

Where a street has been opened for travel over its entire width, the city is liable for injuries from any defect even if it is on part of which there was no travel. Stafford v. City of Oskaloosa, 64 Iowa 251, 20 N.W. 174 (1884).

109. Parks

City or town is not an insurer of safety of those using recreations areas but may be liable if it fails to exercise duty care in keeping its parks and playgrounds in repair, safe for their intended use and free from nuisances. Fetters v. Des Moines, 260 Iowa 490, 149 N.W.2d 815 (1967).

The provision that cities shall keep highways, streets, avenues, alleys, public squares and commons open and in repair and free from nuisance includes parks. Woodard v. Des Moines, 182 Iowa 1102, 165 N.W. 313 (1917).

110. Property adjacent to street

Duty imposed by statute on cities and towns of maintaining streets and sidewalks in reasonably safe condition does not relieve property owners or others from duty not to obstruct or place dangerous instrumentalities thereon so as to endanger safety of public rightfully using such areas. Beyer v. City of Dubuque, 258 Iowa 476, 139 N.W.2d 448 (1966).

City may be liable for permitting existence of dangers adjacent to and not in a sidewalk, also. Rea v. Sioux City, 127 Iowa 615, 103 N.W. 949 (1905).

364.12 Responsibility for Public Places

111. Cause or responsibility, defect or dangerous condition

City's duty to maintain street in reasonably safe condition is not affected by fact that defective grade, which constituted an approach to a bridge, was constructed by county. Whitlatch v. Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

An incorporated town owes a duty to use ordinary care to keep its streets in a reasonably safe condition for travelers, regardless of whether the dangerous condition was created by the town itself, or by others. Spurling v. Town of Stratford, 195 Iowa 1002, 191 N.W. 724 (1923).

Where excavations in the principal streets of a city are made under the direction of the street commissioner, his foreman and in accordance with survey and plat by city engineer, the city cannot claim that the work was not done by its authority in order to escape liability. Millard v. Webster City, 113 Iowa 220, 84 N.W. 1044 (1901).

112. Time allowed for making repairs or eliminating defects

Municipality has a reasonable time to perform its duty to exercise reasonable care to keep sidewalks reasonably safe for travel, and it not liable for injuries sustained unless it has knowledge of or in the exercise of ordinary diligence should have known of the defect in time to correct it. Tillotson v. City of Davenport, 232 Iowa 44, 4 N.W.2d 365 (1942).

Municipality's duty to maintain streets in reasonably safe condition for travel includes, when necessary, erection of barriers or guardrails along grades and at dangerous places. Whitlatch v. Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

City not negligent per se in leaving pile of dirt on street for use in repairing pavement if it takes ordinary, usual and reasonable precautions to warn the public. Ferguson v. Des Moines, 197 Iowa 689, 198 N.W. 40 (1924).

City is bound to keep its streets reasonably safe for travel at night, as well as in the daytime, and to put signals and warnings at points where the street is dangerous. Middleton v. Cedar Falls, 173 Iowa 619, 153 N.W. 1040 (1915).

Where lights would have warned travelers on street of sewer excavation, other barriers were not required. Frohs v. City of Dubuque, 169 Iowa 431, 150 N.W. 62 (1914).

A city maintaining sidewalk three feet above ground without barriers fails to exercise reasonable care to keep sidewalks safe. Dunn v. City of Oelwein, 140 Iowa 423, 118 N.W. 764 (1908).

364.12 Responsibility for Public Places

113. Nature of defects - in general

Height of elevation and depth of depression are not decisive determinants on question of city's liability in failing to exercise reasonable care. Beach v. Des Moines, 238 Iowa 312, 26 N.W.2d 81 (1947).

Where plans prepared by engineer for construction of alley intersection were obviously not defective, city could not be found negligent in adopting the plans. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Whether defect in public street is so dangerous as to constitute negligence on part of city depends upon surrounding circumstances, such as proximity of lights and the amount of travel. Thomas v. Fort Madison, 225 Iowa 822, 281 N.W. 748 (1938).

114. Streets, construction or condition

Town not liable for injuries resulting from accident, where there was no defect in street's construction and town had adopted plans prepared by competent engineer which obviously were not hazardous. Dodds v. West Liberty, 255 Iowa 506, 281 N.W. 476 (1938).

City has right to maintain shade trees, trolley poles and light poles within prescribed areas in city streets. Abraham v. Sioux City, 218 Iowa 1068, 250 N.W. 461 (1933).

Construction of an approach from a street to a sidewalk at a slope of one foot in seven is not negligence per se. Lush v. Town of Parkersburg, 127 Iowa 701, 104 N.W. 336 (1905).

115. Sidewalks or crosswalks, construction or condition

City's obligation to care for, supervise and control streets, includes sidewalks. Alber v. City of Dubuque, 251 Iowa 354, 101 N.W.2d 185 (1960).

In order for municipality to be liable to pedestrian for personal injuries, a defect in sidewalk must be of such a character, in view of its location and use, to attract attention and cause officers of municipality to exercise degree of caution as an ordinarily prudent person under like circumstances and conditions to anticipate danger imposed by such defect. Armstrong v. Des Moines, 232 Iowa 711, 6 N.W.2d 287 (1942).

Where a city sidewalk originally constructed was unsafe and caused injury to pedestrian, city was liable even though it did not construct the walk through its own agencies. Roney v. Des Moines, 150 Iowa 447, 130 N.W. 396 (1911).

364.12 Responsibility for Public Places

120. Necessity of notice of defect or obstruction

City is not liable for injuries from dangerous condition of street unless it has actual notice or the condition existed long enough for city to discover and repair it in exercise of reasonable and ordinary diligence. Abraham v. Sioux City, 218 Iowa 1068, 250 N.W. 461 (1933).

While a municipality must exercise ordinary diligence in keeping its streets in repair, it cannot be held negligent until it has actual or constructive notice of the defect and an opportunity to remedy it. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W. 465 (1922).

To hold city liable for injuries resulting from defective sidewalk, either it must have express notice of a defect not in the original construction, or such defect must be notorious as to be observable by passersby. Cramer v. City of Burlington, 39 Iowa 512 (1874).

122. Unsafe condition caused or authorized by municipality

Where injury was caused by icy sidewalk which was flooded by city employees, city cannot escape liability because it is charged with the knowledge of any condition which employees create while acting as city employees, notwithstanding that such employees were not responsible for keeping sidewalks in safe condition. Franks v. Sioux City, 229 Iowa 1097, 296 N.W. 224 (1941).

Where a defective sidewalk is constructed under the permission of a member of the city street committee, the city may be held to have knowledge of the defect. Kendall v. City of Albia, 73 Iowa 241, 34 N.W. 833 (1887).

123. Defect in construction or repair

To establish city's liability for defect in street or sidewalk, it must be shown that city, through its officers, had either actual notice of defect, or that it had existed for such time that in exercise of reasonable diligence, they ought to have known of it in sufficient time before accident occurred to have permitted its repair. Jeffers v. Sioux City, 221 Iowa 236, 265 N.W. 521 (1936).

City's notice of defect in original construction of street or failure to perform duty to correct it is conclusively presumed. Whitlatch v. Iowa Falls, 199 Iowa 73, 201 Iowa 83 (1924).

Where a city gave abutting owner a permit to tear up street, it had notice of dangerous condition of street resulting from digging, and city still had duty to care for its streets. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W. 465 (1922).

364.12 Responsibility for Public Places

124. Construction notice of defects or obstructions

Length of time sufficient to constitute constructive notice of dangerous accumulation of snow and ice on sidewalk, and what constitutes a reasonable opportunity to remedy it depends on facts and circumstances of each case. Anderson v. Fort Dodge, 213 N.W.2d 527 (1973).

Without notice, a city would not be liable for natural conditions that had developed on its sidewalk which employees created while acting as city employees, notwithstanding that such employees were not responsible for keeping sidewalks in safe condition. Franks v. Sioux City, 229 Iowa 1097, 296 N.W. 224 (1941).

364.12 Responsibility for Public Places

125. Time defect or obstruction exists, constructive notice

The presence of ice ridge on sidewalk for about 45 minutes before pedestrian's injury would not imply that city had notice of ice formation. Wright v. Atlantic & Pacific Tea, 216 Iowa 565, 246 N.W. 846 (1933).

City had constructive notice of sidewalk defect existing two years before pedestrian's injury. Howard v. City of Waterloo, 206 Iowa 1109, 221 N.W. 812 (1928).

There is no fixed or definite rule as to length of time a defect or obstruction in street must exist to constitute notice. Parks v. Des Moines, 195 Iowa 972, 191 N.W. 728 (1923).

127. Contributory negligence - in general

Pedestrian's contributory negligence is not measured by city's duty to maintain street in reasonably safe condition. Engman v. Des Moines, 255 Iowa 1039, 125 N.W.2d 235 (1964).

128. Care required, contributory negligence

Pedestrians must exercise ordinary care to avoid falling on city streets. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Traveler may walk or drive upon the assumption that a municipality is maintaining its streets in a reasonably safe condition and need only exercise ordinary care. Frohs v. Des Moines, 169 Iowa 431, 150 N.W. 62 (1915).

Persons aware of defect in the street must use reasonable care to avoid injury, such care increases in proportion to one's knowledge of the danger. Hoover v. Town of Mapleton, 110 Iowa 571, 81 N.W. 776 (1900).

364.12 Responsibility for Public Places

129. Knowledge of defect or dangerous condition

Mere knowledge of defective condition of public street will not bar pedestrian's recovery for injuries unless it is shown that pedestrian knew or should have known that it was dangerous and imprudent to try to pass over the area. Beach v. Des Moines, 238 Iowa 312, 26 N.W.2d 81 (1947).

So long as streets remain unbarricaded and open to public use, there is an implied invitation for their use, and a person using them is not negligent unless there is knowledge of the dangers. Scurlock v. City of Boone, 142 Iowa 684, 121 N.W. 369 (1909).

132. Automobile cases, contributory negligence

Motorist is not bound to apprehend danger while driving on city streets but may rely on presumption that municipality performed its duty in maintaining its streets in reasonably safe condition. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W 465 (1922).

135. Duty to observe defects or dangers, contributory negligence

City had affirmative duty to exercise reasonable care under circumstances to inspect sidewalks. Spechtenhauser v. City of Dubuque, 391 N.W.2d 213 (1986).

136. Street assumed free from defects, contributory negligence

A city is charged with a greater duty than ordinary traveler to observe the condition of its sidewalks and to know of the existence of dangerous defects. Platts v. City of Ottumwa, 148 Iowa 636, 127 N.W. 990 (1910).

Municipal corporations must keep their streets free from obstructions, and a traveler may presume that it has done so and that they may be passed over without danger. Mickey v. City of Indianola, 114 N.W. 1072 (1908).

IV. BRIDGES AND CULVERTS

301. Construction and repair of bridges and culverts, generally

Attorney General Opinions:

Construction and maintenance of bridges in towns and within cities, not controlling their own bridge fund, is to be undertaken by the county. 1925-26 Op. Att'y Gen. 265.

City council has authority to narrow or change a public highway established by board of supervisors before the city was incorporated. 1898 Op. Att'y Gen. 124.

364.12 Responsibility for Public Places

303. Location of bridges

Attorney General Opinion:

City council may locate bridges wherever public necessity requires, without submitting its plans and specifications to river front improvement commission. 1906 Op. Att'y Gen. 191.

304. Culverts

City bound to exercise reasonable care, judgment and skill in construction of culverts rendered necessary by extension of streets. Van Pelt v. City of Davenport, 42 Iowa 308 (1875).

City not liable where it employed a competent engineer, who in the honest exercise of judgment, failed to construct culvert in sufficient capacity to avoid injury to property. Id.

Attorney General Opinion:

Where drain is established wholly within a city of second class, board of supervisors should construct such culverts as are reasonably necessary and culverts as it may desire, or it may contribute to construction of county culverts. 1919-20 Op. Att'y Gen. 336.

306. Repair of bridges

Whether an approach is part of a bridge or viaduct depends on whether the approach is essential to enable travelers to reach the main structure. Shope v. Des Moines, 188 Iowa 1141, 177 N.W. 79 (1920).

An incorporated town is responsible for keeping its streets in proper condition for travel, and this obligation extends to a bridge built in the street by a railroad company, on its right-of-way, as an approach to a crossing of its track. Fowler v. Strawberry Hill, 74 Iowa 644 (1888).

Attorney General Opinion:

County has primary responsibility for repair or replacement of bridges on secondary highway extension within corporate limits of municipality of less than 2,000 population if the municipality has not enacted ordinance assuming control of bridge. 1973 Op. Att'y Gen. 98.

308. Contracts, bridges

An incorporated town being responsible for control and improvements of its streets may contract for the construction of free bridges over a stream dividing its streets. Mullarky v. Cedar Falls, 19 Iowa 21 (1865).

312. Care required

Whether municipality kept bridges safe in proper manner is determined by situation as it existed before, not after an accident. Bird v. City of Keokuk, 226 Iowa 456, 284 N.W. 438 (1939).

Small opening in bridge between concrete curb of roadway and steel girder separating roadway of bridge from that part containing sidewalk was not a dangerous place in close proximity to the street as to require city to erect barriers to protect users of bridge. Id.

Attorney General Opinion:

Counties were not responsible for keeping sidewalk over a bridge inside a city free from snow, even though bridge was erected by the county. 1919-20 Op. Att'y Gen. 276.

313. Liability for damages

An incorporated town was liable for one injured by a fall from a defective bridge to a street below, even though the bridge was on the right-of-way of a railroad company whose duty was to keep it in repair. Fowler v. Strawberry Hill, 74 Iowa 644, 38 N.W. 521 (1888).

City is liable for personal injuries caused by defective condition of roads and bridges within its corporate city limits. Rusch v. City of Davenport, 6 Iowa 443 (1858).

V. NUISANCES AND OBSTRUCTIONS

401. In general, nuisances and obstructions

A public nuisance is the doing, or the failure to do something that injuriously affects the safety, health or morals of the public, or that causes some substantial annoyance, inconvenience or injury thereto. Abbott v. Des Moines, 230 Iowa 494, 298 N.W. 649 (1941).

Town's duty to keep its street free from nuisances is statutory and cannot be delegated to other agencies. Heller v. Smith, 188 N.W. 878 (1922).

Cities must keep their streets free from obstructions and nuisances which interfere with ordinary public travel with automobiles and other vehicles.
Kendall v. Des Moines, 183 Iowa 866, 167 N.W. 684 (1918).

VI. STREETS AND PUBLIC GROUNDS

502. Streets, generally

Cities and towns have care, supervision and control of all public streets and alleys and duty to keep them open and free from nuisances. Smith v. J.C. Penney, 260 Iowa 573, 149 N.W.2d 794 (1967).

Special charter city has power to open and maintain streets and alleys. Heinz v. City of Davenport, 230 Iowa 7, 296 N.W. 783 (1941).

The State, having full authority and power over public highways in the commonwealth, can delegate its reserved powers as to their control to municipal authorities to act for and represent it. Central Life Assurance Society v. Des Moines, 185 Iowa 573, 171 N.W. 31 (1919).

503. Jurisdiction

Board of railroad commissioners had no jurisdiction to authorize railroad to abandon overhead bridge in town and to substitute cinder roadway and crossing. Town of Huxley v. Conway, 226 Iowa 268, 284 N.W. 136 (1939).

Control and supervision of municipal streets confined to municipal councils, and their power extends to areaways. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

Board of supervisors has no jurisdiction to locate a street within the limits of an incorporated town. Philbrick v. University Place, 106 Iowa 352, 76 N.W. 742 (1898).

Jurisdiction of highways within corporate limits resides exclusively in the corporation. Gallaher v. Head, 72 Iowa 173, 33 N.W. 620 (1887).

504. Title and rights in streets

Cities and towns are owners in fee simple of streets for benefit of public. Town of Lamoni v. Smith, 217 Iowa 264, 251 N.W. 706 (1934).

Town is entitled to unincumbered use and enjoyment of the full width of its streets. Id.

Municipality has fee title to city street, but public has only easement in country highway. Clare v. Wogan, 204 Iowa 1021, 216 N.W. 739 (1927).

Title to streets and alleys of city is held by city in trust for public, and council may not dispose of them in disregard of public good. Lerch v. Short, 192 Iowa 576, 185 N.W. 129 (1921).

City's title to streets and alleys is subject to be divested upon vacation and severance of territory from city would operate as an extinguishment of city's rights in streets and alleys. McKean v. Mount Vernon, 51 Iowa 306, 1 N.W. 617 (1879).

364.12 Responsibility for Public Places

506. Eminent domain

Statutes permit city and commission to take or damage homes for purpose of widening public street in relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

Sale of vacated street to railroad does not preclude city's subsequent condemnation to reopen it. City of Osceola v. Chicago, B. & Q. Ry., 196 F. 777 (1912).

