80.41 History: 1959 c. 547; Stats. 1959 s. 80.41.

80.47 History: 1889 c. 255; Ann. Stats. 1889 s. 1296a; Stats. 1898 s. 1296a; 1923 c. 108 s. 54; Stats. 1923 s. 80.47; 1943 c. 334 s. 57.

The owner of land which abuts on a street on which a railroad has been built along the side of the street opposite his land and beyond the center thereof cannot claim that it was not legally laid down because an ordinance required that the track should be placed in the center of the street, the city not objecting on account of the noncompliance therewith. Besides sec. 1828, R. S. 1878, gives the right to construct a railroad across or along any street which its route should intersect, and the ordinance would be controlled by it if there is a conflict. Trustees F. C. Church v. Milwaukee & L. W. R. Co. 77 W 158, 45 NW 1086.

It is not sufficient that the court find that a railroad built before enactment of ch. 255, Laws 1889, was illegally "laid down," since it may nevertheless have become legally "established" and thus be within the saving proviso. The neglect of the company to restore a street to the former condition of usefulness or its use of such street without lawful authority are immaterial. Abutting owners on one side of the street may not make objection for owners on the other side, the rights of the latter being of no concern to the former. Sinnott v. Chicago & Northwestern R. Co. 81 W 95, 50 NW 1097.

The extension of the sides or eaves of a passing car over the half of an alley opposite a lot is not an obstruction or use of the alley which appreciably damages the lot, notwithstanding a few inches of filling may be necessary for the convenience of travel. Morris v. Wisconsin M. R. Co. 82 W 541, 52 NW 758.

The lawful change of the grade of a street is not a closing up or use or obstruction of the street within the meaning of ch. 255, Laws 1889. Smith v. Eau Claire, 78 W 457, 47 NW 830; Colclough v. Milwaukee, 92 W 182, 65 NW 1039.

In the absence of a statute a municipality is not liable to abutting owners for damages resulting from such a change. Walish v. Milwaukee, 95 W 16, 69 NW 818.

Ch. 255, Laws 1889, does not vest any interest or estate in the land in an abutting owner which was not formerly possessed by him, but gives him the right to recover consequential damages in case a part of the street is taken for railway purposes. Kuhl v. Chicago & Northwestern R. Co. 101 W 42, 77 NW 155.

The construction of a railway track along the further side of a street bounding an owner's lots without taking any of his land is not a trespass for which an action at law for damages may be maintained or an injunction granted. But he is entitled to compensation, for consequential damages suffered, under sec. 1296a, Stats. 1915. Peters v. Chicago & Northwestern R. Co. 165 W 529, 162 NW 916.

As to liability of railroads on separation of grades, see note to 86.11, citing Application of Doss, 171 W 52, 174 NW 718.

An abutting owner cannot confer upon any other party any special privilege in the use or occupancy of the street in front of his premises for purposes other than travel and its incidental uses, such as a special parking privilege. The entire public is equally entitled to the use of any part of a street for travel or its incidents so long as the rights of the abutting owner are not impaired. Park H. Co. v. Ketchum, 184 W 182, 199 NW 219.

See note to 66.045, citing Hotel Wisconsin R. Co. v. Phillip Gross R. Co. 184 W 388, 198 NW 761, 200 NW 304.

A city constructing a shelter for entrance to a pedestrian subway across a street may be liable to abutting property owners for consequential damages insofar as the shelter will obstruct the street. Randall v. Milwaukee, 212 W 374, 249 NW 73.

The owner of abutting land has title to the center of the highway or street adjacent to his land subject to the public easement; and the conveyance of abutting land transfers the legal title to the land to the center of the adjacent highway or street, in the absence of a clear intent to the contrary, even where the conveyance names the highway as the boundary of the parcel conveyed; and such rule with reference to streets is also applicable to alleys. Williams v. Larson, 261 W 629, 53 NW (2d) 625.

Land "abuts" even though only the end of a dead-end street coincides with the property line. For purposes of 80.47, Stats. 1951, a lessee of land has the same status as an owner. Royal Transit, Inc. v. West Milwaukee, 266 W 271, 63 NW (2d) 62.

A lawful change in the grade of a highway is not a closing up, use, or obstruction of the highway within the meaning of 80.47, Stats. 1949. Zache v. West Bend, 268 W 291, 67 NW (2d) 301.

A city ordinance regulating heavy trucking on streets in residential districts, valid under 85.55, Stats. 1955, can be applied to trucks operating from a quarry, but when the streets designated for use lead the trucks into a blind alley because of a different designation of heavy trucking streets by an adjoining municipality, the quarry operator is denied his right of ingress and egress under 80.47, and a court of equity can designate a route. Hartung v. Milwaukee County, 2 W (2d) 269, 86 NW (2d) 475, 87 NW (2d) 799.

80.48 History: 1882 c. 168; Ann. Stats. 1889 s. 1299a subs. 1 to 11; Stats. 1898 s. 1299 to 1299f; 1923 c. 94; 1923 c. 108 s. 55 to 60; Stats. 1923 s. 80.48; 1943 c. 334 s. 58, 149; 1965 c. 252.

80.64 History: 1925 c. 233; Stats. 1925 s. 80.64 (3); 1927 c. 39; 1931 c. 303; 1943 c. 334 s. 60; Stats. 1943 s. 80.64; 1945 c. 556; 1947 c. 130; 1965 c. 252.

80.65 History: 1955 c. 91; Stats. 1955 s. 80.65; 1967 c. 224.

CHAPTER 81.