City council alone can determine necessity for street or alley, although authority of the council to condemn land may be subject of appeal to district court. Town of Alvord v. Great Northern Ry., 179 Iowa 465, 161 N.W. 467 (1917).

The destruction of property to prevent spread of fire is not among the purposes for which the right of eminent domain is conferred upon cities. Field v. Des Moines, 39 Iowa 575 (1874).

507. Establishment of streets

City council has discretion to determine whether public necessity requires street be opened. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

City may "establish" streets or accept dedication of streets to public without being required to open them to public upon request. Id.

Highways through village become streets upon incorporation of town. Town of Ackley v. Central States Electric, 206 Iowa 533, 220 N.W. 315 (1928).

Repeal of an ordinance vacating alley cannot re-establish the alley unless there is a prescription or dedication. Bradley v. City of Centerville, 139 Iowa 599, 117 N.W. 968 (1908).

Attorney General Opinion:

While city streets intersections with other roads and local service-street facilities may be established or constructed or reconstructed by cities acting alone, the work also may be accomplished by both cities and the state highway commission incorporating one with the other. 1969 Op. Att'y Gen. 92.

509. Street lines, establishment

Lines and boundaries of highways, streets and alleys between public and private owners cannot be established by acquiescence. Johnson v. City of Shenandoah, 153 Iowa 493, 133 N.W. 761 (1911).

364.12 Responsibility for Public Places

510. Delegation of power as to streets

The State has control over all its public highways, and through the Legislature, may delegate control of streets within its limits to the city. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

511. Future needs, streets

Cities must be able to intelligently plan their streets for future needs. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

512. Width of street

City commission has discretion in changing grade to widen street. Des Moines City Ry. v. Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

513. Level of streets

City has authority to change the physical level of a street. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

514. Extending street

A town may extend a street across the depot grounds of a railway company, where such a "taking," though it interferes with, does not deprive the railway company of the right to operate its road. Chicago, M. & St. P. Ry. v. Starkweather, 97 Iowa 159, 66 N.W. 87 (1896).

515. Sprinkling of streets

Authority to improve, care for, supervise and control streets includes authority to sprinkle streets. McAllen v. Hamblin, 129 Iowa 329, 105 N.W. 593 (1906).

516. Improvement of streets

When owner of lot abutting unopened street which has been dedicated and accepted as public street requests city to improve street, city has discretionary power in matter rather than mandatory duty to open and improve it. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Municipality, through its council, had statutory authority to initiate proceedings for improvement of streets by soil cement placement. Husson v. City of Oskaloosa, 37 N.W.2d 310 (1949).

516. Improvement of streets (cont.)

City has duty to use reasonable care to improve and maintain streets in reasonably safe condition for public travel. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

City would not be liable for injuries to passenger in automobile resulting from city's adoption of an improper plan for improvement of a street due to error in engineer's judgment, unless plan was so obviously dangerous. Dodds v. West Liberty, 225 Iowa 506, 281 N.W. 476 (1938).

Although only half of a street is within city limits, city may accept and improve that half, and the authorities of the adjacent township may improve the other half without interference by the courts. Backman v. City of Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

Attorney General Opinion:

Resurfacing of a city street constituted an improvement so as to authorize State Highway Commission to assist the city in resurfacing from the primary road fund. 1932 Op. Att'y Gen. 194.

517. Damages from improvement of streets

Where plans were prepared by competent engineers, city was not liable where culverts were too small to allow proper drainage. Cole v. Des Moines, 212 Iowa 1270, 232 N.W. 800 (1930).

City has right to make streets passable, and in doing so provide for the passage of surface waters in drains or culverts, but a city has no right to drain surface waters flowing onto highway and cast it on adjoining land in larger quantities than in natural course. Cheh v. Cedar Rapids, 147 Iowa 247, 126 N.W. 166 (1910).

Where owner of lot obstructs the natural drainage and the city, by improving the streets has not increased the amount of the flow to an appreciable extent, the city is not liable to owner for injuries. Hoffman v. City of Muscatine, 113 Iowa 332, 85 N.W. 17 (1901).

518. Use of streets - in general

City's duty to exercise ordinary care to keep its streets in reasonably safe conditions includes parking areas. Leonard v. Mel Foster Co., 244 Iowa 1319, 60 N.W.2d 532 (1953).

City has no implied right to grant individuals the right to use the streets for business purposes. Gates v. City Council, 243 Iowa 1, 50 N.W.2d 578 (1952).

518. Use of streets - in general (cont.)

Area within limits of streets where they cross railroad right-of-way constituted portion of "street" which the town was authorized to supervise. Ackley v. Central States Electric, 206 Iowa 533, 220 N.W. 315 (1928).

Any private use of a public street, preventing free use as public way "from side to side and end to end," is a nuisance and may be prohibited by the municipality. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

Although a city may vacate a street, it cannot authorize perversion of street to other or private uses so long as it remains, nor can the city grant the right to permanently occupy any part of it with any structure or device for private use, convenience or profit. Lacey v. City of Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909).

Municipal corporation cannot put streets to use inconsistent with street purposes. Bennett v. Mount Vernon, 124 Iowa 537, 100 N.W. 349 (1904).

519. Public utilities, use of streets

City council did not have power to lease streets and public places for use in maintaining and conducting telephone exchange. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Interurban electric railway has right, without city's consent, to construct and maintain spur track across street at right angles with consent of abutting owners. Interurban Ry. v. Des Moines, 197 Iowa 1398, 199 N.W. 355 (1924).

Telegraph and telephone companies are subject to all regulations within police power of state or of a municipal corporation, and use of public streets is a matter of police regulation. East Boyer Telephone v. Town of Vail, 166 Iowa 226, 147 N.W. 327 (1914).

Municipality has power to regulate the placing of telephone poles in streets, but it cannot authorize such placing in a manner as to cast surface water upon the property of an abutting owner. Wendt v. Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

521. Repair of streets

Maintenance and repair of street, including sidewalks, is a governmental function, not a proprietary one. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

City has authority to either repair or reconstruct paving, if proper jurisdictional steps are taken. Ellyson v. Des Moines, 179 Iowa 882, 162 N.W. 212 (1917).

521. Repair of streets (cont.)

City not liable for consequential damages resulting from repairing streets if work is not negligently done. O'Connell v. City of Davenport, 164 Iowa 95, 145 N.W. 519 (1914).

Where street improvement being made under valid resolution adopted by city, general taxpayers cannot interfere. Shelby v. City of Burlington, 125 Iowa 343, 101 N.W. 101 (1904).

Town must accept road dedication before it will be bound to keep road in repair. Manderschid v. City of Dubuque, 29 Iowa 73 (1870).

522. Abandonment or estoppel, streets

Any right obtained by deed to right-of-way for street purposes were lost by abandonment of project by promoter joined in by city. Beim v. Carlson, 209 Iowa 1001, 227 N.W. 421 (1929).

Fact that city taxed the property does not estop city from claiming it had become a public street. Hull v. Cedar Rapids, 111 Iowa 466, 83 N.W. 28 (1900).

523. Vacation of streets - in general

Cities and towns have authority to vacate streets and alleys, and may do so by ordinance, having due regard for public interest. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Street should not be vacated if it will seriously inconvenience or injure the public. Kelroy v. Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

An ordinance, passed after commencement of suit purporting to vacate an alley but failing to properly describe boundaries of alley within a certain block, was invalid. Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

The vacation of county road, making a street a cul-de-sac, does not destroy the street as a highway. Chrisman v. Omaha & C.B. Ry. & Bridge, 125 Iowa 133, 100 N.W. 63 (1904).

524. Power to vacate

Street may be vacated and title may be conveyed to individuals only if street was properly accepted, opened and used by the public. Patrick v. Cheney, 226 Iowa 853, 285 N.W. 184 (1939).

All streets are highways, but all highways are not streets; streets can be vacated by the city or town, but a highway or county road can only be vacated by an order of the county board of supervisors. McKinney v. Rowland, 197 Iowa 180, 197 N.W. 88 (1924).

524. Power to vacate (cont.)

Council must act with proper regard for public interests and convenience in adoption of vacation ordinance. Lerch v. Short, 192 Iowa 576, 185 N.W. 129 (1921).

The General Assembly may give municipal corporations the power to vacate. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

Legislature may delegate power to vacate streets to cities and towns. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

Power to vacate may not be exercised arbitrarily. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

526. Notice of proceedings to vacate

Cities and incorporated towns may vacate a street or alley by ordinance, without notice to the owners of abutting property. Dempsey v. City of Burlington, 66 Iowa 687, 24 N.W. 508 (1885).

527. Ownership on vacation

When properly vacated, a street ceases to be a street, the rights of the public are divested and the street becomes private property. Tomlin v. Cedar Rapids & I.C. Ry. & Light, 141 Iowa 599, 120 N.W. 93 (1909).

Upon city's vacation of a street, the title of the land formerly occupied by the street does not revest in the abutting owners but remains in the city and may be dispose of for other purposes. Harrington v. Iowa Century Ry., 126 Iowa 388, 102 N.W. 139 (1905).

528. Disposition of land, vacation

Upon vacating street, municipal corporation may deed the property if it holds title to highway. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

City council had power to vacate street and grant it to railway in consideration of railroad's grant of strip across its right-of-way. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

City may use ground of vacated street for any legitimate purpose so as not to constitute a nuisance. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

City has power to grant private person its title to ground covered by a street or alley. Dempsey v. Burlington, 66 Iowa 687, 24 N.W. 508 (1885).

364.12 Responsibility for Public Places

529. Lighting of Streets - in general

Cities are not required to light their streets, and they are not negligent in failing to do so unless reasonable care require that it be lighted. Shannon v. Council Bluffs, 194 Iowa 1294, 190 N.W. 951 (1922).

There is no absolute obligation imposed either as to the extent or mode of lighting. Blain v. Town of Montezuma, 150 Iowa 141, 129 N.W. 808 (1911).

534. Abutting owners, rights

Owner of property abutting street has special right in street as distinguished from general public where street has been opened and used by owner. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Municipality's duty to maintain streets and alleys does not relieve property owners or others from duty not to obstruct them so as to endanger safety of public rightfully using them. Smith v. J.C. Penney, 260 Iowa 573, 149 N.W.2d 794 (1967).

Rights of access, light, air and view are property rights. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Property owners can claim rights to alley only through the public. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

Abutter has right to reasonable temporary obstruction of street for appropriate purposes. Jones v. Fort Dodge, 185 Iowa 600, 171 N.W. 16 (1919).

Land taken or dedicated for streets is subject to right of abutting property owner. Wegner v. Kelley, 157 N.W. 206 (1916).

Although city holds title to streets, it may not authorize an areaway so as to injure property of abutting owner. Perry v. Castner, 124 Iowa 386, 100 N.W. 84 (1904).

535. Access to and use of street or alley

Right of access may be destroyed, but abutting owner must be compensated for such injury. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Substantial interference with owner's right of access constitutes a "taking." Nalon v. Sioux City, 216 Iowa 1041, 250 N.W. 166 (1933).

Abutter have the right of unobstructed ingress and egress, which is not shared by the public at large. Ritchhart v. Barton, 193 Iowa 271, 186 N.W. 851 (1922).

Owners' right of access, egress and egress to realty may not be deprived by vacation of street or alley without compensation. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

535. Access to and use of street or alley (cont.)

City may grant permits, which may be revoked at any time, for use of streets for ingress to floors below street level. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188 (1915).

536. Trees, abutting owners

Resident, rightfully maintaining shade trees within street had property right in them, subject to rights of the State. Newlands v. Iowa Ry. & Light, 179 Iowa 228, 159 N.W. 244 (1916).

Trees in a street or highway are not a nuisance unless they obstruct travel. Everett v. Council Bluffs, 46 Iowa 66 (1877).

543. Alleys

City required to exercise reasonable care to maintain alleys for pedestrians. Greninger v. Des Moines, 264 N.W.2d 615 (Iowa 1978).

VII. GRADES AND GRADING OF STREETS

601. Grades, generally

City has power to change physical level of a street where there is an ordinance establishing the intended grade, however, without an ordinance, city does not have authority and is liable for interfering with lot owner's special interest in the street. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

City could not escape liability for change of established grade as caused by the construction of viaduct. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Trespasser on land dedicated as a street cannot prevent city from improving grade on grounds that street is not within city limits. Backman v. Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

602. Grade, establishment

Permanent grade may be established only by ordinance. People's Investment v. Des Moines, 241 N.W. 468 (1932).

Where residence bordered street upon which no grade had been established, city was liable for lowering grade and thereby rendering driveway useless. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

Changing an established grade must be made by ordinance. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

Establishment of grade for center of street also establishes the grade for that portion of street occupied by sidewalks. Beirness v. Missouri Valley, 162 Iowa 720, 144 N.W. 628 (1913).

602. Grade, establishment (cont.)

Under code 1897, section 782, empowering city councils to establish street grades, and sections 792, 793 and 818, providing for street improvements to be made when ordered after three-fourths vote where city established street grade by ordinance, the work of bringing street to grade could be started without resolution or ordinance. Collins v. Iowa Falls, 146 Iowa 305, 125 N.W. 226 (1910).

When exercised within its prescribed limits, a city's authority to establish grades cannot be controlled. Kemp v. Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

An ordinance establishing the grade of two streets intersecting a third cannot be extended to include the intersected street. Morton v. City of Burlington, 106 Iowa 50, 75 N.W. 662 (1898).

603. Grading, generally

City has statutory authorization to bring its streets to grade. Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803 (1918).

City cannot deposit earth on abutter's lot in raising grade of street to the full width of the street. Hendershott v. City of Ottumwa, 46 Iowa 658, 26 Am. Rep. 182 (1877).

605. Expenses of grading, payment

Payment of expenses for grading streets may be taken from the general fund or the grading fund. Shelby v. City of Burlington, 125 Iowa 343, 101 N.W. 101 (1904).

606. Damages from grading - in general

City is liable for damages to abutter caused by cutting down street in front of property unless city's purpose was to bring street to grade established by ordinance. Markham v. City of Anamosa, 122 Iowa 689, 98 N.W. 493 (1904).

Property owner is not entitled to damages caused by bringing street to grade if owner makes improvements before street grade is established. Wilbur v. Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903).

Property owner is not entitled to damages caused by filling street to grade if owner improved property without reference to street grade which had already been established. Reilly v. Fort Dodge, 118 Iowa 633, 92 N.W. 887 (1902).

Where city establishes grades and improves streets and abutter make improvements accordingly, the city is liable for negligently permitting obstructions should injuries occur to property owners. Powers v. Council Bluffs, 50 Iowa 197 (1878).

606. Damages from grading - in general (cont.)

City is liable if it negligently changes the natural grade of a street and causes injury to adjoining lots. Hendershott v. City of Ottumwa, 46 Iowa 658 (1877).

If city grades street in a careful and skillful manner, it will not be liable for injury to property. Ellis v. Iowa City, 29 Iowa 229 (1870).

607. Nature of injury and elements of damages, grading

Where a city adopts a plan for improvement of a street by grading, which requires the destruction of trees in parkway of street, their removal by the city is not a cause of action for the owner. Kemp v. Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

A city is not liable for engineer's mistake of incorrectly marking established street grade. Waller v. City of Dubuque, 69 Iowa 541, 29 N.W. 456 (1886).

610. Grading in absence of established grade

No liability attaches to city by mere "establishment" of grade of street or passage of ordinance. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

A city is liable for damage caused by changes in surface of street unless grade of street is established. Brown v. City of Sigourney, 164 Iowa 184, 145 N.W. 478 (1914).

City may be liable for injuries to abutting property caused by cutting down a street on which no grade has been previously established as required by statue. Millard v. Webster City, 113 Iowa 220, 84 N.W. 1044 (1901).

611. Surface waters, grading

City is bound to keep streets free from nuisances; city may not collect surface waters on public highway or land of private citizen and discharge it on another's property. Farley v. Des Moines, 199 Iowa 974, 203 N.W. 287 (1925).

City may be liable for damages caused by street grading even though done in accordance with provisions of grade ordinance if the natural drainage is destroyed and there's no adequate means for the surface water to escape. Wilbur v. Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903).

City may not divert surface water from its natural course to a lot owner's land in destructive quantities. Hoffman v. City of Muscatine, 113 Iowa 332, 85 N.W. 17 (1901).

611. Surface waters, grading (cont.)

If there is a practicable means of providing a temporary substitute to raising the grade of street without destroying the existing drainage, a city is liable for neglecting to do so, whereby flooding adjacent lot. Ross v. City of Clinton, 46 Iowa 606 (1877).

A city is responsible for providing waterways sufficient to carry off water that might be reasonably expected to accumulate, and therefore is liable for injuries caused to private property by a diversion of surface water from the construction of a street railway. Damour v. Lyons City, 44 Iowa 276 (1876).

612. Drains, gutters and culverts, grading

Where storm sewer was placed in street as a natural outlet for surface water, the city was not liable for discharge of water on neighboring land. Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803 (1918).

City must exercise ordinary care in establishing street grade; city is liable if it unnecessarily or negligently fills drains in street, causing surface water to flow on adjacent lot, without giving landowner notice and reasonable time to bring lot up to grade. Hume v. Des Moines, 146 Iowa 624, 125 N.W. 846, (1910).

City not liable for a failure to provide gutters and culverts so as to keep surface water from overflowing lots below the established street grade. Morris v. Council Bluffs, 67 Iowa 343, 25 N.W. 274 (1885).

City not liable for honest error in competent engineer's judgment. Van Pelt v. City of Davenport, 42 Iowa 308 (1875).

613. Property owners, rights and duties as to surface waters

Abutting owners have duty of ordinary care to prevent surface waters from flooding of property. Wendt v. Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

Abutting owners are under no duty to bring their property to grade. Monarch Manufacturing v. Omaha, C.B. & S. Ry., 127 Iowa 511, 103 N.W. 493 (1905).

Owner of a city lot has a right to bring lot to grade even though it may cause diversion of surface water onto other's property. Cedar Falls v. Hansen, 104 Iowa 189, 73 N.W. 585 (1897).

In grading city street, the city is not required to protect lots below grade from water; owner must protect such lots by raising them to grade. Gilfeather v. Council Bluffs, 69 Iowa 310, 28 N.W. 610 (1886).

IX. SIDEWALKS, GENERALLY

801. Construction and repair of sidewalks, generally

The Legislature has not imposed liability on abutting owners for failure to maintain and repair sidewalks. Busselle v. Doubleday, 486 N.W.2d 45 (Iowa Ct. App. 1992).

Maintenance and repair of street, which includes sidewalk, is a governmental function. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

Statute providing for assessment of benefits for street improvements was not applicable to sidewalk assessments, which were covered by another statute. Northern Light Lodge No. 156 v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).

City council may delegate authority to construct a sidewalk. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1859).

802. Nature and necessity of proceedings - sidewalks

Authority required by council to construct and reconstruct permanent sidewalks must be aimed at some individual walk. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

804. Ordinance, resolution or order for improvement, sidewalks

Town must abide by ordinance which fixed mode of procedure to construct sidewalks and assess costs . Brush v. Town of Liscomb, 202 Iowa 1155, 211 N.W. 856 (1927).

City's ordinance authorizing it to construct walk if owner did not do so within 30 days was valid. Kaynor v. District Court, 178 Iowa 1055, 158 N.W. 557 (1916).

Ordinance may authorize abutting owners to build walks according to specifications. Zalesky v. Cedar Rapids, 118 Iowa 714, 92 N.W. 657 (1902).

809. Construction of sidewalk

Under ordinance requiring maintenance by property owners of abutting sidewalks, any obligation is upon the city, not the traveling public. Busselle v. Doubleday, 486 N.W.2d 45 (Iowa Ct. App. 1992).

City's duty owed to pedestrians in respect to construction of sidewalk differs from those a city owes to pedestrians in the construction of an intersection. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

City was not entitled to materials in landowner's sidewalk where it refused to accept the walk and contracted for different grade. Guthrie v. Mc'Murren, 167 Iowa 154, 149 N.W. 71 (1914).

364.12 Responsibility for Public Places

811. Established grade, sidewalks

Provision that sidewalks shall be completed at the established grade of street does not require that the top of walk shall be exactly at grade level; where it may be convenient, sidewalk may be at same street grade when necessary for drainage or other purposes. Kaynor v. Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Owner does not have duty to construct walk where town neither brought street to grade nor pointed out a grade line. Burget v. Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Council could not construct walk where no permanent grade had been established. Hartrick v. Town of Farmington, 108 Iowa 31, 78 N.W. 794 (1899).

812. Grading required, sidewalks

Construction of permanent sidewalks were impermissible until the bed was graded so that upon completion it would be at established grade. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

City required to bring street to established grade prior to building permanent walk. Kaynor v. Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Bed of sidewalk must be graded before walk can be built. Bowman v. City of Waverly, 155 Iowa 745, 128 N.W. 950 (1910).

Attorney General Opinions:

City must bring street to grade before property owners are required to lay permanent walks where filling or excavating is necessary. 1910 Op. Att'y Gen. 192.

Although town may not construct permanent walks where no grade is established, it may construct temporary walks so long as costs are kept within statutory limit. 1909 Op. Att'y Gen. 274.

814. Notice of assessment hearing for sidewalks

Cost for repairing permanent sidewalk may be assessed to abutting property without notice to the property owner. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

Attorney General Opinion:

Owner should have notice of time of hearing and have opportunity to be heard. 1911-12 Op. Att'y Gen. 831.

815. Crosswalks, assessments

Cost of crosswalks cannot be assessed against private property. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924).

Provision, authorizing cities to assess cost of sidewalks on lots in front of construction, does not authorize assessment of cost of crosswalks against corner or other lots. Kaynor v. Cedar Falls, 156 Iowa 151, 135 N.W. 564 (1912).

824. Snow and ice removal

Liability is imposed upon abutting property owner for failure to remove natural accumulations of snow and ice within a reasonable time. Busselle v. Doubleday, 486 N.W.2d 45 (Iowa Ct. App. 1992).

Subsection 2 of this section, imposing duty to remove snow and ice from sidewalks on abutting property owner, does not impose liability on abutting property owners for injury to pedestrians caused by negligent failure to remove snow and ice. Peffers v. Des Moines, 299 N.W.2d 375 (1980).

Legislative intent in revised statute was to leave legal responsibility on municipalities for injury to pedestrians caused by negligent failure to remove ice and snow and not shift such liability to the property owner. Id.

X. SNOW AND ICE, REMOVAL FROM SIDEWALKS [PRIOR LAW]

901. In general

Mere slipperiness caused by ice or snow left in its natural condition is not ordinarily a defect in a sidewalk for which a city may be held liable. Hovden v. City of Decorah, 261 Iowa 624, 155 N.W.2d 534 (1968).

902. Negligence, ice and snow

Although city was not liable for injuries caused by normal ice accumulation on sidewalks, it was liable when it allowed snow and ice to remain on the walk and be traveled upon until it became rough and irregular and where such conditions could have been prevented. Leonard v. City of Muscatine, 227 Iowa 1381, 291 N.W. 446 (1940).

To hold city liable for injuries sustained to pedestrian slipping on ice on depressed part of sidewalk, city must be guilty of "culpable negligence" in permitting the depression to remain. Turner v. City of Winterset, 210 Iowa 458, 229 N.W. 229 (1930).

902. Negligence, ice and snow (cont.)

City was liable for pedestrian's fall on rough and uneven ice. Tollackson v. Eagle Grove, 203 Iowa 696, 213 N.W. 222 (1927).

City is negligent in allowing frozen, fallen snow which has become icy, packed and uneven to remain in that condition for a substantial length of time. Parks v. Des Moines, 195 Iowa 972, 191 N.W. 728 (1923).

City was not negligent for permitting snow and ice to remain on its sidewalks where the slippery conditions was caused by sleet or snow as it fell naturally over all the city's sidewalks, which otherwise were not defective. Griffin v. City of Marion, 163 Iowa 435, 144 N.W. 1011 (1914).

903. Abutting owner, liability as to ice and snow

Owner of property adjacent to public sidewalk has no duty to pedestrian to clear ice and snow which has naturally accumulated on sidewalk or make it safe for walking , unless a statute imposes such duty. Rockafellow v. Rockwell City, 217 N.W.2d 246 (1974).

Absent unusual circumstances, business establishments, landlords and carriers can wait until a reasonable time after a storm to remove snow and ice from their outdoor entrances, walks or steps. Hovden v. City of Decorah, 261 Iowa 624, 155 N.W.2d 534 (1968).

Owner or occupant of building abutting on public way may not lawfully collect water accumulating from rain or snow and by some artificial means discharge it upon the street or sidewalk thereby causing injury to others. Smith v. J.C. Penny, 260 Iowa 573, 149 N.W.2d 794 (1967).

Abutting property owners have no duty to the general public to keep the sidewalk which crosses a private residential driveway free from ice and snow which ordinarily accumulates on such driveway. Breuer v. Mataloni, 257 Iowa 445, 133 N.W.2d 114 (1965).

904. Duty to remove snow and ice

A municipality has a duty to remove ice and snow from sidewalks but has no such duty in respect to streets and highways; therefore, a municipality, generally, is not liable for injuries caused by an accumulation of ice and snow in traveled portions of its street. Bahner v. Des Moines, 230 Iowa 13, 296 N.W. 728 (1941).

364.15 Changing Grade of Street

1. Construction and application

Abutting owners cannot require city to excavate or fill street to grade where the natural surface of a street is above or below an established grade line. Given v. Des Moines, 70 Iowa 637, 27 N.W. 803 (1886).

Establishment of grade must be by proper legislative act or ordinance. Kepple v. City of Keokuk, 61 Iowa 653, 17 N.W. 140 (1883).

Attorney General Opinion:

Construction of viaduct over railroad which damages, injures or diminishes the value of abutting property is a change in grade. 1949 Op. Att'y Gen. 11.

2. Procedure for change grade

Permanent grade may be changed only by ordinance. People's Investment v. Des Moines, 241 N.W. 468 (1932).

City council may change grade of street for paving purposes and establish different grade by ordinance. In re Audubon & Ninth Streets, 198 Iowa 1103, 199 N.W. 983 (1924)

4. Improvement according to grade

Street railway tracks are not considered improvement on street within this section. Des Moines City Ry. v. Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

CHAPTER 384

CITY FINANCE

DIVISION I. TAXES AND FUNDS

384.9 Additional Funds

13. Streets, alleys and sidewalks

Character and extent of street improvement must be exercised with regards to interest of the public and without oppressing individuals. Call Bond & Mortgage v. Great Northern Ry., 227 Iowa 142, 287 N.W. 832 (1939).

Assessments authorized by statute for the opening, improvement and extension of streets were for improvements other than mere creating and extending street. Hutchins v. Hanna, 159 N.W. 199 (Iowa 1916).

Statute authorizes city to levy an "improvement fund tax" to pay for street improvements. Corey v. Fort Dodge, 133 Iowa 666, 111 N.W. 6 (1907).

Attorney General Opinions:

Road use tax fund allocated to cities and towns cannot be used for sidewalk construction which is not part of a street construction project. 1970 Op. Att'y Gen. 508.

Municipality may use street fund to build garage to store and maintain road construction, machinery equipment. 1969 Op. Att'y Gen. 181.

While city street intersections with other roads and local service-street facilities may be established, constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the State Highway Commission working together. 1969 Op. Att'y Gen. 92.

Road use tax fund may be used for maintenance of roads and streets but not for street lighting, or city or town's construction or maintenance of alleys or sidewalk purposes. Op. Att'y Gen. Dec. 13, 1961.

If cities or towns do not have bridges, city council may allocate entire street fund for other purposes. 1954 Op. Att'y Gen. 156.

Payment for use of privately owned cars and engineering work should not be paid from the improvement fund unless cars were used exclusively for engineering purposes. 1934 Op. Att'y Gen. 362.

14. Traffic Control

Attorney General Opinion:

Signs and traffic signals used for control or direction of traffic are properly paid out of public safety fund, rather than road use tax fund. Op. Att'y Gen. Dec. 13, 1961.

15. Parking

Road use tax fund may be used for street maintenance, surfacing, repair and snow removal, but not for acquisition or improvement of real estate for parking purposes. Douglass v. Iowa City, 218 N.W.2d 908 (Iowa 1974).

Attorney General Opinion:

Road use tax fund is not to be used for on or off-street parking. Op. Att'y Gen. Dec. 13, 1961.

384.12 Additional Taxes

8. Bridges - in general

Attorney General Opinions:

County not responsible for keeping sidewalk over bridge inside of city free from snow, even though bridge was erected by county. 1919-20 Op. Att'y Gen. 276.

Town is not entitled to vote for aid in construction of county bridge unless cost of bridge is at least $10,000. 1911-12 Op. Att'y Gen. 346.

9. Levy of tax, bridges

County had no power to levy tax for bridges on property within city limits. City of Keokuk v. Kennedy, 156 Iowa 680, 137 N.W. 914 (1912).

Attorney General Opinions:

City could not levy bridge or sidewalk tax for purpose of paying for construction of sidewalks on bridge; sidewalk construction costs could be paid out of the improvement or general fund. 1925-26 Op. Att'y Gen. 368.

Authority to levy bridge tax was vested in cities, not boards of supervisors. 1919-20 Op. Att'y Gen. 378.

10. Power to control and regulate, bridges

City which acquired right to use subway of railroad as a street by implied consent could not interfere in use of bridge company's right-of-way, except where actually used for street purposes. Sioux City v. Missouri Valley Pipeline, 46 F.2d 819 (N.D. 1931).

13. Liability for damages, bridges

An incorporated town is responsible for keeping its streets in proper condition for travel, and this obligation extends to bridge built by railroad company on its right-of-way as an approach to a crossing. Fowler v. Strawberry Hill, 74 Iowa 644, 38 N.W. 521 (1888).

DIVISION IV. SPECIAL ASSESSMENTS

384.37 Definitions

3. Sidewalks

Paving includes that portion of streets and alleys commonly used by the public for traffic as well as by pedestrians, and does not refer to walks laid within the curbing and designed for the exclusive use of pedestrians. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924).

384.38 Certain Costs Assessed to Private Property

2. Construction and application

Special assessments may be levied against abutting property owners to reimburse city where it enhances value of property even though community at large also receives some incidental benefit from the local improvement. Morrison v. City of Washington, 332 N.W.2d 125 (Iowa Ct. App. 1983).

Statutes permitting special assessment levies by city or town to defray cost of city improvement must be strictly construed. H.L. Munn Lumber v. City of Ames, 176 N.W.2d 813 (Iowa 1970).

Each separate public improvement should be dealt with on its own merits. Husson v. City of Oskaloosa, 37 N.W.2d 310 (1949).

Statutes relating to special assessments against abutting property are strictly construed in favor of property owner. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

11. Powers of city

Where city proceeded to establish street without proper jurisdiction, it was not authorized to exercise taxing power for cost of improvement. Beim v. Carlson, 209 Iowa 1001, 227 N.W. 421 (1929).

City does not have inherent authority to levy special assessment for street improvements, which must be granted by statute. Des Moines City Ry. v. Des Moines, 183 Iowa 1261 (1916).

11. Powers of city (cont.)

City may discharge its sewers to prevent street floods from unusual rainfall. Sioux City v. Simmons Warehouse, 151 Iowa 334, 129 N.W. 978, judgment modified on other grounds, 151 Iowa 334, 131 N.W. 17 (1911).

City has authority to assess abutting lots for expense of curbing a parkway where space in the middle of the street has been reserved for parking purposes. Downing v. Des Moines, 124 Iowa 289, 99 N.W. 1066 (1904).

12. Counties

Attorney General Opinion:

This section, formerly 391.2, authorized an agreement between a town with population under 5,000 and a county, whereby town could take advantages of county facilities and street improvement services. Op. Att'y Gen. May 31, 1962.

A town is not authorized to enter into contract for town and county work within town to be reimbursed by county. Id.

14. Payment of cost from general funds

City or town had right to improve and pave streets with money from general fund or from the highway or poll taxes. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

Attorney General Opinions:

Municipality may extend sewer, gas and water facilities beyond its corporate limits. Op. Att'y Gen. March 28, 1962.

City could not levy sidewalk tax for the purpose of paying for construction of sidewalks on a bridge. 1925-26 Op. Att'y Gen. 368.

17. Sidewalks, ordinance

Order requiring construction of sidewalks may be either by resolution or motion, and need not be by ordinance or formal resolution. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).

18. Necessity of ordinance

As provided in former section 389.31, an ordinance is essential to city's right to exercise power granted. Kaynor v. District Court, 178 Iowa 1055, 158 N.W. 557 (1916).

19. Delegation of authority

Authority required by council to construct and reconstruct permanent sidewalks must be aimed at some individual walk. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

21. Joint improvements

Attorney General Opinions:

City street intersections with other roads and local service-street facilities may be established, reconstructed or constructed by cities acting alone; work may also be accomplished by both cities and State Highway Commission working together. 1969 Op. Att'y Gen. 92.

Chapter 28E, relating to joint exercise of governmental powers, authorizes a city and county to improve road which is on boundary of each and which is one-half in the city and one-half in the county. 1966 Op. Att'y Gen. 134.

22. Temporary improvements

City was not authorized to tax abutting property for cost of temporary improvements even though property was benefited. McManus v. Hornaday, 99 Iowa 507, 68 N.W. 812 (1896).

23. Crosswalks

Cost of crosswalks cannot be assessed against private property. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924).

Pavement between sidewalks and curbing are extensions of the sidewalks which are classified as crosswalks. Id.

24. Intersections

Cost of paving alley and street intersections was assessable. Dickinson v. Guthrie Center, 185 Iowa 541, 170 N.W. 759 (1919).