Town Highways.

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

81.01 History: R. S. 1849 c. 16 s. 1, 2; R. S. 1858 c. 19 s. 1, 2; 1869 c. 152 s. 1, 2, 7 to 9, 11, 12, 22, 25, 32; 1878 c. 250; R. S. 1878 s. 1223, 1227, 1228, 1240, 1246; 1880 c. 60;

1883 c. 163; 1885 c. 103; Ann. Stats. 1889 s. 1223, 1227, 1228, 1240, 1246; 1893 c. 284 s. 4; 1893 c. 292 s. 18; 1895 c. 145; Stats. 1898 s. 1223, 1227, 1228, 1240, 1246; 1899 c. 83 s. 1; Supl. 1906 s. 1223, 1240; 1907 c. 331; 1909 c. 149, 170, 284, 405; 1911 c. 599; Stats. 1911 s. 1223, 1227, 1228, 1240, 1246, 1347n; 1913 c. 402, 432, 509, 697; Stats. 1913 s. 1223, 1227, 1240, 1246, 1347n; 1915 c. 62; 1915 c. 409 s. 2; 1917 c. 173; 1917 c. 198 s. 1, 2; 1919 c. 404; 1919 c. 443 s. 1; 1919 c. 518 s. 1 to 3; 1919 c. 702 s. 60, 61; Stats. 1919 s. 1223, 1227, 1230, 1240, 1246, 1347n; 1921 c. 140; 1921 c. 384; 1923 c. 108 s. 81; Stats. 1923 s. 81.01; 1927 c. 123 s. 2; 1933 c. 106; 1943 c. 334 s. 62; 1951 c. 107; 1969 c. 500 s. 30 (2) (e).

A town may change the natural flow of surface water by making improvements on its highways so long as it confines its operations within their limits, though as a result the water diverted is made to flow upon adjoining lands. The owner of such lands has no right of action against the town which so diverts water, though the improvement was negligently made or made upon a defective plan. Champion v. Crandon, 84 W 405, 54 NW 775.

The duty imposed upon town supervisors by sec. 1223, Stats. 1898, to keep the highways free from obstruction exists only in the case of highways which are recognized as such and not in the case of highways where there is a bona fide dispute as to their existence. State ex rel. Schermerhorn v. McCann, 107 W 348, 83 NW 647.

Under 81.01 and 60.29 the town board may adjust damages in respect to highways and enter into valid releases. Dekorra v. Wisconsin River P. Co. 188 W 501, 205 NW 423.

The town board has no authority to delegate power to negotiate a contract for road repairs to its chairman or to the chairman of a neighboring town or to the neighboring town itself. Employers Mut. Liability Ins. Co. v. Industrial Comm. 229 W 121, 281 NW 678.

Towns are not liable for maintenance and repair of highways located within the limits of a state park. 2 Atty. Gen. 66.

A town highway must be kept in repair by the town, even though money was formerly contributed by the county and individuals to improve it. 6 Atty. Gen. 313.

The town board may condemn a right-of-way to a gravel pit under the right to acquire the gravel pit. 10 Atty. Gen. 1119.

The duty of town in relation to highway maintenance and snow removal is discussed in 24 Atty. Gen. 99.

The chairman or other member of a town board of supervisors may be appointed by the town board to supervise construction and repair of town highways and may receive per diem as supervisor for such work. 29 Atty. Gen. 233.

81.02 History: 1919 c. 518 s. 3; Stats. 1919 s. 1229 subs. 1 to 3; 1921 c. 274; 1923 c. 108 s. 84; Stats. 1923 s. 81.02; 1943 c. 334 s. 63.

81.03 History: 1869 c. 152 s. 16, 101, 143, 144; 1872 c. 128 s. 2; R. S. 1878 s. 1233, 1249, 1326; 1887 c. 174, 454; Ann. Stats. 1889 s. 1233, 1249, 1326; Stats. 1898 s. 1233, 1249, 1326; 1909 c. 143; 1911 c. 599; 1913 c. 703; 1913 c. 773 s. 107; 1919 c. 518 s. 3; Stats. 1919 s. 1229 sub. 4, 1230 subs. 1, 2, 5, 1233, 1249, 1326; 1923 c. 108 s. 85, 212; Stats. 1923 s. 81.03, 86.01; 1933 c. 106; 1943 c. 334 s. 64; Stats. 1943 s. 81.03.

By enacting ch. 454, Laws 1887, the legislature intended to take from the overseer of highways the right to open a temporary track upon private lands and to compel him at once to open highways to public travel which have become obstructed by snow. Hence, a town is not liable for injuries sustained from defects in a road temporarily provided across a field by the overseer after the enactment of the law of 1887, the highway being obstructed by snow. The fact that the temporary road was made by the overseer with the approval of the supervisors and was continuously used does not estop the town from setting up that it was not a highway. Bogie v. Waupun, 75 W 1, 43 NW 667.

Accumulation of snow upon a highway such as to come within sec. 1249, Stats. 1898, is not such as to cause a liability for a defective highway under sec. 1339, as amended, unless such accumulation of snow has continued for 3 weeks. Uecker v. Clyman, 137 W 38, 118 NW 247.

A fence existing across a highway for the purpose of impeding travel thereon is an obstruction, not an encroachment. Since no statutory duty is imposed by law upon either the superintendent of highways or the town board in his absence, summarily to remove a fence obstruction, mandamus does not lie to compel the town board to remove it. (Neff v. Paddock, 26 W 546, and later cases distinguished.) State v. Maresch, 225 W 225, 273 NW 225.