Full assessment of intersection against abutting owner for street paving was not invalid . In re Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

Under Code, sections 792 and 817, the cost of paving street intersections was properly treated as part of the whole improvement and taxed to the entire property abutting on that part of the street. Perry v. City of Albia, 155 Iowa 550, 136 N.W. 681 (1912).

25. Parking facilities

City or town council could acquire jurisdiction to defray, by special assessment, only that part of cost attendant upon acquisition or construction of a parking facility which was created or incurred out of necessity. H.L. Munn Lumber v. City of Ames, 176 N.W.2d 813 (Iowa 1970).

26. Sewer projects

Property owners have right to be treated fairly and equally in sharing burdens and receiving benefits of sanitary sewer system. Sayles v. Bennett Avenue Development, 258 Iowa 628, 138 N.W.2d 895 (1965).

27. Sidewalks

Details of duty owed by city to pedestrians in respect to construction of sidewalk differ from those a city owes to pedestrians in construction of an intersection. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

City's authority to require abutting lot owners to pave streets includes authority to require them to build sidewalks. Warren v. Henly, 31 Iowa 31 (1870).

28. Streets and roads

Property owner may be specially assessed by city for paving residential street even though there may be some incidental benefit to the city. Morrison v. City of Washington, 332 N.W.2d 125 (Iowa Ct. App. 1983).

Improvement of a street is a public object which allows special assessment on abutting property, regardless of the question of benefit to such property. Dewey v. Des Moines, 101 Iowa 416, 70 N.W. 605 (1897).

30. Tree removal

City could not assess cost of removing diseased trees to property owners adjacent to tree removal area where statute limited such liability to cost of removing trees on owner's property only. Shriver v. City of Jefferson, 190 N.W.2d 838 (1971).

Attorney General Opinion:

Cities and towns may not assess abutting property for cost of tree removal from city parking area in front of owner's residence. Op. Att'y Gen. May 15, 1969.

31. Abutting property

Where lot extended so as to abut on each of two parallel streets, special assessment for improvement of one street could be imposed only on value of that half of the lot which abutted on the improved street. Dunn v. Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

Under Code section 779, authorizing sidewalk assessment against lots in front of sidewalk, and section 792, authorizing assessment of abutting property, the street and property assessed must have a common boundary. Northern Light Lodge No. 156 v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).

Only assessments against the parcel or that part of a lot which actually abuts on the street will be authorized. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

34. Agricultural property

Agricultural lands within city limits were subject to tax for paving roadways. McKinney v. McClure, 206 Iowa 285, 220 N.W. 354 (1928).

Attorney General Opinion:

Agricultural lands of more than 10 acres within boundaries of cities or towns are not taxed, except for city and town purposes, library purposes and paving arterial highways for access to the city. 1944 Op. Att'y Gen. 76.

37. Corner lots

Corner lots are subject to assessment for improvement of two intersecting streets. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Corner lot could be assessed for street improvements in each of the streets on which it abutted. Harris v. Evans, 196 Iowa 799, 195 N.W. 178 (1923).

Where corner lots are situated to create double frontage, they may be properly doubly assessed. Morrison v. Hershire, 32 Iowa 271 (1871).

38. County property

City property owned and used for public purposes by a county was not exempt from special assessments for street improvements. Edwards & Walsh Construction v. Jasper County, 117 Iowa 365, 90 N.W. 1006 (1902).

384.38 Certain Costs Assessed to Private Property

40. Railroads

Street railway company which had right-of-way but owned no lots on street was not liable for assessment for improvement of street. Davis v. Lucas, 52 Iowa 730, 3 N.W. 134 (1879).

47. Method of computing assessments

Town must abide by ordinance which fixed mode of procedure to construct sidewalks and assess costs. Brush v. Town of Liscomb, 202 Iowa 1155, 211 N.W. 856 (1927).

Engineer's use of "curve" to determine benefits according to area and distance from improvement was not ground for setting aside assessment. In re Resurfacing Fourth Street, 203 Iowa 298, 211 N.W. 375 (1926).

City has right to make street improvement and reimburse itself for such expense by prescribing mode in which tax shall be assessed. City of Burlington v. Quick, 47 Iowa 222 (1877).

384.39 Improvements Brought to Grade

1. Construction and application

Permanent street improvements should not be made until grade is established. People's Investment v. Des Moines, 241 N.W. 468 (1932).

Establishing street grade is not required before passing resolution ordering street improvement. Id.

Assessment for paving alley was invalid because grade had not been established. Walter v. City of Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927).

3. Powers and duties of cities

Under provision, providing for establishing street grade, city is not required to make the necessary excavation to obtain foundation for sidewalk. Kaynor v. Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

When exercised within its prescribed limits, a city's authority to establish grades cannot be controlled. Kemp v. Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

Statutory provisions, giving cities authority to construct sidewalks, to curb, pave, gravel and gutter any highway or alley, and tax abutting property owners for the improvements, did not include grading prior to paving at some uncertain time in the future. Bucroft v. Council Bluffs, 63 Iowa 646, 19 N.W. 807 (1884).

384.39 Improvements Brought to Grade

3. Powers and duties of cities (cont.)

Attorney General Opinions:

City must bring street to grade before requiring property owners to lay permanent walks where considerable filling or excavation is needed. 1910 Op. Att'y Gen. 192.

Power of municipal corporation to order sidewalks and assess costs against abutting property does not include assessment cost of bringing that portion of street where sidewalk will be constructed to grade. 1907 Op. Att'y Gen. 143.

4. Ordinance

Notwithstanding this section, formerly 792, where an original ordinance passes prior to paving, assessment under ordinance establishing grade after paving was complete is valid. In re Audubon & Ninth Streets, 198 Iowa 1103, 199 N.W. 983 (1924).

Where city ordered paving improvement at the established grade and later changed it without ordinance, it could not assess cost of improvement to property owner. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

6. Sidewalks

Construction of permanent sidewalks were impermissible until the bed was graded so that upon completion, it would be at established grade. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

City required to bring street to established grade prior to building permanent walk. Kaynor v. Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Bed of sidewalk must be graded before walk can be built. Bowman v. City of Waverly, 155 Iowa 745, 128 N.W. 950 (1910).

384.49 Resolution of Necessity

1. Construction and application

Property owner's waiver of rights for failure to file objection to assessment does not apply to sewer projects. Petition of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Issuance of certificates was mandatory, and statutory limitation were imposed where city paid for street paving by special assessment certificates. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

If costs are paid from the general fund and assessed against property, sewers may be built without the necessary formalities. Dunn v. Sioux City, 206 Iowa 908, 221 N.W. 571 (1928).

384.49 Resolution of Necessity

1. Construction and application (cont.)

Statutory conditions precedent to public improvement must be strictly followed. Chicago & N.W. Ry. v. Sedgwick, 203 Iowa 726, 213 N.W. 435 (1927).

Requirement of resolution of necessity and publication of notice of intent to improve are to be strictly followed. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Resolution adopted by city council for construction of a sewer was void for lack of jurisdiction. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

2. Ordinance

City could improve streets without amending prior ordinance where statute prescribed mode of procedure. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

Ordinance, providing that improvements in streets shall be ordered by resolution describing the streets and improvements, and that notice shall be given by publication, are mandatory. Starr v. City of Burlington, 45 Iowa 87 (1876).

384.50 Notice of Hearing

6. Necessity of notice

Sewer assessment on abutting owners without giving notice was unlawful even though neither statute nor ordinance under which it was laid provided for such notice. Gatch v. Des Moines, 63 Iowa 718, 18 N.W. 310 (1884).

Statutory requirements as to notice must be strictly observed, otherwise proceedings involving special assessments will invalid. Roznos v. Town of Slater, 254 Iowa 77, 116 N.W.2d 471 (1962).

384.52 Detailed Plans and Specifications

1. Construction and application

Plans and specifications for paving, designating asphalt filler, and at council's option giving specifications for coal tar pitch filler, were not so misleading as to nullify council's action in adopting them. Vowles v. Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

Where town engineer did not file specifications for specific type of paving, but before the notice to bidders was published the council added this the type in the original proposed resolution of necessity, and each bidder had specifications with type of paving, contract for such paving was not invalid. Wigodsky v. Town of Holstein, 195 Iowa 910, 192 N.W. 916 (1923).

384.52 Detailed Plans and Specifications

1. Construction and application (cont.)

It is not required that the plans and specifications for a street improvement be on file for the information of the property owners prior to the time of advertising for bids. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

2. Bids

Bidders on municipal construction work owe duty to base their bids on plans and specifications on file. Brutsche v. Coon Rapids, 220 Iowa 1295, 264 N.W. 696 (1936).

Contract was invalidated where specifications of company granted contract to construct electric light plant for town varied materially from town's specifications. Iowa Electric Light & Power v. Grand Junction, 216 Iowa 1301, 250 N.W. 136 (1933).

3. Amended specifications

A street paving assessment was not invalid because city engineer approved unwashed gravel instead of washed gravel, as called for in the specifications, where an "after word" to the specifications reserved to city engineer discretion to permit the use of unwashed gravel. In re Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

384.53 Procedures to Let Contract

4. Requisites and validity of contract

Contract for street improvements does not have to be in writing. Wayman v. City of Cherokee, 204 Iowa 841, 232 N.W. 137 (1930).

To be valid, contract for street improvement must substantially conform to provision of resolution of necessity. Richardson v. City of Denison, 189 Iowa 426, 178 N.W. 332 (1920).

Contracts for street improvements complying with statutory requirements and which are to be assessed against abutting property do not create a municipal indebtedness. Corey v. Fort Dodge, 133 Iowa 666, 111 N.W. 6 (1907).

384.58 Inspection of Work

2. Construction and application

Extension of time for completion of street paving as authorized by contract does not invalidate assessments, unless unreasonable. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

384.58 Inspection of Work

5. Acceptance of work

Where city has engineer who inspects and accepts work done by contractor, absent any fraud or mistake, the city cannot recover on contractor's bond for defects known or discoverable by engineer's reasonable attention. City of Osceola v. Gjellefald Construction, 225 Iowa 215, 279 N.W. 590 (1938).

Street improvements are assessed against abutting owner when contract has been approved by inspector, accepted by the city and is in substantial compliance with contract, absent any fraud. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

384.61 Assessment of Benefits

4. Property subject to assessment, generally

Benefit for which property owner is taxed necessarily requires that fair allocation of costs of improvement within assessment area be made to all property; in making this determination, it is necessary to consider whether proper factors are considered in the formula and whether the formula reflects the actual benefit to the property. Des Moines Chrysler-Plymouth v. City of Urbandale, 488 N.W.2d 711 (Iowa Ct. App. 1992).

Where lot extended so as to abut on two parallel streets, special assessment for improvement of one street could be imposed only on the value of that half of the lot which abutted on the improved street. Dunn v. Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

If special benefits conferred by street improvement upon a given tract exceed cost of improvement immediately in front of track, city council may apportion and levy excess upon other property that benefited from the improvement. Snyder v. Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).

12. Area factor, amount of assessment

Area or frontage methods cannot be made sole or exclusive basis of determining assessments without regard to other factors. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 227 (1953).

Assessment for street improvement benefits according to area are valid. In re Resurfacing Fourth Street, 203 Iowa 298, 211 N.W. 375 (1926).

13. Frontage factor, amount of assessment

Factors other than frontage affecting benefits must be given weight in determining amount of special assessment. Spencer Shopping Center v. City of Spencer, 200 N.W.2d 513 (Iowa 1972).

13. Frontage factor, amount of assessment

The proportionate benefit to abutting lots was the basis of the assessment, but in the absence of any other consideration affecting benefits, frontage might properly be considered as basis for determining benefits. Des Moines Union Ry. v. Des Moines, 140 Iowa 218, 118 N.W. 293 (1908).

The front-foot rule applied to the assessment of land abutting a street for paving will be sustained, though the assessment exceeds the benefits conferred. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

14. Excessive assessments

Assessment may fail the "just and equitable" test when measured against the benefits conferred, even though it is not excessive. Knudsen v. Des Moines, 254 N.W.2d 1 (Iowa 1977).

Individual excessive assessments do not warrant finding that method of assessment was unconstitutional. In re Resurfacing Fourth Street, 203 Iowa 298, 211 N.W. 375 (1926).

City council, in levying special assessments for public improvements upon abutting property, must not levy amount in excess of special benefits conferred, nor in any event exceed 25 percent of the value of property. Snyder v. Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).

Assessment may not exceed special benefits nor one-fourth of the value of the property assessed. Camp v. City of Davenport, 151 Iowa 33, 130 N.W. 137 (1911).

15. Separate assessments

Paving under two separate contracts and under separate resolutions was considered as separate improvements, and property benefited separately assessable for each. Curtis v. Town of Dunlap, 202 Iowa 588, 210 N.W. 800 (1926).

Improvement of intersecting streets at same time under separate resolutions and assessments are not violative of this section. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Where curbing and paving are part of same general improvement, a prior assessment for curbing should be subtracted from second assessment for paving. Chicago Great Western Ry. v. Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

"Paving" includes curbing, guttering and paving, all of which should not be assessed separately. Bailey v. Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

Lots should be assessed separately even though they are adjoined and used as one tract by the same owner. Stutsman v. City of Burlington, 127 Iowa 563, 103 N.W. 800 (1905).

384.62 Limit

2. Construction and application

This section does not apply to drainage district assessments, which may exceed 25 percent of actual property value. Hatcher v. Board of Supervisors, 165 Iowa 197, 145 N.W. 12 (1914).

Twenty-five percent limitation on improvement assessments applies to value after improvement has been constructed. Nelson v. Sioux City, 208 Iowa 709, 226 N.W. 41 (1929).

Attorney General Opinion:

Where special assessment deferred, interest accrues on days of change in use of property, withdrawal or discontinuance of deferment. Op. Att'y Gen. May 30, 1979.

11. Future use and prospects, determination of value

Future potential use of property should be considered in deciding benefits accruing to land from paving improvement for which assessment is made. Spring Valley Apartments v. Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Probable future growth of a town and uses to which abutting property may reasonably be put should be considered in determining actual value of land. Gingles v. City of Onawa, 241 Iowa 492, 41 N.W.2d 717 (1950).

Consideration of future prospects of the property should be considered when levying special assessment against property for curb and gutter. Nash v. City of Ames, 282 N.W. 340 (Iowa 1938).

384.64 Assessment to Railway Company

1. Construction and application

Where benefit to railroad is only nominal, it is not assessable for street paving. Chicago, B. & Q. Ry. v. City of Chariton, 169 N.W. 337 (1918).

Under express terms of this section, assessment may be made upon railroad right-of-way abutting on a street. Chicago Great Western Ry. v. Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Attorney General Opinions:

Where right-of-way is just an easement, it is not subject to assessment for road improvements. 1919-20 Op. Att'y Gen. 302.

Railroad is not compelled to pave between its tracks at crossing or assessing company. Id.

Railway property is chargeable with its share of cost of street improvement. 1911-12 Op. Att'y Gen. 681.

384.71 Costs Paid from Applicable Funds

1. Validity

Provision authorizing street improvement and assessing cost against abutting property according to benefits is not unconstitutional. Hutchins v. Hanna, 179 Iowa 912, 162 N.W. 225 (1917).

Apportionment of cost of street paving on abutting lots according to their frontage is not unconstitutional as the "taking" of property without due process of law. Hackworth v. City of Ottumwa, 114 Iowa 467, 87 N.W. 424 (1901).

3. Construction and application

Statutes relating to special assessments against abutting property are strictly construed in favor of property owner. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

City or town had right to improve and pave streets with money from general fund, or from the highway or poll taxes. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

Attorney General Opinions:

Municipality may extend sewer, gas and water facilities beyond its corporate limits. Op. Att'y Gen. March 28, 1974.

City street intersections with other roads and local service-street facilities may be established, reconstructed or constructed by cities acting alone; work may also be accomplished by both cities and State Highway Commission working together. 1969 Op. Att'y Gen. 92.

Chapter 427

PROPERTY EXEMPT AND TAXABLE

427.2 Roads and Drainage Rights of Way

1. Construction and application

Attorney General Opinions:

Real estate adjacent to public highway which has been granted in easement for public road purposes should not be taxed. 1963 Op. Att'y Gen. 204.

Land conveyed to state and dedicated to public use for highway purposes, prior to the levy of any tax, is exempt from taxation. Op. Att'y Gen. October 1, 1963.

2. Public roads

Where landowner who intends to sell lots files plat showing the lots and streets, such dedication of the streets to the public may be accepted by a public user; formal acceptance by the municipality or public authorities is not necessary for street to be exempt from taxation. Iowa Load & Trust v. Board of Supervisors, 187 Iowa 160, 174 N.W. 97 (1919).

Is it not necessary that highway be established by dedication, with some formal sequestration of lands for use as a public highway before such area be exempt from taxation on the basis that it is a highway. Id.