81.04 History: 1919 c. 518 s. 3; Stats. 1919 s. 1230 sub. 4; 1923 c. 108 s. 86; 1923 c. 446 s. 4; Stats. 1923 c. 81.04; 1933 c. 106; 1943 c. 334 s. 65.

81.05 History: 1915 c. 116; Stats. 1915 s. 1224a; 1923 c. 108 s. 88; Stats. 1923 s. 81.05; 1943 c. 334 s. 66.

81.06 History: 1869 c. 152 s. 14; R. S. 1878 s. 1236; 1883 c. 148; Ann. Stats. 1889 s. 1236; 1897 c. 76; Stats. 1898 s. 1236; 1919 c. 518 s. 2; 1923 c. 108 s. 89; 1923 c. 446 s. 1; Stats. 1923 c. 81.06; 1943 c. 334 s. 67.

The power given to overseers by sec. 11, ch. 16, R. S. 1849, does not authorize them to take and appropriate to public use any timber or other material which the owner had prepared for his own use. Goodman v. Bradley, 2 W 257.

The overseer is not protected in entering and cutting timber upon lands if the highway is not legally laid out. Babb v. Carver, 7 W 124.

Sec. 1236, R. S. 1878, gives the right to use materials found within the limits of a highway to improve other highways in the same town, and under some circumstances in another town. Huston v. Fort Atkinson, 56 W 350, 14 NW 444.

Taking land under sec. 1236, R. S. 1878, is a taking for public use, the necessity for which is a legislative question which may be delegated to supervisors or overseers. Smeaton v. Martin, 57 W 364, 15 NW 403.

Where the work of improving the highway is of such magnitude as to require that it be performed under a contract and by direction

of the supervisors, the contractor and his workmen are protected in their proper acts by secs. 1236 and 1237, R. S. 1878. Smith v. Gould, 59 W 631, 18 NW 457.

The landowner is entitled to have his damages appraised as well when the work was done under the direction of the town board as when it was done by the superintendent or by his direction. State ex rel. Smith v. Leon, 66 W 199, 28 NW 140.

The superintendent has no right to enter upon improved land outside the limits of the highway to obtain material with which to make or improve it, though it cannot be otherwise done without great expense and trouble. Jackson v. Rankin, 67 W 285, 30 NW 301.

When necessary to drain a highway, a county highway commissioner may enter on abutting lands and construct a drain through embankment erected by the owner along the boundary line of the highway, leaving the owner to his remedy to apply for appraisal of any damage caused him thereby, as provided by 81.06 and 81.07, Stats. 1923. Permanent drainage may be acquired by the county in any event by condemnation proceedings as provided by 83.07. 13 Atty. Gen. 444.

81.07 History: 1868 c. 152 s. 15; R. S. 1878 s. 1237; 1885 c. 46; Ann. Stats. 1889 s. 1237; Ann. Stats. 1889 s. 1237a sub. 1; Stats. 1898 s. 1237, 1237a; 1923 c. 108 s. 90; 1923 c. 446 s. 4; Stats. 1923 s. 81.07; 1927 c. 123 s. 1; 1943 c. 334 s. 68.

The taxable property of a town or municipality constitutes a pledge or fund to which the owner of property which has been taken for public use by such corporation may resort for payment. Smeaton v. Martin, 57 W 364, 15 NW 403.

The statutory mode of proceeding to obtain compensation must be followed. An action of tort will not lie. Smith v. Gould, 59 W 631, 18 NW 457.

The appraisement of damages under sec. 1237, Stats. 1898, must be limited to such as result from the acts authorized by sec. 1236, and cannot be extended to damages caused by wrongful acts in the improvement of the highway, such as diverting the course of a creek within the limits of the highway, without entry upon the adjoining land. Smith v. Onalaska, 159 W 290, 150 NW 415.

The owner of land upon which town supervisors have constructed a drain may recover the damages thereby suffered; and an assessment by way of offset for "special advantages" can be made only when material is actually taken from his land and placed upon the road. Harvie v. Caledonia, 161 W 314, 154 NW 383.

81.08 History: 1923 c. 446 s. 2; Stats. 1923 s. 81.08; 1943 c. 334 s. 69.

Revisor's Note, 1923: 81.08 * * * will furnish a legal means for entering fields where it is impracticable at times to keep portions of the highway free from snow blockades * * * [Bill 1-S, s. 91]

Where a temporary bridge is necessary for the accommodation of travel while a new bridge is under construction, the contract for the new bridge may include the furnishing of such temporary bridge, and it may be paid for from the construction fund. 5 Atty. Gen. **243.**

81.11 History: 1869 c. 152 s. 22 to 25; 1878 c. 250; R. S. 1878 s. 1239, 1240; 1880 c. 60; 1883 c. 163; Ann. Stats. 1889 s. 1239, 1240; 1893 c. 284; 1893 c. 292 s. 18; Stats. 1898 s. 1239, 1240; 1907 c. 331; 1909 c. 170; 1913 c. 432, 697; 1915 c. 409 s. 2; 1917 c. 173; 1919 c. 443 s. 1 to 3; 1919 c. 518 s. 2; 1919 c. 702 s. 61; 1921 c. 384; 1923 c. 108 s. 93; 1923 c. 446 s. 1; Stats. 1923 s. 81.11; 1931 c. 460; 1937 c. 316; 1943 c. 334 s. 71.

A town meeting cannot limit the statutory power of a town board to levy highway taxes. 24 Atty. Gen. 772.

81.12 History: 1869 c. 152 s. 6, 144; 1872 c. 74; 1872 c. 128 s. 2; R. S. 1878 s. 1244, 1250; 1882 c. 215; 1885 c. 243; Ann. Stats. 1889 s. 1244, 1244a, 1250; Stats. 1898 s. 1244, 1250; 1907 c. 240; 1911 c. 599; 1915 c. 409 s. 3; 1919 c. 518 s. 2; 1923 c. 108 s. 94; 1923 c. 446 s. 4; Stats. 1923 s. 81.12; 1943 c. 334 s. 72.

81.14 History: 1873 c. 224; R. S. 1878 s. 1338; 1895 c. 284; Stats. 1898 s. 1338; 1911 c. 531; 1913 c. 766; 1915 c. 83; 1923 c. 108 s. 98; Stats. 1923 s. 81.14; 1929 c. 401; 1943 c. 334 **s. 73.**

See note to 70.66, citing Waupaca County v. Matteson, 79 W 67, 48 NW 213.

In order to charge a town with a portion of the cost of repairing a bridge, the steps required by sec. 1338, Stats. 1898, must be taken, but where it does not appear that any actual vote was ever taken by the town, or what decisions were appealed from, or that the committee appointed by the county board made the required examination, or that the chairman of the board kept an account of the expenses, the county cannot recover against the town. State ex rel. Shawano County v. Sexton, 124 W 352, 102 NW 24.

See notes to sec. 8, art. VII, on extraordinary writs to non-judicial agencies and officers (mandamus), citing State ex rel. Van Lyssel v. Scheuring, 154 W 93, 141 NW 1001, and State ex rel. Wisniewski v. Rossier, 205 W 634, 238 NW 825.

In a proceeding by one county against another to recover half the cost of putting a county line highway in reasonable condition for travel, the trial judge is not justified in substituting his judgment as to what was proper to put the road in a reasonable condition for travel for the judgment of the county highway committee, there being no proof or claim that the committee did not act in good faith and according to their judgment, or that the total expense of the improvement was not as claimed. Kewaunee County v. Door County, 212 W 518, 250 NW 438.

The collection by a proper tax levy of the money expended by the county board acting under the provisions of sec. 1338, Stats. 1921, in the construction of bridges and repair of town highways, and charged to the town and certified by the county clerk to the town clerk as part of the county tax apportioned to the town, may be compelled by mandamus. 12 Atty. Gen. 110.

Apportionment and charge to towns of the expense of repairs made by the county board to a town line highway in due proceedings on

appeal provided for by 81.14, Stats. 1927, are to be made without regard to any apportionment of maintenance liability existing between towns made under provisions of 80.11, and are to be made by the county board in proportion to the equalized value of taxable property in a town as fixed by the county board pursuant to 70.61 and 70.63; either the town must seek its own remedy against the other for readjustment of such expense as between themselves based on any claimed apportionment of maintenance agreement existing between them. 17 Atty. Gen. 114.

A county proceeding under this section may charge the total cost of construction of a bridge back to the town and include the same in the next year's tax. Said county may, under 83.03 (1), Stats. 1937, assume any portion of the cost of construction. If the total cost is charged back to the town, then the whole of such charge must be included in the tax before the next year. If the amount of tax so apportioned exceeds the constitutional limitation imposed upon the town, then any balance over such limitation will necessarily be carried to the following year but will not draw interest. 26 Atty. Gen. 508.

81.15 History: R. S. 1849 c. 16 s. 103; R. S. 1858 c. 19 s. 120; 1869 c. 152 s. 120; 1872 c. 46; 1875 c. 86; R. S. 1878 s. 1339; 1885 c. 454; Ann. Stats. 1889 s. 1339, 1339a; 1893 c. 85; 1897 c. 236; Stats. 1898 s. 1339; 1899 c. 305 s. 1; Supl. 1906 s. 1339; 1913 c. 142; 1923 c. 108 s. 99; Stats. 1923 s. 81.15; 1927 c. 473 s. 28; 1931 c. 138; 1939 c. 373; 1943 c. 334 s. 74; 1959 c. 305; 1963 c. 435.

1. What is a highway.
2. Personal injury or property damage.
3. Municipality liable.
4. Nature of liability.
5. Municipality's knowledge of defect.
6. Sidewalk defects.
7. Roadway defects.
8. Bridge defects.
9. Defects adjacent to highway.
10. Ice and snow.
11. Notice of injury.
12. Husband or parent.

1. What Is a Highway.

A road overseer was not authorized to lay out a temporary road across a field which adjoined a highway blocked with snow; and the town was not liable for an injury caused by a defect therein. The fact that the overseer worked such temporary road with the approval of the supervisors and that it was traveled by the public does not prevent the town from claiming that it was not a highway. Bogie v. Waupun, 75 W 1, 43 NW 667.

A bridge built by an individual with material furnished by the town in which it was situated, and constituting part of a platted street, and as such being used daily by 20 or 30 persons, is a public way both by public user and acceptance. McDonald v. Ashland, 78 W 251, 47 NW 434.

Streets in cities and villages are highways within sec. 1339, Stats. 1898. Byington v. Merrill, 112 W 211, 88 NW 26.

Where a town board laid out a highway to the bank of the river but refused to extend it across the river and a bridge was built by the owners of lands on the other side of the river, such bridge was not a part of the highway unless adopted by the town as a part of such highway. Curtiss v. Bovina, 138 W 660, 120 NW 401.