3. Bridges

Toll bridge owned and operated by city of Dubuque Bridge Commission was not exempt from taxation on basis that bridge was "real estate occupied as a road," in view of section 427.13, which expressly provide that toll bridges shall be taxed. In re Dubuque Bridge Commission, 232 Iowa 112, 5 N.W.2d 334 (1942).

Attorney General Opinions:

That portion of a toll bridge built by corporation across Des Moines River, situated in Iowa, which is the boundary between Missouri and Iowa, is not exempt from taxation. Op. Att'y Gen. March 27, 1967.

The South Omaha bridge nor its approaches were subject to taxation by Pottawattamie county. 1938 Op. Att'y Gen. 860.

4. Drainage ditches

Attorney General Opinion:

Right-of-way drainage ditch covered by the easement is exempt from taxation. 1934 Op. Att'y Gen. 299.

CHAPTER 461A
(Transferred from Chapter 111, Code 1991)

PUBLIC LANDS AND WATER

461A. Obstruction Removed

1. Construction and application

Attorney General Opinions:

Conservation Commission may remove any encroachments, such as walls, fences and similar type structures, upon or over any lands owned or under its supervision, if such removal would be in the best interest of the public. Op. Att'y Gen. May 19, 1967.

The Conservation Commission has jurisdiction over all shacks or buildings built within meandered line of state waters which have been set aside as a game sanctuary and has power to remove such structures. 1928 Op. Att'y Gen. 222.

461A.8 Highways

1. Construction and application

Attorney General Opinion:

The state Board of Conservation's Executive Council must approve the construction of a highway through a public park. 1923-24 Op. Att'y Gen. 171.

10. Bridges

Attorney General Opinion:

Board of Conservation had power to grant Highway Commission permission to build solid bridges over meandered lakes and streams. 1928 Op. Att'y Gen. 320.

Chapter 468
(Transferred from Chapter 455, Code 1989)

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

SUBCHAPTER I. ESTABLISHMENT
PART 1. GENERAL

468.43 Public Highways and State-Owned Lands

1. Construction and application

Although city had jurisdiction of highway where culvert was located, there was no statutory authority for county drainage district to assess cost of installing culvert against the city. Drainage District No. 119 v. City of Spencer, 268 N.W.2d 493 (1978).

There was no lack of jurisdiction to levy assessments for benefits because no assessment was made against highways within a district where it was not shown they required drainage. Chicago & N.W. Ry. v. Board of Supervisors, 197 Iowa 1208, 198 N.W. 640 (1924).

Attorney General Opinion:

Whenever any highway within a drainage district is benefited by construction of any improvement in that area under the Drainage Act, the commissioners are required to classify and assess benefits accruing to highway in the same manner as it is assessed to private property. 1906 Op. Att'y Gen. 416.

2. Payment of assessment

Attorney General Opinions:

If county pays all assessment for benefits received by highway out of township fund, such fund should be credited with county's share. 1930 Op. Att'y Gen. 240.

The provision that assessments against primary fund should be paid out of counties' allotment of primary fund which first appeared in the code is not retroactive. 1925-26 Op. Att'y Gen. 278.

468.106 Construction on or Along Highway

1. Mandamus

Board allowed to build highway bridge over drainage ditch since drainage district cannot extinguish public easements for highway purposes. Robinson v. Board of Supervisors, 222 Iowa 663, 269 N.W. 921 (1936).

468.107 Establishment of Highways

1. In general

Notwithstanding concession that drainage district had a prescriptive easement for levee crossing property, district did not acquire prescriptive right to establish a public highway upon levee, where use substantially deviated from and materially exceeded any right acquired by prescription. Gilmore v. New Beck Levee District, 212 N.W.2d 477 (Iowa 1973).

Mere fact that drainage district was established, with a drainage levee later being constructed on property, was not sufficient basis to assume district acquired right-of-way easement across levee, absent any showing that landowner had actual or constructive knowledge. Id.

468.108 Bridges

1. Railroads, liability

Where railroad was assessed for the benefit it received from drain construction, it could not be charged additionally with a portion of the cost of highway bridge over the drain not located on the railroad's right-of-way since the cost of such bridge should have been included in the assessment. United States Railroad Administration v. Board of Supervisors, 196 Iowa 309, 194 N.W. 365 (1923).

2. Mandamus

Mandamus is used to compel board of supervisors to construct a bridge where a drainage ditch crosses a public highway. Perley v. Heath, 201 Iowa 1163, 208 N.W. 721 (1926).

Statute requiring board to erect bridge where drainage ditch crossed highway is mandatory. Ruffcorn v. Chatburn, 166 Iowa 611, 147 N.W. 110 (1914).

3. City limits

This section, which deals with secondary and primary roads and not extensions of primary roads, did not provide necessary statutory basis for assessment for cost of construction of culvert crossing under highways within city limits. Drainage District No. 119 v. City of Spencer, 269 N.W.2d 493 (Iowa 1978).

Attorney General Opinion:

Where complete drain is established within city of second class, board should construct culverts which are reasonably necessary, and the city may construct other culverts as it desires or contribute to county culverts construction. 1919-20 Op. Att'y Gen. 336.

468.108 Bridges

4. Private bridges

Board of supervisors has no duty to maintain and repair private bridge crossing an open drainage ditch because such cost are part of damages taken into consideration when drainage district is established. 1932 Op. Att'y Gen. 103.

SUBCHAPTER II. JURISDICTIONS
PART 4. HIGHWAY DRAINAGE DISTRICTS
(Transferred from Chapter 460, Code 1989)

468.335 Establishment

1. Necessity of establishment

Where land was used as easement for discharge of surface waters from former dirt highway, paving such highway without substantial change of grade requires establishment of highway drainage district. Grimes v. Polk County, 34 N.W.2d 767 (1949).

2. Joint districts

Attorney General Opinion:

Under this chapter, joint drainage district could not be formed to drain countyline highway and land tributary to same drainage area lying in two or more counties. 1918 Op. Att'y Gen. 512.

3. Nature of drainage districts

Drainage district has no rights or powers other than those found in the statutes authorizing its existence. Board of Trustees v. Board of Supervisors, 232 Iowa 1098, 5 N.W.2d 189 (1942).

Drainage districts have their own characteristics, and powers are not granted to cites and towns nor private individuals. Miller v. Monona County, 229 Iowa 165, 294 N.W. 308 (1940).

4. Right to discharge water absent drainage district

Highway Commission and county had right to dispose of surface water coming onto highway right-of-way by connecting highway ditches with private tile drainage system and discharging such waters onto land where commission and county had acquired an easement and prescriptive right to do so. Grimes v. Polk County, 34 N.W.2d 767 (1949).

468.344 Condemnation of Right-of-way

1. Railroads, ditches across

Damages for condemnation of right-of-way for a public drainage ditch across a railroad are confined to the value of the easement across its right-of-way, regardless of whether or not the ditch follows a natural course over such way. Chicago, B. & Q. Ry. v. Board of Supervisors, 182 F. 291 (Iowa Ct. App. 1910).

2. Instructions

"Establishment" of a drainage ditch refers to action of the board of supervisors in ordering it, and "construction" refers to actual work, however, absent any greater damage at one point than another, the terms may be used synonymously in assessing damages for the "taking" of land for a drainage district. Larson v. Webster County, 150 Iowa 344, 130 N.W. 165 (1911).

468.346 Removal of Trees from Highway

1. Construction and application

Removal of trees on highway, which was a necessary improvement of roadway by county, was not controlled by this section and section 460.13, dealing with highway drainage districts and prohibiting removal of trees serving as ornament or windbreak. Rabiner v. Humboldt County, 224 Iowa 1190, 278 N.W. 612 (1938).

Attorney General Opinion:

Road authority's discretion to determine the depth of ditches on roads is limited only by implied prohibitions against injuring trees and interfering with drainage. 1938 Op. Att'y Gen. 184.

SUBCHAPTER V. INDIVIDUAL DRAINAGE RIGHTS
(Transferred from Chapter 465, Code 1989)

468.600 Drainage Through Land of Others - Application

2. Construction and application

Where property owners maintained ditch, which was too narrow to confine high drainage waters, a landowner had right to construct ditch from it along a natural water course, partly upon the land of another but did not have right to dam up old ditch to force water along new ditch. Allen v. Berkheimer, 194 Iowa 871, 186 N.W. 683 (1922).

Township trustees cannot grant application for drainage benefit by enlarging a natural water course entirely upon one's land to prevent flooding of another's. Cowan v. Grant Township, 190 Iowa 1188, 181 N.W. 637 (1921).

468.600 Drainage Through Land of Others - Application

2. Construction and application (cont.)

This section does not authorize township trustees to establish or construct drainage improvements. Cowan v. Grant Township, 190 Iowa 1188, 181 N.W. 637 (1921).

Attorney General Opinion:

Board of supervisors decides whether a drainage title may be projected across or through a road right-of-way to a suitable outlet. 1970 Op. Att'y Gen. 545.

2. Establishment

Landowners have right to construct drain to carry water in its natural and usual course from their land onto or over the land of others, so long as the quantity of water thrown upon others' land is not materially and unduly increased to their damage. Sheker v. Machovec, 110 N.W. 1055 (1907).

4. Prescriptive right - in general

Artificial channel may become natural watercourse after period of prescription has run. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947).

If use of landowner's property is permissive, and not adverse, no prescriptive right to use such property land is acquired. Jones v. Stover, 131 Iowa 119, 108 N.W. 112 (1906).

Claim of easement acquired by adverse use is defeated when a landowner goes on the highway and fills up a ditch carrying surface water from the land of another over one's own land, when done during a period of limitations. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

468.621 Drainage in Course of Natural Drainage - Reconstruction - Damages

II. RIGHTS AND LIABILITIES

66. Railroads, rights and liabilities - in general

Where railroad is not at fault, it is not liable for damage to adjoining land caused by waters brought onto land. Hinkle v. Chicago, R.I. & P. Ry., 208 Iowa 1366, 227 N.W. 419 (1929).

If railroad company abandons a culvert it its right-of-way, thereby changing the course of surface water, it may in the absence of express or implied contract, reopen it and permit water to flow in its original course across adjacent owner's land. Brainard v. Chicago, R.I. Ry., 151 Iowa 466, 131 N.W. 649 (1911).

66. Railroads, rights and liabilities - in general (cont.)

Railway company which acquires right-of-way by condemnation proceedings has no right to collect surface water by the construction of a solid roadbed and discharge it on adjacent land. Albright v. Cedar Rapids & I.C. Ry. & Light, 133 Iowa 644, 110 N.W. 1052 (1907).

67. Drainage through railroad right-of-way

Railroad must construct sluices or culverts to conduct water in its natural course. Hinkle v. Chicago, R.I. & P. Ry., 208 Iowa 1366, 227 N.W. 419 (1929).

Railroad had right to construct culvert through roadbed at place over which water, if unobstructed, would naturally flow. Id.

Railroad company must provide passageways for water of a stream crossed by the road which are reasonably sufficient to allow the water to flow through without being diverted from its natural course. Estes v. Chicago, B. & Q. Ry., 159 Iowa 666, 141 N.W. 49 (1913).

Railway company must maintain its roadways in such condition as to permit the passage of an amount of surface water produced by an ordinary rainfall, or one which is likely to occur in the climate and country where it is located. Cornish v. Chicago, B. & Q. Ry., 49 Iowa 378 (1878).

68. Highways, drainage through or across

Landowner's access road, the traveled surface of which is raised above adjoining land, must be ditched and have transverse bridges, culverts, or pipes which permit free passage of water from one side to the other. Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973).

Landowner had right to drain natural depression of land onto adjoining lower land in the natural course of drainage where the flow of water was caused by construction of a new highway, and the water would not be carried to a different place or in a substantially different manner. Jacobson v. Camden, 236 Iowa 976, 20 N.W.2d 407 (1945).

Highway authorities may maintain and use culverts to drain waters in their natural course. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Supervisors could not be restrained by landowners from building culverts across road to drain surface water in its natural course. Schwartz v. Wapello County, 208 Iowa 1229, 227 N.W. 91 (1929).

68. Highways, drainage through or across (cont.)

Where a road was changed and culverts, which allowed water from to drain from north to south, were filled, and landowners cut hole in the embankment causing surface water to back up on the road, they were liable even though the culverts were improperly discontinued. Martin v. Schwertley, 155 Iowa 347, 136 N.W. 218 (1912).

Attorney General Opinion:

Landowners have right to open drain on their own land which goes upon a public highway even though it may result in an occasional flooding or saturation of the highway. 1919-20 Op. Att'y Gen. 330.

69. Street railroads, rights and liabilities

Street railway company is prohibited from constructing and maintaining its embankments for track purposes as to flood the land above it. Nelson v. Omaha & C.B. St. Ry., 158 Iowa 81, 133 N.W. 831 (1912).

Street railway liable for damages caused by its obstruction of surface water in removing bridge and inserting inadequate tile. Hoppes v. Des Moines City Ry., 147 Iowa 580, 126 N.W. 783 (1910).

93. Dikes

County was entitled to enjoin landowner from maintaining dike to divert water originating from its natural course and directing it under highway bridge. Droegmiller v. Olson, 40 N.W.2d 292 (1950).

94. Dams

Landowners had no right to maintain dam to widen flow of water coming through highway culvert in natural course of drainage for purchase of preventing creation of ditches of land where dam held water back in highway. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Township could enjoin landowners from maintaining dam on their premises, obstructing free flow of surface water across highway in its natural course of drainage. Id.

468.622 Drainage Connection with Highway

1. Construction and application

This section is only applicable when tile line or drainage ditch on individual land must be projected across right-of-way to suitable outlet; this section was not applicable to county drainage districts claims against city and Department of Transportation for cost of construction of culvert crossings. Drainage District No. 119 v. City of Spencer, 268 N.W.2d 493 (Iowa 1978).

Although city had jurisdiction of highway at culvert crossing, there was no statutory authority for county drainage district to assess cost of installing culvert to the city. Id.

Farmer could not compel county and drainage trustees to install highway ditch where there was no showing that any water had come onto farmer's land from river close to newly constructed highway after the river had straightened in drainage project. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292.

Where landowner had no right to divert natural flow of water by constructing a dike extending from highway across land, county was not compelled to protect landowner by redirecting water back into its natural course. Id.

County, town and school district had a right to make tile drainage connections in highway ditches. Grimes v. Polk County, 240 Iowa 228, 34 N.W.2d 767 (1949).

State Highway Commission and county had right to dispose of surface water coming on highway right-of-way by connecting ditches with private tile drainage system to discharge such waters on natural servient estate. Id.

Attorney General Opinions:

Board of supervisors has power to determine whether proposed drainage project is beneficial for sanitary, agriculture or mining purposes, so as to determine whether county is responsible for projecting such drain across secondary road right-of-way location different from the present drain. Op. Att'y Gen. Jan. 3, 1973.

Right of owner to open a drain on land going to public highway. 1919-20 Op. Att'y Gen. 330.

2. Rights of public

Attorney General Opinion:

Owners of land may drain the same in the general course of natural drainage by constructing tile lines and connecting same to any drain or ditch along or across any public highway, such connections to be made in accordance with specifications furnished by highway authorities having jurisdiction thereof. 1974 Op. Att'y Gen. 364.

468.622 Drainage Connection with Highway

3. Easements

Landowners could not deny existence of easement where they were aware of the maintenance of highway ditches and culvert crossing the highway and actively participated in taking water from their land and discharging it using the ditches. Hayes v. Oyer, 164 Iowa 697, 146 N.W. 857 (1914).

Claim of easement acquired by adverse use is defeated when a landowner goes on the highway and fills up a ditch carrying surface water from the land of another over one's own land, when done during a period of limitations. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

4. Repairs

Attorney General Opinion:

Provisions of this section do not obligate the county to repair drainage tile installed by private individuals across farm-to-market road. Op. Att'y Gen. March 17, 1961.

468.629 Lost Records - Hearing

1. Construction and application

Attorney General Opinion:

Provisions of this section may be utilized to resolve problems of a common drain involving private property and state owned property devoted to use as a primary highway when said property is not part of an established drainage district, and records of said common drain are lost or non-existent. Op. Att'y Gen. Nov. 17, 1975.

Chapter 473A

MIDWEST ENERGY COMPACT

473A.4 Powers and Duties

1. Voting

Provision of this section codifies common law rule and authorizes joint planning commissions to make decisions by a majority of quorum rather than requiring majority approval of all members of commission. Hiawatha v. Regional Planning Commission, 267 N.W.2d 31 (Iowa 1978).

2. Powers

Attorney General Opinion:

A joint planning commission may own and lease public transit building, maintenance and equipment facilities to the Iowa Regional Transit Corporation. Op. Att'y Gen. March 17, 1970.

473A.7 Construction of Provisions

1. Cooperation with commissions

A county regional planning commission formed under chapter 473A may join a multi-county regional planning commission under chapter 28E. 1973 Op. Att'y Gen. 187.