A driveway in a public park maintained by a city, which driveway was not laid out, constructed or opened by the public authorities to whom the laying out of roads and streets is delegated by statute, but by the park authorities, on whom its care and control devolved by virtue of 27.08 (2) (a), Stats. 1937, and which driveway had never been used as a way of any kind until opened by the park authorities, was not a public "road" within the purview of 81.15, imposing liability on cities and other municipalities for injuries sustained by reason of the insufficiency or want of repair of any "road" therein, and hence the city in question was not liable for injuries sustained by a bicyclist when he ran into a pile of black-top on the edge of such driveway. Kernan v. Eau Claire, 232 W 587, 288 NW 198.

The word "highway" in 81.15, which relates to claims based on insufficiency or want of repair of highways, includes sidewalks. Smith v. Jefferson, 8 W (2d) 378, 99 NW (2d) 119; Colburn v. Ozaukee County, 39 W (2d) 231, 159 NW (2d) 33.

2. Personal Injury or Property Damage.

The ulterior purpose of a traveler in using a way cannot affect his right to have it in a reasonably safe condition. Strong v. Stevens Point, 62 W 255, 22 NW 425.

A child injured while going to play with some other children, who had a hoop which she rolled on the sidewalk on her way to them, was a traveler, and it was no objection to her recovery that while traveling she was indulging in play which was not inconsistent with traveling. Reed v. Madison, 83 W 171, 53 NW 547.

A workman upon house steps may be a traveler. Stege v. Milwaukee, 110 W 484, 86 NW 161.

A child using a sidewalk in going from one place to another, but incidentally turning aside for play, is a traveler. Collins v. Janesville, 111 W 348, 87 NW 241 and 1087.

Where a person finds one entrance to a building locked and returns to the sidewalk to proceed to another entrance, he is a traveler upon the highway and is entitled to recover under sec. 1339, Stats. 1898. Strack v. Milwaukee, 121 W 91, 98 NW 947.

A 3-year-old child playing on a sidewalk with a tricycle was a traveler and had the same rights as an adult traveler as against the municipality for injuries caused by a defective sidewalk. McCormick v. Racine, 227 W 33, 277 NW 646.

Property damages which may be recovered under 81.15 are limited to personal property used in traveling on the highway; the term does not include real property. Hoene v. Milwaukee, 17 W (2d) 209, 116 NW (2d) 112.

3. Municipality Liable.

A city is not liable for an injury on a highway maintained by it in Minnesota under an act of the legislature. Becker v. La Crosse, 99 W 414, 75 NW 84.

For an injury occasioned by a defect in a highway at a point where it crosses the boundary line between 2 towns, an action may be maintained against either town or both, each severally being obligated to keep the highway in repair at that point. Trebowoski v. Ringle, 165 W 637, 163 NW 165.

No liability for injuries exists against a municipality charged with the duty of maintaining its highways except and unless a statute so provides. The limitation of $5,000 as the maximum amount which can be recovered for injuries from a defect in a highway applies to all claims for injuries, and is not limited merely to persons whose notice of injury is defective or inaccurate. Whatever may be the theoretical basis of the doctrine, the state, a county, city or other municipal or quasi-municipal corporation is exempt from liability in the performance of governmental functions, with the exception for liability for negligence in the performance of a function from which a revenue is received. McCoy v. Kenosha County, 195 W 273, 218 NW 348.

A town is not liable for damages resulting from the insufficiency or want of repair of a road located therein which has been adopted as a county road; but in the case of roads for which the county is not liable, the town is charged with liability. Stoehr v. Red Springs, 195 W 399, 216 NW 487, 219 NW 98.

See note to 81.17, citing Rudolph v. Currer, 5 W (2d) 639, 94 NW (2d) 132.

A municipal corporation is not liable for a public nuisance when the relationship of governor and governed exists between it and the injured person. Smith v. Jefferson, 8 W (2d) 378, 99 NW (2d) 119.

Where 2 counties maintain a highway at the point of the accident and notice is given to only one, the other can be made a defendant for purposes of contribution. Geiger v. Calumet County, 18 W (2d) 151, 118 NW (2d) 197.

A city, and not abutting property owners, had the duty to maintain and repair the public sidewalks; and a county, as the owner of courthouse property adjacent to a public sidewalk, was not liable for injuries sustained by a pedestrian who tripped over an abrupt rise in the sidewalk, caused by the natural growth of the roots of a tree located on the county's property; nor was the county liable on the theory of creating and maintaining a nuisance on its premises. Hei v. Durand, 22 W (2d) 101, 125 NW (2d) 341.

Neither 81.15 nor 84.07 can be looked to as constituting an expression of the legislative intent to grant immunity to a county in respect to state trunk highways, since neither statute has the legal effect of reinstating governmental immunity or preserving such immunity. Dunwiddie v. Rock County, 28 W (2d) 568, 137 NW (2d) 388.

Where a street is obstructed or made unsafe by some act of a municipality (of commission or omission), not connected with its construction or repair, a claim arising therefrom does not fall under 81.15, Stats. 1965. George v. Milwaukee, 41 W (2d) 92, 163 NW (2d) 166.

Neither 81.15 nor 895.43, Stats. 1965, create liability, but rather provide the procedure to prosecute a claim for negligence. Schwartz v. Milwaukee, 43 W (2d) 119, 168 NW (2d) 107.

81.15, Stats. 1965, applies only to a small area of negligent conduct by a municipality and in this area does not necessarily cover all the negligence which might relate to highways. Schwartz v. Milwaukee, 43 W (2d) 119, 168 NW (2d) 107.

Whether or not acts of negligence charged against a municipality are attributable to defect or want of repairs within the intendment of 81.15, or are due to or combined with other acts of general negligence cognizable under 895.43, they cannot be fragmented into 2 recoverable causes of action for the same injury by invoking both statutes. Schwartz v. Milwaukee, 43 W (2d) 119, 168 NW (2d) 107.

Governmental tort liability and immunity in Wisconsin. Bernstein, 1961 WLR 486.

4. Nature of Liability.

The statute does not impose absolute liability upon municipalities. The elements of liability are the insufficiency or want of repair, knowledge or notice thereof, and negligence in not making the repair or protecting travelers from injury by reason of the defect. Duthie v. Washburn, 87 W 231, 58 NW 380; Schillinger v. Verona, 88 W 317, 60 NW 272; Vass v. Waukesha, 90 W 337, 63 NW 280. Compare Burns v. Elba, 32 W 605.

It is error to instruct the jury that the driver of a vehicle may drive over a defective place unless the defect is of such a nature that it would be rashness to attempt to do so. Groundwater v. Washington, 92 W 56, 65 NW 871.

A bridge is an integral part of the street and must be maintained by the municipality in a reasonably safe condition, including proper signals and warnings; but the operation of a drawbridge is a governmental function, and the city is not liable for injuries resulting solely from a failure of the tender to give proper warnings of the opening of the draw. Leannah v. Green Bay, 180 W 84, 192 NW 388.

Negligent use of a defective and unguarded flare, placed for the purpose of giving warning of danger on top of planks covering an excavation in a public street necessitated by a service installation in the conduct of its municipal water system by a city, was an act done in its proprietary capacity. The act was no part of street construction, repair or maintenance so as to constitute a defect therein, requiring service of notice of injury. Badten v. Stevens Point, 209 W 379, 245 NW 130.

The legal consequence of imposing liability on a city for damage sustained by failure to construct sufficient highway is that the failure constitutes negligence as a matter of law. Liability for failure to discover and repair subsequent defects rests on failure to exercise ordinary care. Morley v. Reedsburg, 211 W 504, 248 NW 431.

See note to 895.045, citing Morley v. Reedsburg, 211 W 504, 248 NW 431, and Scheibe v. Lincoln, 223 W 425, 271 NW 427.

The fact that some 30 years previously the water-main shutoff box over which the plaintiff fell was placed so as to rise about 1 4/5 inches above the surrounding surface did not constitute the street or the shutoff box a "nuisance," and the liability of the village, the street not being a place of employment within the safe-place statute, was controlled by this section, relating to municipal liability for in-

juries to travelers from defects. Padley v. Lodi, 233 W 661, 290 NW 136.

A city is not liable as for a nuisance merely for its failure to discharge the duty imposed on it to maintain the streets in a reasonably safe condition for travel as required by 81.15, Stats. 1939, the extent of its duty in that regard being fixed by the statutes. Lindemeyer v. Milwaukee, 241 W 637, 6 NW (2d) 653.

Although the duty of a municipality to make a highway reasonably safe in its original construction is absolute, the duty to discover and repair defects afterward occurring, not by acts of the municipality, is one involving only ordinary and reasonable care and diligence. Conrardy v. Sheboygan County, 273 W 78, 76 NW (2d) 560.

331.045, Stats. 1949, relating to contributory negligence, applies to actions under 81.15. Trobaugh v. Milwaukee, 265 W 475, 61 NW (2d) 866; Hales v. Wauwatosa, 275 W 445, 82 NW (2d) 301.

5. Municipality's Knowledge of Defect.

A town is not liable for latent defects of which it is ignorant. Ward v. Jefferson, 24 W 342.

Plaintiff must show that the authorities had actual notice of the defect or that the circumstances were such that knowledge must be presumed. Goodnough v. Oshkosh, 24 W 549.

Notice to officers is notice to the municipality. Harper v. Milwaukee, 30 W 365; Jaquish v. Ithaca, 36 W 108; McKeigue v. Janesville, 68 W 50, 31 NW 298; Bloor v. Delafield, 69 W 273, 34 NW 115.

The requirement of notice of defect does not apply where an obstruction has been placed in the street by a city employe while repairing it. Adams v. Oshkosh, 71 W 49, 36 NW 614.

A walk which had been defective for weeks was partially repaired the day an injury was sustained thereon; but all the planks were not fastened down and the injury resulted from stepping upon the end of one of them. The city had nothing to do with the repairs and was without actual or constructive notice of the condition in which the planks were left. A nonsuit should have been granted. Hiner v. Fond du Lac, 71 W 74, 36 NW 632.

The question being whether the officers could, with reasonable diligence, have discovered and repaired a break in a sidewalk before the injury, the jury may be instructed to consider the length of time the walk was built, the condition of the planks and stringers, the amount of travel on the walk, etc. McLimans v. Lancaster, 63 W 596, 23 NW 689; Smalley v. Appleton, 75 W 18, 43 NW 826.

If the officers, knowing that a bridge is unsafe, cause it to be repaired, they are bound to make a thorough inspection of it or have it examined by a competent person. Spaulding v. Sherman, 75 W 77, 43 NW 558.