CHAPTER 477

TELEGRAPH AND TELEPHONE LINES AND COMPANIES - CABLE SYSTEMS

477.1 Right of Way

1. Validity

Telephone company's authorization to maintain a long-distance line through municipalities without obtaining a franchise did not deny constitutional right requiring franchise to maintain a local exchange. Cherokee v. Northwestern Bell Telephone, 199 Iowa 727, 202 N.W. 886 (1925).

Statutory provisions authorize the use of public highways of the state for the construction of telegraph and telephone lines.
State v. Nebraska Telephone, 127 Iowa 194, 103 N.W. 120 (1905).

2. Construction and application

Procedure providing for determination of damages in section 6B.1 relative to "taking" of private property for public use by condemnation is not exclusive. Hagenson v. United Telephone, 164 N.W.2d 853 (Iowa 1969).

Where company acquired perpetual right to use highways, such right was subject to police power, constitution and statutes of the state. Shaver v. Iowa Telephone, 175 Iowa 607, 154 N.W. 678 (1916).

Previous Iowa Code provided telephone company with right to place its lines in city streets. Iowa Telephone v. Keokuk, 226 F. 82 (N.D. 1915).

Attorney General Opinion:

The Iowa State Highway Commission may authorize a telephone company to place an underground cable along the untraveled portion of a controlled-access highway, within primary road system of the state, without consent from abutting landowner who holds the underlying fee in such highway. 1970 Op. Att'y Gen. 511.

3. Streets, rights in

Where road was never condemned by governmental authority as a public road, nor was it ever informally dedicated to public use by owners of the land it traversed, the telephone company which laid underground cable assuming that the road was a public one had to prove it by common-law dedication or by prescription. Hagenson v. United Telephone, 209 N.W.2d 76 (Iowa 1973).

Telephone company constructing lines in cities and towns acquires perpetual franchise for use and occupation of streets and alleys, subject to reserved rights of the state. City of Osceola v. Middle States Utilities, 219 Iowa 192, 257 N.W. 340 (1934).

3. Streets, rights in (cont.)

Statutory provisions authorizing telegraph and telephone companies to use the public highways empower such companies to use city streets as were required to meet demands of the public. State v. Nebraska Telephone, 127 Iowa 194, 103 N.W. 120 (1905).

4. Municipal franchise

The legislative franchise under Code of 1873 to occupy streets and alleys with telephone lines was not waived or abandoned by city's grant of franchise to telephone company in 1895 and the company's acceptance of such franchise, where city did not have the power in 1895 to grant such a franchise. Emmetsburg v. Central Iowa Telephone, 250 Iowa 768, 96 N.W.2d 455 (1959).

Where company had statutory perpetual franchise to occupy city streets, the Legislature could not grant city power to revoke when it adopted a commission form of government. Iowa Telephone v. Keokuk, 226 F. 82 (N.D. 1915).

Persons entering streets and alleys prior to Code 1897, which gave city power to grant franchises, acquired perpetual franchise, and city could not interfere except in exercise of police power. Audubon v. Northwestern Bell Telephone, 232 Iowa 79, 5. N.W.2d 5 (1942).

City council was not authorized to grant franchise to use streets and alleys for telephone until Code of 1897 became effective October 1, 1897. Id.

Fixed limitation in ordinance of term of telephone franchise to 10 years was valid. Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Under Code 1897, a franchise was not necessary to erect and maintain telephone toll line in a town. Talmadge v. Washta, 183 Iowa 792, 167 N.W. 596 (1918).

Legislative grant of right to use public street for telephone fixtures when accepted and acted upon by a telegraph or telephone company is a contract which cannot be changed, except by the Legislature itself. Des Moines v. Iowa Telephone, 181 Iowa 1282, 162 N.E. 323 (1917).

Telephone company accepting charter or license from city without having such authority is not prevented from claiming rights in street. State v. Chariton Telephone, 173 Iowa 497, 155 N.W. 968 (1916).

Under Code 1873, telephone company's right to operate lines through city's streets was subject to city's police power. Shaver v. Iowa Telephone, 175 Iowa 607, 154 N.W. 678 (1915).

Code 1897, section 2158, authorizing construction of lines along public roads, was limited within municipalities. East Boyer Telephone v. Town of Vail, 166 Iowa 226, 147 N.W. 327 (1914).

5. Municipal tax or fee

An ordinance requiring telegraph company to pay a rental for use of city streets for its poles was a revenue measure, and not the imposition of a license or tax nor an exercise of police power. Des Moines v. Iowa Telephone, 181 Iowa 1282, 162 N.E. 323 (1917).

Where fee title to streets and alleys is in a city, it is held by the city in trust for the general public and not entitled to compensate itself for use of its streets. Id.

6. Exclusive or concurrent rights

In action by city for injunction requiring telephone company to remove its lines from city's streets and alleys, wherein telephone company asserted that, its lines having been built prior to October 1, 1897, secured perpetual rights to use streets and alleys under statutes then effective, transfer by person who built the first lines carried with it legislative franchise to occupy streets and the alleys. Emmetsburg v. Central Iowa Telephone, 250 Iowa 768, 96 N.W.2d 445 (1959).

Railroad company granting telegraph company exclusive right to establish lines of telegraph communication along its right-of-way was a restraint of trade and contrary to public policy. Western Union Telegraph v. Burlington & S.W. Ry., 11 F. 1 (Iowa Ct. App. 1882).

Where neither of two telephone companies had exclusive right to place its wires along a particular street or highway, both were required to construct their wires in sufficient distance from each other so that the use of one would not unreasonably interfere with the use of the other. Northern Telephone v. Iowa Telephone, 98 N.W. 113 (1904).

7. Extension of right

Where a telephone company was granted right to construct telegraph or telephone lines along public highways of the state, absent an acceptance limiting the grant, the right to extend service as required by public necessity was included. State v. Nebraska Telephone, 127 Iowa 194, 103 N.W. 120 (1905).

9. Tort liability

Telegraph and telephone wires crossing a highway must be high enough for usual and ordinary travel. Wegner v. Kelly, 182 Iowa 259, 165 N.W. 449 (1917).

Telephone company stringing its lines on public highway is required to raise them so as not to interfere with a landowner. Wegner v. Kelley, 157 N.W. 206 (1916).

477.2 Removal of Lines

1. Construction and application

Prior to October 1, 1897, cities and towns had no right to prohibit use of streets by telephone lines or to grant franchises to persons or companies desiring to construct such lines; however, the effect of Code 1897 secured perpetual rights of persons or companies who built lines prior to October 1, 1897, while those constructing such lines after that date are subject to control by the municipalities. Emmetsburg v. Central Iowa Telephone, 250 Iowa 768, 96 N.W.2d 445 (1959).

Attorney General Opinion:

Proper authority may order poles or fixtures of any telephone, telegraph or electric transmission line placed anywhere on highway, subject to superior right of use of such highway by public in reasonable and practical manner. 1923-24 Op. Att'y Gen. 182.

1. Expense of removal

Attorney General Opinion:

Where reconstruction of highway necessitates relocation of telegraph, telephone or electrical transmission line poles, county or township has no authority to pay for cost of such relocation. 1923-24 Op. Att'y Gen. 182.

477.4 Condemnation

1. In general

Attorney General Opinion:

The Iowa State Highway Commission may authorize a telephone company to place or construct an underground telephone cable along the untraveled portion of a controlled-access highway, within primary road system of the state, without consent or permission of from an abutting landowner. 1970 Op. Att'y Gen. 511.

CHAPTER 478

ELECTRIC TRANSMISSION LINES

478.1 Franchise

1. Conflict of state laws

Chapter 306A, pertaining only to controlled-access highways, enacted after this chapter, is controlling where there is a conflict between this chapter, pertaining to location of utility lines on highways outside of cities and towns. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 543, 117 N.W.2d 425 (1962).

2. Public grounds

"Public grounds" is synonymous with public lands and includes both grounds owned by public and open to use by public generally and grounds owned by public and not open to use by public generally. Taschner v. Iowa Electric Light & Power, 249 Iowa 673, 86 N.W.2d 915 (1958).

An electric line erected on municipal airport located outside city or town was over or across "public grounds" within this section, notwithstanding that except for its transport facilities, the airport was not open to the public generally. Id.

3. Necessity of franchise

Franchise and petition for condemnation was invalidated by the State Commerce Commission's failure and refusal to consider whether it was necessary for utility to condemn strip across condemnees' land for electric transmission line right-of-way purposes. Vittetoe v. Iowa Southern Utilities, 255 Iowa 805, 123 N.W.2d 878 (1963).

Town could not erect and maintain an electric line to another town without franchise from State Commerce Commission. Central States Electric v. Town of Randall, 230 Iowa 376, 297 N.W. 804 (1941).

Attorney General Opinion:

It is violation of law to erect and operate an electric transmission line along the public highway without a grant from proper authority, notwithstanding the construction and maintenance complied with Acts 1908. 1913-14 Op. Att'y Gen. 182.

4. Power to grant franchise

Section 306A.3, authorizing highway authorities to regulate controlled-access facilities, which was subsequently enacted, is controlling when in conflict with this section. Iowa Power & Light v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

478.14 Service Furnished

1. Discontinuance

A power company, even though its franchise has expired, must continue to serve city under contract or as long as no other source of electricity is available; company has same right it had under its franchise except that it may be compelled to discontinue using public streets after expiration of reasonable notice to do so. Abbott v. Iowa City, 224 Iowa 698, 277 N.W. 437 (1938).

478.15 Eminent Domain - Procedure - Entering on Land - Reversion of Non-Use

1. Validity

This chapter which granted power company condemnation power under electric line franchise did not permit "taking" of private property for private purpose but required a showing of public necessity to permit power company to establish proposed line over particular route. Race v. Iowa Electric Light & Power, 257 Iowa 701, 134 N.W.2d 335 (1965).

2. Prerequisites to exercise of right

Valid franchise is a prerequisite to the exercise of right of eminent domain to erect electric transmission lines. Vittetoe v. Iowa Southern Utilities, 225 Iowa 805, 123 N.W.2d 878 (1963).

3. Public use

Initial determination of what is a public use, for the purpose of condemnation, is ordinarily decided by the Legislature. Id.

Power company exercising its right to condemn land for transmission lines may do what is reasonably necessary to carry out public purpose for which land is taken. De Penning v. Iowa Power & Light, 33 N.W.2d 503 (1948).

478.30 Crossing Highway

1. Private right of way

Electric line which started out from main electric line on electric company's right-of-way parallel to public highway, and which crosses such highway and proceeded into municipal airport situated outside city, was not on private right-of-way within this section, notwithstanding that city designated the place for the wire on the airport premises. Taschner v. Iowa Electric Light & Power, 249 Iowa 673, 86 N.W.2d 915 (1958).

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

479.1 Purpose and Policy

1. Validity

Permitting pipeline company engaged in interstate commerce to make underground crossing of public highways, grounds and streams would not result in "taking" of public property; statutes authorizing such permits are not unconstitutional on ground they permit unlawful "taking" of public property without just compensation. Mid-America Pipeline v. Iowa State Commerce, 255 Iowa 1304, 125 N.W.2d 801 (1964).

2. Preemption

State statute regulating pipeline distribution of hazardous liquids was preempted by the federal Hazardous Liquid Pipeline Safety Act, to the extent that state statute purported to regulate safety aspects of hazardous liquid movement; statute expressly provides that no state agency can adopt or continue to enforce safety standards applicable to interstate facilities or transportation of hazardous liquids associated with such facilities. Kinley v. Iowa Utilities Board, 99 F. 2d. 354 (8th Cir. 1993).

Natural Gas Pipeline Safety Act preempted this chapter on substantive safety regulation of interstate gas pipelines, regardless of whether local regulation was more restrictive, less restrictive or identical to federal standards. ANR Pipeline v. Iowa State Commerce Commission, 828 F.2d 465 (8th Cir. 1987).

3. Substantial compliance

Substantial compliance with this chapter is sufficient for commerce commission to permit construction of pipeline. Browneller v. Natural Gas Pipeline, 233 Iowa 686, 8 N.W.2d 474 (1943).

4. Issuance of permits

State Commerce Commission is required to issue permits to interstate pipeline companies without regard to public convenience or necessity, subject only to safety regulations and proper permits to cross highways and railroad right-of-ways. Mid-America Pipeline v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

479.2 Definitions

2. Public convenience or necessity

Public company engaged in interstate, not intrastate commerce, was not entitled to question whether issuance of permit to another pipeline company to cross public highways, grounds and streams for interstate transportation, without showing of public use or necessity which would result in unconstitutional discrimination. Mid-America Pipeline v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

3. Federal eminent domain

Gas company seeking to acquire property rights for underground storage facilities for natural gas was not subject to federal eminent domain procedures. Natural Gas Pipeline v. Iowa State Commerce Commission, 369 Supp. 156 (1974).

479.9 Objections

1. Right to object

Objection that an appropriation of private property is not for a public use is not confined to the owner of the property sought to be appropriated, but may be raised by any interested person. Mid-America Pipeline v. Iowa State Commerce Commission, 253 Iowa 1143, 114 N.W.2d 622 (1962).

Pipeline company had right to question the legality of a permit for construction of a pipeline issued by Commerce Commission to a company for private purposes, on the ground that section 479.24 was unconstitutional in that it permitted the granting of the right of eminent domain for solely private purposes without any showing of public necessity or convenience. Id.

479.24 Eminent Domain

1. Validity

This section insofar as it attempts to confer the right of eminent domain on a private corporation intending to operate a private pipeline for private purposes is invalid; when the Commerce Commission attempts to follow the statute granting such a right, it acts illegally and beyond its jurisdiction. Mid-America Pipeline v. Iowa State Commerce Commission, 153 Iowa 1143, 114 N.W.2d 622 (1962).

Owners of land through which pipeline company sought to condemn gas pipeline right-of-way could not question constitutionality of statute on ground that it discriminated between operators engaged in interstate business and those engaged in intrastate business where the landowners, themselves, were not engaged in either type of commerce transporting gas. Browneller v. Natural Gas Pipeline, 223 Iowa 686, 8 N.W.2d 474 (1943).

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

573.1 Terms Defined

1. Validity

Chapter governing labor and material on public improvements did not deny procedural due process to contractor by requiring city, without notice and opportunity for hearing, to retain from final payment to contractor a sum of not less than twice the total amount of materialman's claim on file against contractor for rental due for leasing of concrete forms to subcontractors. Economy Forms v. Cedar Rapids, 340 N.W.2d 259 (1983).

2. Construction and application

Subcontractors claim against surety for general contractor on highway surfacing project and against statutory retained funds were barred where claims were not filed within statutory period. Northwest Limestone v. State Department of Transportation, 499 N.W.2d 8 (1993).

General Assembly could reasonably believe that public should not be exposed to liability for risks that are subject to control of private contractors. Economy Forms v. Cedar Rapids, 340 N.W.2d 259 (1983).

"Subcontractor," as defined for purposes of chapter governing mechanics' liens is not applicable to chapter governing labor and materials for public improvements. Lennox Industries v. City of Davenport, 320 N.W.2d 575 (1982).

Laborers and materialmen's rights and surety on highway contractor's bond as their subrogee against the unpaid fund must be determined by this chapter. Hercules Manufacturing v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Relief given to seller of materials against unpaid portion due to contractor for public improvement is purely statutory. Rainbo Oil v. McCarthy Improvement, 212 Iowa 1186, 236 N.W. 46 (1931).

3. Materials

Subdivision four defining "materials" must be construed strictly. Coon River Co-op Sand v. McDougall Construction, 215 Iowa 861, 244 N.W. 847 (1932).

Meals furnished to employees of highway contractor are not "materials." Id.

Gas, oil and grease used in hauling other material actually going into improvement are "materials" furnished in construction of public improvement. Rainbo Oil v. McCarthy Improvement, 212 Iowa 1186, 236 N.W. 46 (1931).

573.1 Terms Defined

5. Contract, necessity of

Attorney General Opinion:

City or town must let contract for construction of storm sewer, building it with day labor from tax money is prohibited. 1928 Op. Att'y Gen. 46.

573.2 Public Improvements - Bonds and Conditions

1. Construction and application

Highway contractor's bond executed pursuant to this chapter securing performance of nonstatutory terms is void. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

4. Construction of bond

Obligation under highway contractor's bond, executed in compliance with this chapter under contract for public improvement, is measured by statute. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

6. Liability on bond

Surety on contractor's construction bond could not avoid liability to city for contractor's failure to construct a water-tight dam, even though city engineer made no objections to methods used and work done by contractor, where contractor did not comply with specifications. City of Osceola v. Gjellefald Construction, 225 Iowa 215, 279 N.W. 590 (1938).

Where, after highway contractor assigned contract to materialman and assignee failed to give notice of the assignment to the Highway Commission or board of supervisors, surety was not liable for incorrect payment to assignor. Sibley Lumber v. Madsen, 198 Iowa 880, 200 N.W. 425 (1924).