Where the defect was caused by the overflow of a creek the trial court correctly charged as follows: "If the condition of the road immediately preceding the rise of water was such that the dangerous condition caused by such rise of water might reasonably have been expected by such town authorities, and the notice of such previous condition, then it was incumbent on the part of the town to either have closed up the road till it was repaired, or provided such means as to have warned persons traveling on such highway, in the exercise of ordinary care, of the danger." Wiltse v. Tilden, 77 W 152, 46 NW 234.

If the defect consists in making repairs with unsuitable materials the city is liable for the acts of its employes and is chargeable with notice of their use. Moore v. Platteville, 78 W 644, 47 NW 1055.

Where the street commissioner had ordered the repairs of a walk at the place of the accident, such order relating only to the outer ends of the planks, which projected over an area wall towards the gutter, it did not follow that the city had notice of a hole in the walk inside of such area wall. Bergevin v. Chippewa Falls, 82 W 505, 52 NW 588.

Repairs made by a lot owner by direction of the street commissioner are, in contemplation of law, made under the latter's supervision; and it must be conclusively presumed that the city had knowledge thereof. Woodward v. Boscobel, 84 W 226, 54 NW 332.

A boat which is being launched and which partially obstructs a street becomes a nuisance only after its owner has failed to launch it with reasonable care and expedition. The municipal officers are not required to interfere until, to their knowledge, the delay of the owners to launch the boat has become unreasonable. Hence they are not chargeable with notice of its being an obstruction until they have knowledge that it has become a nuisance. Cairncross v. Pewaukee, 86 W 181, 56 NW 648.

An abutter on a highway has the right to use, temporarily, a reasonable portion of it for the deposit of mortar boxes and building material which is necessarily used in building a house on his land. The necessity which will justify such use need not be absolute; ordinarily it is for the jury; but if the facts are undisputed and no more space was used than was actually needed, and the use was not unreasonably prolonged, the court may decide the point. Constructive notice to the authorities is not to be inferred, nor were they chargeable with actual notice, because a road overseer saw them there the day before the accident. Loberg v. Amherst, 87 W 634, 58 NW 1048.

Where the authorities know that a sidewalk was rotten and unsafe, the fact that the particular planks which caused the injury were not known to be loose will not enable the municipality to escape liability on the ground that such defect is latent. For the purpose of showing constructive notice of a defect, other defects in the vicinity of the one which is the alleged cause of the accident, may be shown, or the general bad condition of the walk, if its condition is substantially the same at all the points to which the evidence relates. But such notice cannot be shown by a petition presented to the authorities for the building of a walk of greater width, nor proof of similar accidents on the walk near the place where the cause of action arose. Barrett v. Hammond, 87 W 654, 58 NW 1053.

The rule concerning notice to officers has no application where a drawbridge is not provided with barriers or lights. The defect lies in the lack of its completion and is obvious. Stephani v. Manitowoc, 89 W 467, 62 NW 176.

If the unsafe condition of a walk has existed so long that, if the authorities had given it reasonable attention, they must have discovered its condition, then they are chargeable with notice of it, and bound to remedy it within a reasonable time. Koch v. Ashland, 88 W 603, 60 NW 990; Colby v. Beaver Dam, 34 W 285; Hall v. Fond du Lac, 42 W 274; West v. Eau Claire, 89 W 31, 61 NW 313; Luedke v. Mukwa, 90 W 57, 62 NW 931.

The duty of city officers to discover defects is greater than that which rests upon the traveler. Lyman v. Green Bay, 91 W 488, 65 NW 167.

Where the covers of coalholes in a walk are properly constructed and apparently secure, officers are not bound to make an examination. Cooper v. Milwaukee, 97 W 458, 72 NW 1130.

In order that there be liability for a latent defect in a walk its character must be such that ordinary diligence would have discovered it. Shaw v. Sun Prairie, 74 W 105, 42 NW 271; Cooper v. Milwaukee, 97 W 458, 72 NW 1130.

The existence for a year of a visible defect in a sidewalk imports knowledge of it. Crites v. New Richmond, 98 W 55, 73 NW 322.

The authorities are presumed to know that a stump near the track is a defect. Boltz v. Sullivan, 101 W 608, 77 NW 870.

Where the defect exists by reason of the construction of a sidewalk, or has existed so long as to charge the officers with notice, the town is negligent. Brunette v. Gagen, 106 W 618, 82 NW 564.

A city is liable for injury resulting from the cover to a coalhole being propped up for a long time. Stege v. Milwaukee, 110 W 484, 86 NW 161.

It is not necessary that the municipality have knowledge of the precise defect which causes injury, and which is the result of natural rot and decay of a bridge, and long use. The duty to repair is implied from the duty to inspect the bridge, from time to time, and keep it safe. Green v. Nabagamain, 113 W 508, 89 NW 520.

Long continued use of a street for the leaving of vehicles, etc., rendering it unsafe, may amount to municipal knowledge of the defect. Radichel v. Kendall, 121 W 560, 99 NW 348.

The city, having made a street safe, is not liable unless it have notice, actual or constructive, of a subsequent defect and a reasonable opportunity to repair. Strang v. Kenosha, 174 W 480, 182 NW 741.

A visible defect existing a year is constructive notice. Vogel v. Ott, 182 W 1, 195 NW 859.

Knowledge of a sidewalk accident on the part of a policeman, if constituting notice to the city, would be notice only of the place of accident and the conditions existing there, and not that the plaintiff claimed satisfaction of the city for her damages. Rudolph v. Currer, 5 W (2d) 639, 94 NW (2d) 132.