Road contractor's liability for labor, materials, etc. furnished to subcontractors, may not be predicated on provisions of a statutory bond which are broader than the requirements of the statute. Nebraska Culvert & Manufacturing v. Freeman, 197 Iowa 720, 198 N.W. 7 (1924).

Performance bond of highway contractor containing agreement to pay all just claims for material, supplies, tools labor and all other claims does not extend to personal injury suffered by third persons. Schisel v. Marvill, 198 Iowa 725, 197 N.W. 662 (1924).

Surety bond on highway contractor was not liable for claims against contractor for materials furnished for which materialmen had no claim or lien against the county. Hunt v. King, 97 Iowa 88, 66 N.W. 71 (1896).

573.2 Public Improvements - Bonds and Conditions

7. Priorities

Surety on highway contractor's bond, subrogated to rights of principal, has prior claim to balance due than assignees of contractor for nonstatutory claims. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

8. Surety's rights

Rights of laborers, materialmen and surety on highway contractor's bond as their subrogee, against the unpaid fund must be determined by this chapter. Hercules Manufacturing v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

573.3 Bond Mandatory

1. Construction and application

Road contractor's contract and bond to pay for labor and materials furnished were compulsory under Acts 1919 (38 G.A.) chapter 347, and must be construed in light of that statute. Nebraska Culvert & Manufacturing v. Freeman, 197 Iowa 730, 198 N.W. 7 (1924).

573.6 Subcontractors on Public Improvements

1. Construction and application

Under subcontract for excavation on highway construction project, final payment was an absolute debt of general contractor. Grady v. S.E. Gustafson Construction, 251 Iowa 1242, 103 N.W.2d 737 (1960).

This section and others govern the rights of parties to highway contract as between surety on contractor's bond and contractor's assignee; statutes, in conflict between contract, prevail. Hercules Manufacturing v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Claimant's rights against highway contractor's bond were governed by statute. Southern Surety v. Jenner, 212 Iowa 1027, 237 N.W. 500 (1931).

3. Discharge of surety

Attorney General Opinion:

Surety may be discharged on bond of contractor for building county bridges on basis of extension of time for completing the work without notice, if there is a valid agreement based on sufficient consideration and specific as to time of extension. 1919-20 Op. Att'y Gen. 273.

573.6 Subcontractors on Public Improvements

4. Retained funds, right to

Where subcontract for excavation on highway construction project provided that final

payment to subcontractor should be made after payment of final estimate to general contractor by State Highway Commission, but general contractor delayed acceptance of this final estimate, subcontractor was entitled to compensation within a reasonable time. Grady v. S.E. Gustafson Construction, 251 Iowa 1242, 103 N.W.2d 737 (1960).

5. Filing claims

Claimants not filing claims with state auditor within 30-day period could have no judgement against highway contractor's surety, but they were entitled only to balance of contract price remaining after work was completed. Southern Surety v. Jenner, 212 Iowa 1027, 237 N.W. 500 (1931).

Claimants seeking to establish priority on highway contract price retained by state and to obligate surety to pay balance must file demands with state auditor. Id.

573.7 Claims for Material or Labor

1. Construction and application

Claimant must substantially comply with statute governing claim for material or labor under contract for construction of public improvement. Economy Forms v. Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Under the Miller Act and statute governing claims for material and labor on public improvement, ordinarily, contract with prime contractor is a prerequisite for being subcontractor. Lennox Industries v. City of Davenport, 320 N.W.2d 575 (Iowa 1982).

Although proceedings on highway contractor's bond and similar to those for enforcement of mechanic's lien, no lien attaches to public improvements. Cities Service Oil v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Designation of officer with whom claims arising in construction of public improvement are to be filed is required by this section. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

3. Claims, nature of

This section permits liens only when labor or material is furnished under contract with principal contractor or subcontractor. Nolan v. Larimer & Shaffer, 218 Iowa 599, 254 N.W. 45 (1934).

573.7 Claims for Material or Labor

3. Claims, nature of (cont.)

Trucker, agreeing to haul sand for another, who had subcontract with seller whose sales agreement provided for delivery at highway contractor's stock piles was a materialman, not a subcontractor. Forsberg v. Koss Construction, 218 Iowa 818, 252 N.W. 258 (1934).

Lumber for construction of cement forms, bought by contractor, was not lienable as material used in construction of public improvement. Melcher Lumber v. Robertson, 218 Iowa 818, 252 N.W. 258 (1934).

Claims for labor and material furnished in repairing machinery used in constructing drainage district were not lienable. Ottumwa Boiler Works v. M.J. O'Meara & Son, 206 Iowa 577, 218 N.W. 920 (1928).

4. County or city, liability of

Although city is not authorized to pay for judgments out of the general revenue, it is not released from liability for judgment arising from street improvements. Slusser, Taylor & Co. v. City of Burlington, 42 Iowa 378 (1876).

8. Filing claim

Claims arising in primary road construction under contract with State Highway Commission must be filed with the state auditor and not State Highway Commission. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

Subcontractor's claims for materials furnished in construction of road should be filed with county auditor. Fuller & Hiller Hardware v. Shannon & Willfong, 205 Iowa 104, 215 N.W. 611 (1927).

Failure to file claim did not release surety. Read v. American Surety, 117 Iowa 10, 90 N.W. 590 (1902).

Claims must be filed with county auditor though supervisor named superintendent. Green Bay Lumber v. Thomas, 106 Iowa 420, 76 N.W. 749 (1898).

Attorney General Opinion:

Contracts let by the Highway Commission fall within this section and claims must be filed with the commission. 1932 Op. Att'y Gen. 142.

Claims filed with state auditor should be forwarded to highway commission. 1930 Op. Att'y Gen. 142.

573.8 Highway Improvements

1. Construction and application

Where a subcontract for excavation on highway construction provides for payment to subcontractor upon general contractor's receipt of payment, and the contractor delays acceptance of final estimate, the subcontractor is entitled to compensation within a reasonable time. Grady v. S.E. Gustafson Construction, 251 Iowa 1242, 103 N.W.2d 737 (1960).

Primary road construction claims for material and labor under contract with State Highway Commission could not be filed with county auditor. Missouri Gravel v. Federal Surety, 212 Iowa 1322, 237 N.W. 635 (1931).

573.10 Time of Filing Claims

1. Construction and application

Failure to file claim with Highway Commission within 30 days after completion and acceptance of construction work does not prevent materialman from recovering upon contractor's bond. Cities Service Oil v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Claimants not filing claims with state auditor within 30-day period could not have judgment against highway contractor's surety, but they were entitled only to the balance of contract price remaining after work was completed. Southern Surety v. Jenner, 212 Iowa 1027, 237 N.W. 500 (1931).

573.14 Retention of Unpaid Funds

1. Validity

This chapter does not deny due process to contractor by requiring city, without notice and opportunity for hearing, to retain a sum from final payment, of not less than double the total amount of materialman's claim against contractor for rent due for leasing of concrete forms for public improvement to subcontractor. Economy Forms v. Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

573.16 Optional and Mandatory Actions - Bond to Release

1. Construction and application

Highway laborers, materialmen and surety on contractor's bond as their subrogee, could resort only to 10% of contract price which the State Highway Commission was required to retain; the balance above the 10% belong to the contractor's assignee, not the surety. Hercules Manufacturing v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

CHAPTER 613

PARTIES - CAUSES OF ACTION - LIABILITY

613.11 Actions Against Department of Transportation

1. Construction and application

Iowa Sate Highway Commission is arm of state, and action against the commission is an action against the sovereign. Charles Gabus Ford v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Landowner could not recover damages from the State Highway Commission because of its alleged interference with contractual relations by failing to grant access to frontage road, where landowner failed to exhaust administrative remedies before the State Appeal Board under Tort Claims Act, prior to instituting its claim against the commission. Id.

This section, waiving state immunity in an action brought against the Highway Commission respecting any claim, right or controversy arising out of work performed or by virtue of any provisions of any construction contract entered into by the commission, did not constitute a waiver of immunity in tort actions, only immunity in regard to controversies arising out of contract; an action for personal injuries could not be maintained against the commission for its negligence in resurfacing a highway with asphaltic concrete. Montandon v. Hargrave Construction, 256 Iowa 1297, 130 N.W.2d 659 (1965).

Department of Transportation did not have sovereign immunity from suit brought by subcontractor on highway construction project, even though there was no privity of contract between subcontractor and the department, where subcontractor's claim arose out of work performed according to contract provisions required by the department. Midwest Dredging v. McAninch, 424 N.W.2d 216 (1988).

CHAPTER 614

LIMITATIONS OF ACTIONS

614.1 Period

V. INJURIES FROM DEFECTIVE ROADS OR STREETS

252. Construction and application, defects in roads or streets

Subdivision 1 of this section, requiring notice on municipal corporation, is mandatory and must be substantially complied with. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

Pedestrian's cause of action against city for injuries resulting from fall on public sidewalk was barred after three months had passed, unless city was served with written notice, within 60 days after fall occurred, whereby such action might be brought within two years after cause accrued. Hack v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Subdivision 1 of this section requiring written notice to city of claim for injuries from defects in street is mandatory and must be substantially compiled with; injured party has burden to prove such compliance. Id.

253. Purpose and necessity of notice, road defects

Individual officers or agents of city, other than its governing body, have no power to waive provision of this section for notice of claim against municipal corporation. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

The notice required under subdivision 1 of this section is not jurisdictional, but is for the purpose of preventing cause of action from becoming barred in three months after happening of injury and to provide a method by which prompt information of time, place and circumstances thereof may be conveyed to city for investigation. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Notice of claim of injury against municipality is necessary only if suit is not commenced within three month period of limitation. Gates v. Des Moines, 38 N.W.2d 96 (Iowa 1949).

254. Nature of defects in roads, bridges or streets

This section applies to fatal injuries received through the negligence of a municipality in failing to install lights to protect travelers from dangerous embankments. Bixby v. Sioux City, 184 Iowa 89, 164 N.W. 641 (1917).

Notice is required for injuries occurring in a street ditch. Giles v. City of Shenandoah, 111 Iowa 83, 82 N.W. 466 (1900).

Injuries caused by a fallen bridge maintained by a city on its street are within subdivision 1 of this section. Sachs v. Sioux City, 109 Iowa 224, 80 N.W. 336 (1899).

614.1 Period

255. Failure to give notice, excuse, road defects

Giving notice of defect in street is not excused by fact that city owned abutting property. Pasold v. Town of De Witt, 198 Iowa 966, 200 N.W. 595 (1924).

256. Sufficiency of notice, road defects

Notice to municipal corporation is sufficient if it is in writing, served and conforms to statute as to time, place and circumstances. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

This section must be construed liberally so that a person having a meritorious claim shall not be denied the right to recover on the basis of technicality as to the form of notice given. Ray v. Council Bluffs, 193 Iowa 620, 187 N.W.447 (1922).

Written statement made by injured person in response to questions asked him by the city solicitor was a sufficient notice to the city. Id.

Two notices taken together, where the first was defective for failure to state time of injury and the second stated such time and was within required time, constituted sufficient compliance with this section. Blackmore v. Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

257. Description of place in notice, road defects

Party injured from defect in street must state designated place of injuries with reasonable certainty. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W. 37 (1933).

Notice defective for failure to specify place where accident took place. Ray v. Council Bluffs, 193 Iowa 620, 187 N.W. 447 (1922).

258. Service of notice, road defects

Notice must be wholly in writing to suspend limitations of the bringing of suits founded on injuries to person caused by defective sidewalks. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

An injured pedestrian's giving of statement to adjuster of city's liability insurance carrier did not constitute substantial compliance with requirement of notice under subdivision 1 of this section. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Served written notice of injury is sufficient if it is served on any officer of the city whose relation to the city is such that notice to him of matters affecting the interest of the city is notice to the city; fact that notice is not addressed to the city does not make it defective. Blackmore v. Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

CHAPTER 657

NUISANCES

3. Nature and element of nuisance

Simply put, "nuisance" refers to hurt, annoyance or inconvenience which results from the cause of a problem but does not identify the cause. Guzman v. Des Moines Hotel Partners, 489 N.W.2d 7 (1992).

Conduct alleged to be a nuisance under statute prohibiting public nuisance must cause tangible injury; mere annoyance, aesthetic objections, offense to community tastes or community disapproval are not sufficient when statutory illegality is not basis of nuisance. State ex rel. Clemens v. ToNeCa, 265 N.W.2d 909 (1978).

Courts consider priority of location, nature of the neighborhood and the wrong complained of to determine whether a nuisance exists. Helmkamp v. Clark Ready Mix, 214 N.W.2d 126 (1974).

To constitute a nuisance, there must be a degree of inherent danger, likely to result in damage, beyond that arising from mere failure to exercise ordinary care. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 784 (1957).

Persons who create or maintain nuisances are liable for resulting injury to others without regard to the degree of care or skill exercised by them to avoid such injury, and notwithstanding they exercised reasonable or ordinary care and skill, or even the highest possible degree of care. Blackman v. Iowa Union Electric, 234 Iowa 859, 14 N.W.2d 721 (1944).

A private nuisance is a substantial and unreasonable interference with one's interest in the use and enjoyment of land. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1924).

A public nuisance is one which affects rights to which every citizen is entitled. State v. Chicago Great Western Ry., 166 Iowa 494, 147 N.W. 874 (1914).

10. Determination of nuisance

The gravity of harm to the plaintiff should be weighted against the utility of defendant's conduct to determine whether there has been unreasonable interference, by defendant, with interest, use and enjoyment of plaintiff's property, resulting in a nuisance. Pitsenbarger v. Northern Natural Gas, 198 F. Supp. 665 (N.D. 1962).

The major factor in determining the reasonableness of condition in place and under the circumstances is character and gravity of resulting injuries, not the injury threatened. Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687 (1980).

657.1 Nuisance - What Constitutes - Action to Abate

13. Necessities for business and enjoyment of property

City, seeking to require railroad to abandon right-of-way along particular street within

city because of traffic problem, was
authorized to apply to Interstate Commerce Commission for abandonment of such portion of line. Des Moines v. Chicago & N.W. Ry., 159 F. Supp. 223 (N.D. 1958), vacated on other grounds, 164 F.2d 454.

Wires stretched across street constitute a nuisance which my be enjoined. Town of Ackley v. Central States Electric, 204 Iowa 1246, 214 N.W. 879 (1927).

24. Obstruction of roads, ways and streets

Even if dust on road caused by truck traffic constituted an obstruction within statutes pertaining to duty of a county board of supervisors to cause all obstructions in highways to be removed, residents of homes along such roadway would, at most, be entitled to an order requiring the board to perform its duty and remove the obstruction. Shannon v. Missouri Valley Limestone, 255 Iowa 528, 122 N.W.2d 278 (1963).

A businessman's customers cannot create nuisance in alley and cannot block alley with standing vehicles. Schlotfelt v. Vinton Farmers' Supply, 252 Iowa 1102, 109 N.W.2d 695 (1961).

657.2 What Deemed Nuisances

3. Private nuisance

Private nuisance is a civil wrong based on disturbance of rights of land including vibrations, blasting, destruction of crops, flooding, pollution and disturbance of comfort caused by unpleasant odors, smoke or dust. Guzman v. Des Moines Hotel Partners, 489 N.W.2d 7 (1992).

3.5 Public nuisance

Public or common nuisance is a catchall criminal offense consisting of interference with rights of the community at large and may include anything from obstruction of public highway to public gaming house or indecent exposure. Guzman v. Des Moines Hotel Partners, 489 N.W.2d 7 (1992).

8. Obstructing streams

Where city's discharge of sewer into stream to relief streets from floods caused injury to property in the neighborhood and streets, such obstruction was a nuisance. Sioux City v. Simmons Warehouse, 151 Iowa 334, 129 N.W. 978 (1911), modified on other grounds, 151 Iowa 334, 131 N.W. 17.

657.2 What Deemed Nuisances

8. Obstructing streams (cont.)

Pier erected in navigable water for the sole use of riparian owner, without authority, is an unlawful structure. Atlee v. Union Packet, 88 U.S. 389 (1874).

Bridge erected over navigable stream, leaving reasonable space for passage of vessels, built for public use and produced a public benefit is not a nuisance. Mississippi & M. Ry. v. Ward, 67 U.S. 485 (1862).

Riparian owner's right to have the natural flow of a steam continue unobstructed may be lost by prescription, even though any invasion of such right may constitute a nuisance. Marshall Ice v. La Plant, 136 Iowa 621, 111 N.W. 1016 (1907).

10. Obstruction of roads, ways and streets

An obstruction may be a nuisance, even though it is not located in or upon the street, if it endangers those foreseeably deviating from the street; this rule does not apply to intentional deviations from the highway for purposes not reasonably connected with travel. Sisco v. Iowa-Illinois Gas & Electric, 368 N.W.2d 853 (Iowa Ct. App. 1985).

City's assessment of cost of tree removal against owner of property adjacent to city's parking was void. Shriver v. City of Jefferson, 190 N.W.2d 838 (Iowa 1971).

Extent of obstruction of public street or alley was not important in determining whether defendants had violated ordinance making obstruction of streets and alleys by buildings a nuisance. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Dust on road caused by traffic constituted an obstruction within statutes pertaining to duty of county board of supervisors to remove obstructions in highways. Shannon v. Missouri Valley Limestone, 255 Iowa 528, 122 N.W.2d 278 (1963).

A businessman's customers cannot create nuisance in alley or block alley with standing vehicles. Schlotfelt v. Vinton Farmers' Supply, 252 Iowa 1102, 109 N.W.2d 695 (1961).

City requirement that private water hydrant, installed by corporation on sidewalk abutting its property, be removed as nuisance did not violate corporation's constitutional right and was well within the provisions of this section. Midwest Investment v. City of Chariton, 248 Iowa 407, 80 N.W.2d 906 (1957).

Obstruction of access does not have to be continuous to entitle owner of property abutting on street or highway to damages. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Gasoline curb pumps within limits of public street were "incumbering" street. Town of Lamoni v. Smith, 217 Iowa 264, 251 N.W. 706 (1934).

Cities may enjoin corporation from stretching wires across street without showing damages. Town of Ackley v. Central States Electric, 204 Iowa 1246, 214 N.W. 879 (1927).

657.2 What Deemed Nuisances

10. Obstruction of roads, ways and streets (cont.)

Lawful circus exhibitions using street to unload wagons from railroad cars into street and leaving them standing for a while is not prohibited by this section. Carlisle v. Sells-Floto Show, 180 Iowa 549, 163 N.W. 380 (1917).

Parked automobiles obstructing the streets is a nuisance. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

If trees in or along street do not obstruct travel, they are not necessarily a nuisance. Burget v.

Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

One cannot acquire right to maintain a nuisance in a street by prescription. Cain v. Chicago, R.I. & P. Ry., 54 Iowa 255, 6 N.W. 268 (1880).

11. Alleys, obstruction

Obstruction of alley is nuisance. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

12. Sidewalks, obstructing

Newsstand operator did not have vested right to maintain newsstand which constituted a nuisance, nor could such right be acquired by lapse of time, usage or prescription. Cowin v. Waterloo, 237 Iowa 202, 21 N.W.2d 705 (1946).

Allowing abutting owner to build housing on the sidewalk in front of a building in the course of reconstruction, without permission by the city council, does not make the occupation of the street unlawful. Jones v. Fort Dodge, 185 Iowa 600, 171 N.W. 16 (1919).

13. Obstructions authorized by public authority

City ordinance, establishing a bus zone for loading and unloading interurban buses in the street fronting business property adjoining bus station, was illegal and created a public nuisance. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Absent a valid ordinance, any obstruction to travel is a nuisance. Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

Despite this section, a city may authorize abutting owner to use streets for areaways and cellar stairways when it does not cause injury to others. Wendt v. Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

Public market in a portion of the street was not nuisance per se, where it was only a temporary or partial obstruction. State v. Smith, 123 Iowa 654, 96 N.W. 899 (1903).

657.2 What Deemed Nuisances

11. Abatement, obstructions of way

Ditch which casts water out of its natural course is a nuisance and may be abated. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

Diversion of large quantity of surface water out of its natural course to public highway is an obstruction and a nuisance. Id.

City may prohibit any private use of a public street which in any way prevents the free use of a public way because it constitutes a nuisance, except for a limited period for unloading and standing vehicles exceeding one hour. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

City may order removal of obstruction, where one enters on street, makes excavation on street

or erects structures thereon without permission. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188 (1915).

Although a town has general authority to remove obstructions from streets, it may not arbitrarily destroy trees that are obstructions to street improvements. Waterbury v. Morphew, 146 Iowa 313, 125 N.W. 205 (1910).

The limited extent of street obstruction is immaterial to right to remove it. Lace v. Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909).

City is entitled to the full width of its streets and charged with duty of keeping such in good repair and reasonable condition; city has authority to remove any obstruction found upon any part of its streets put there without its permission. Kemper v. City of Burlington, 81 Iowa 354, 47 N.W. 72 (1890).

City authorities cannot remove shade trees along a street unless they are an actual obstruction to travel. Everett v. Council Bluffs, 46 Iowa 66 (1877).

15. Damages, obstructions of ways

Private citizen complaining of nuisance in street must show special damages. Lytle Investment v. Gilman, 201 Iowa 603, 206 N.W. 108 (1925).

Proof that obstruction was a nuisance is not a condition to recovery where one's vehicle was overturned by such obstruction on the street. Raine v. City of Dubuque, 169 Iowa 388, 151 N.W. 518 (1915).

Municipalities are responsible for the regulation and control of use of its streets, and it is their duty to keep streets free from nuisances. Wheeler v. Fort Dodge, 131 Iowa 566, 108 N.W. 1057 (1906).

Abutting owner may abate nuisance and recover damages from city which erected buildings in street without permission. Pettit v. Grand Junction, 119 Iowa 352, 93 N.W. 381 (1903).

16. Diversion of water

Where flooding of land and crops was caused by railway embankment, damages and an injunction may be granted. Steber v. Chicago & N.W. Ry., 139 Iowa 153, 117 N.W. 304 (1908).

17. Billboards and signs

Municipality's failure to keep metal traffic sign post in proper repair was not a nuisance. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 784 (1957).

Attorney General Opinion:

Highway Commission's jurisdiction with respect to billboards or advertising signs is not extended to cover extensions of primary roads within cities and towns, but such jurisdiction should be exercised with caution in view of this section and section 319.12. 1940 Op. Att'y Gen. 180.

669.24 Exceptions

9. Highways

Under "discretionary function" exception of Tort Claims Act, State was immune from liability for negligence in choosing site for highway because it was a political decision involving social, economic and policy decisions. Sullivan v. Wickwire, 476 N.W.2d 69 (1991).

Under "discretionary function" exception of Tort Claims Act, State was not immune from liability for alleged negligent design of highway in connection with accident caused by factory-produced fog, where State engineer's proposed installation of baffles along highway to divert vapor upward, preventing it from glazing the highway, was never studied or pursued by the State. Id.

Chapter 721

Official Misconduct

721.2 Non-felonious Misconduct in Office

2. In general

Public officers are not liable for acts of commission or omission by their predecessors. Dewell v. Suddick, 211 Iowa 1352, 232 N.W. 118 (1930).

Party injured may have redress by civil action for the misfeasance or non-feasance of a ministerial officer. Wasson v. Mitchell, 18 Iowa 153 (1864).

Attorney General Opinions:

Board of supervisors could not authorize grading of private lanes leading from secondary roads to farms despite offer of payment for such service by farmers. 1938 Op. Att'y Gen. 837.

3. Purpose of statute

Legislature intended section 741.1 to have same scope, purpose and effect as 18 U.S.C.A. section 201 (f,g), governing corruption of federal officers. State v. Prybil, 211 N.W.2d 308 (1973).

5. Misfeasance

Misfeasance of a county officer or employee is the improper doing of an act which a person might lawfully do. Moore v. Murphy, 254 Iowa 969, 119 N.W.2d 759 (1963).

Officers or county employees are liable for acts of misfeasance occurring in the performance of their duties. Id.

An "act of misfeasance" is a positive wrong, and every employee whether employed by a private person or municipal corporation owes a duty not to injure another by a negligent act of commission. Shirkey v. Keokuk County, 225 Iowa 1159, 281 N.W. 837 (1938).

Municipal employees are liable for an act of misfeasance on their part even though they are engaged in the performance of a governmental function. Id.

A city, county, or state employee committing wrongful or tortious act, violates duty owed to one injured thereby and is personally liable for damages. Montanick v. McMillin, 225 Iowa 1159, 280 N.W. 608 (1938).

The general obligation not to cause injury to another is not diminished or increased for municipal corporation employees. Id.

6. Nonfeasance

Nonfeasance of a county officer or employee is the omission of an act which a person ought to do. Moore v. Murphy, 254 Iowa 969, 119 N.W.2d 759 (1963).

Officer or county employee is not personally liable for acts of nonfeasance in connection with duties as an employee. Id.

7. Judicial acts

Though erroneous, officers are not liable for judicial acts where they did not act maliciously or corruptly. Green v. Talbot, 36 Iowa 499 (1873).

Judicial officers were not liable for judicial acts where there was no showing that they acted corruptly. Howe v. Mason, 14 Iowa 510 (1863).

8. Ministerial acts

Ministerial officers are liable for damages caused by their misfeasance and nonfeasance in office. Howe v. Mason, 14 Iowa 510 (1863).

9. Contract

Attorney General Opinion:

Subsection 1 of this section imposes non-felonious criminal liability on any public officer or employee who knowingly makes a contract that contemplates an expenditure known to be in excess of that authorized by law; such knowledge requirement is met whenever a person acts with actual, positive knowledge of the facts. Op. Att'y Gen. Sept 25, 1979.

10. Conflict of interest

Attorney General Opinions:

Members of school board, mayors and other public officials cannot take advantage of their positions to write public contractor's bonds or insurance. 1928 Op. Att'y Gen. 399.

It was against public policy for any state, county or school official to be directly or indirectly interested in any contract or employment as to which the board or department of which such official was a member would be required to act for the public. 1928 Op. Att'y Gen. 75.

11. Public monies - in general

Attorney General Opinions:

A retirement dinner sponsored by and paid for by municipal utility may, depending upon the circumstances, be for a "public purpose," and thus not violative of Iowa Constitution, Art. III, Section 31. Op. Att'y Gen. April 25, 1979.

Expenditure of public funds for parties for public employees is improper and unlawful. Op. Att'y Gen. March 12, 1979.

12. Intent, public monies

Under Code 1897, section 4910 (now this section), the falsification of a docket or an account was forbidden without reference to the motive, and the offense was complete if the alteration was done willfully or intentionally. State v. Hanlin, 134 Iowa 493, 110 N.W. 162 (1907).

17. Gifts in general, compensation

Provisions of this section, formally section 741.1, making it an offense for public officials and employees to accept any gift or gratuity in connection with a business transaction extended to private, as well as, public employees. State v. Books, 225 N.W.2d 322 (1975).

This section makes it unlawful for any public officer, acting in behalf of a principal in "any" business transaction, to receive for one's own use, directly or indirectly, any "gift commission, discount, bonus or gratuity" connected with, relating to or growing out of business transaction was not limited to kickbacks and barred gratuities related to multiple, as well as single business transactions. State v. Prybil, 211 N.W.2d 308 (1973).

Word "any" within meaning of provision of this section, making it unlawful for a public officer acting in behalf of a principal in any business transaction to receive for one's own use,..., was intended to enlarge, rather than limit terms modified and meant "every" and "all," not "one." Id.

Provision of this section, governing offense of receiving corrupt influence, was directed toward conduct by its nature calculated to undermine an employer's relationship to trust with one's employee; thus, influence, to be corrupt, had to involve transfer of something of value for employee's own private use. Id.

This section provided that it was unlawful for any agent, representative or employee, officer or any agent of a private corporation, or a public officer, acting in behalf of any principal in any business transaction, to receive for one's own use, directly or indirectly, any gift, commission, discount, bonus or gratuity connected with, relating to or growing out of such business transaction. Dukehart-Hughes Tractor & Equipment v. United States, 341 F.2d 613 (1965).

721.2 Non-felonious Misconduct in Office

17. Gifts in general, compensation

This section was aimed at kickbacks in both governmental and nongovernmental business

transactions and did not per se bar entertainment of or gifts to agents of potential customers. Dukehart-Hughes Tractor & Equipment v. United States, 341 F.2d 613 (1965).

19. Bribery, compensation

Attorney General Opinion:

Person offering or promising to give anything of value or benefit to a legislator or other public official, with intent to influence the act, vote, opinion, decision, or exercise of discretion of the legislator or official with respect to one's service as such would be guilty of bribery, a class D felony. Op. Att'y Gen. Dec. 27, 1977.

28. Private use of public property

Attorney General Opinions:

Private use of public property is permissible only if the private use is incidental to a public purpose; salary contract may not authorize purely private use of public property, not may public property be used for purely private purposes on a reimbursement basis. Op. Att'y Gen. May 12, 1938.

Absent a vote of two-thirds of the members of each branch of the General Assembly, a city may not, consistent with the Iowa constitution, authorize the use of city property by city employees for their private use. Op. Att'y Gen. June 18, 1980.

Use of county-owned automobiles by sheriff's officers on 24-hour call to travel between home and work does not violate this section. Op. Att'y Gen. May 11, 1979.

The Department of Revenue fieldmen working in a geographic area of the state from a field office may drive state motor vehicles from their homes to their places of work and return or from their places of work to their hotel after a day's duty are completed; the test is whether the employee is serving a public as well as a private purpose and if one regularly on call at home or some other place, frequently required to do state work at home or to leave home on state business at odd hours, the vehicle may be taken home. Op. Att'y Gen. Dec. 2, 1975.

There is no authority for the use of state vehicles by anyone other than state officers or employees; it is within state vehicle dispatcher's authority to revoke assignment of state car anytime it is found being used by someone else. Op. Att'y Gen. Feb. 8, 1972.

29. Performance of duty - in general

Public officer who refuses or neglects to perform a ministerial act is subjected to personal liability. Amy v. Des Moines County Supervisors, 78 U.S. 136 (1870).

30. Intent, performance of duty

The present of malice is immaterial where an officer, in the discharge of one's duty, does no more than required to do by law. Anderson v. Park, 57 Iowa 69, 10 N.W. 310 (1881).

Public officer's honest intentions and mistake do not affect one's personal liability from neglect or refusal to perform a current ministerial act when required. Amy v. Des Moines County Supervisors, 78 U.S. 136 (1870).

Public officers, other than judicial officers are personally liable, without proof of malice or intent to injure, where their actions directly invade the private rights of others, are liable, and there is no other remedy for such injury. McCord v. High, 24 Iowa 336 (1868).

31. Special injuries, performance of duty

Public officers are liable for special injury sustained by their negligence or refusal to perform a ministerial duty. Gutschenritter v. Whitmore, 158 Iowa 252, 139 N.W. 567 (1913).

Recovery for damages for injuries inflicted on one's property or person as a result of mob action must be based on some statute which specifically authorizes it. Jahnke v. Des Moines, 191 N.W.2d 780 (1971).

Employees of a governmental body who commit wrongful acts are liable to the person injured and do not share the immunity of their principal. Lenth v. Schug, 226 Iowa 1, 281 N.W. 510 (1939).

32. Torts, performance of duty

Public officials may be guilty of negligence in the performance of official duties for which their official character gives them no immunity. Goold v. Saunders, 196 Iowa 380, 194 N.W. 227 (1923).

Where a public officer knowingly makes a false record and deceives another, the law will treat the principal as deceived, in the absence of any showing to be contrary and hold such officer responsible. Perkins v. Evans, 61 Iowa 35, 15 N.W. 584 (1883).

721.5 State Employees Not to Participate

1. In general

Attorney General Opinion:

A commerce commissioner, being a state appointed officer, is expressly authorized to be a candidate for political office and to campaign during working hours. Op. Att'y Gen. Feb. 15, 1978.

721.8 Labeling Publicly Owned Motor Vehicles

2. Police vehicles

Attorney General Opinion:

Any person using an automobile to enforce regulation concerning motor vehicles and their use upon public highway is engaged in enforcing police regulations and provision requiring labels would not apply to such automobiles. 1934 Op. Att'y Gen. 96.

721.10 Misuse of Public Records and Files

1. In general

Attorney General Opinion:

Even though railway special agents may be given access to criminal history and intelligence data in the files of the Department of Public Safety, any dissemination or re-dissemination to others would have to be in strict compliance with sections 692.2 and 692.3. Op. Att'y Gen. Nov. 5, 1973.

721.11 Interest in Public Contracts

1. In general

Attorney General Opinion:

A violation of the prohibition against private interests in public contracts contained in section 362.5 constitutes a serious misdemeanor, under this section, a crime punishable by imprisonment not to exceed one year or a fine not to exceed $1,000 or both. Op. Att'y Gen. Oct. 29, 1990.

A "knowing" violation of the requirements for compensating elected city officials contained in section 372.13(8) could constitute non-felonious misconduct in office, in violation of subsection six of this section. Id.

721.11 Interest in Public Contracts

2. Express and implied contracts

Provision of Act 1898 (27 G.A.) ch. 13, section 1 that members of county board of supervisors should not in any manner become parties, directly or indirectly, to any contract to furnish supplies, materials or labor to the county, included implied and express contracts. Nelson v. Harrison County, 126 Iowa 436, 102 N.W. 197 (1905).

3. Validity of contracts

Contracts made in violation of this section are void. Nelson v. Harrison County, 126 Iowa 436, 102 N.W. 197 (1905).

A contract, approved during closing hours of the official term of the board members, which provided for the repair of an unimportant road at an exorbitant price, where the supervisor, who approved such contract, was to furnish the workmen was fraudulent and void to the extent of the work done by the supervisors. Id.