Before a municipality, in an action against it for personal injuries, can rely on the rule—that where an excavation in a street has been made by a permittee and the municipality has inspected the site and remedied any apparent depression of the fill, the city is not liable for an injury resulting from further depression of such fill until after it has had notice of the situation and an opportunity to repair—the municipality must first show the sufficiency of the repairs made to a known defect, either by proof of what was done in making the repair or by proof of an adequate inspection. Murphy v. Milwaukee, 11 W (2d) 554, 105 NW (2d) 794.

The fact that the street where the accident occurred was a main-traveled street, and that it was closely supervised by police, would be relevant in determining the length of time which must elapse before the city could be reasonably charged with notice of the defect in the street. Forbus v. La Crosse, 21 W (2d) 171, 124 NW (2d) 66.

6. Sidewalk Defects.

A pipe 1⅝ inches high and 2¾ inches in diameter near the edge of a sidewalk and out of the main line of travel is not an actionable defect. Whether a city is liable for injuries resulting from an alleged defect in a street is not a question of negligence on the part of the city, but whether the highway is sufficient within the meaning of sec. 1339, Stats. 1917. Padden v. Milwaukee, 173 W 284, 181 NW 209.

The rule that the topography of the locality, development of the community, standard of road construction, amount and character of traffic, are to be considered in determining whether a given condition renders a highway defective, applies to sidewalks in cities as well as to country highways. Sidewalks need not be perfect—"reasonably safe" is sufficient. A slant of 7 inches in an approach at a crossing, and the projection of one cobblestone in an alley 1⅛ to 2 inches above the others did not constitute defects. Hollan v. Milwaukee, 174 W 392, 182 NW 978.

A city is not liable for injuries sustained by a pedestrian who slipped upon a cement block, forming a part of a sidewalk, which had settled 2¼ inches, causing a slope in the surface of the block. Ross v. Shawano, 179 W 595, 191 NW 970.

Bicycle and tricycle riders on a sidewalk cannot recover for injuries resulting from defects in the sidewalk if it was in proper condition for pedestrians, but such riders may recover if the walk was not in such condition. A difference of 2⅜ inches in the level between adjacent cement squares of a sidewalk did not, in the absence of other contributory conditions, constitute an actionable insufficiency or want of repair such as would render the city liable for injuries sustained by a pedestrian who stumbled over the defect. McCormick v. Racine, 227 W 33, 277 NW 646.

A difference of 4 inches in sidewalk levels presents a jury question as to sufficiency of the walk. LeMay v. Oconto, 229 W 65, 281 NW 688.

A triangular shaped hole or depression in a concrete sidewalk on a city street—about 11 inches long, 3 inches wide at one end and tapering to a blunt point at the other end, about one inch deep at the wider end and less at the pointed end—was not an actionable defect in itself, and a metal trap door—with hinges about three-fourths of an inch high, set in the walk about 20 inches from the pointed end of the hole, and not shown to be unusual or insufficient or in a state of negligent dis-

repair—was not in itself an actionable defect, and the hole and the trap door in combination did not constitute an actionable "insufficiency or want of repair" such as would render the city liable under this section for injuries sustained by a pedestrian who caught her left foot in the hole and fell when her right foot came in contact with a hinge of the trap door as she was attempting to regain her balance. Reynolds v. Ashland, 237 W 233, 296 NW 601.

An obstruction, consisting of a water stop box maintained by the city in its proprietary capacity in operating its waterworks, and projecting 2¼ inches above the sidewalk, does not amount to an insufficiency or want of repair of the street. Lindemeyer v. Milwaukee, 241 W 637, 6 NW (2d) 653.

A county, owning and maintaining jail premises abutting a public sidewalk in a city, created a nuisance by excavating under and along a concrete block of the sidewalk and thereby causing an uneven and unsafe surface, and, since the relation of the county to pedestrians using such sidewalk was not that of governor and governed, the county was liable for injuries sustained by a pedestrian in tripping on the uneven surface, although the county's maintenance of the jail premises generally was in the discharge of a governmental function. Holl v. Merrill, 251 W 203, 28 NW (2d) 363.

Where there was a depression of only one and seven-eighths inches between 2 slabs of concrete sidewalk where the plaintiff fell, but both squares were cracked lengthwise in the center, and the north half of one sloped down to the crack at a 20 per cent pitch, and the west edge was tipped laterally at an angle of two and three-eighths inches per foot, creating various angles of tipping or sloping in both squares, the question of insufficiency or want of repair of the sidewalk was for the jury, which could find in the affirmative. (McCormick v. Racine, 227 W 33, distinguished.) Pias v. Racine, 263 W 504, 58 NW (2d) 67.

When the imperfection is so near the public way for travel or so connected with it that the place for travel is not reasonably safe, there is an actionable defect. It is common knowledge that on busy streets the area from the curb to the sidewalk, used by automobilists for leaving or reaching parked automobiles, is in constant public use. First Nat. Bank & Trust Co. v. S. C. Johnson & Sons, 264 W 404, 59 NW (2d) 445.

A water shutoff valve, protruding out of and one inch above the level of the sidewalk was not an insufficiency or want of repair so as to constitute negligence for which the city would be liable for injuries sustained by a pedestrian who fell by stumbling over such valve. Krejci v. Lojeski, 275 W 20, 80 NW (2d) 794.

A finding by trial court that an oval hole in paved street 4½ inches deep was actionable "insufficiency or want of repair" was supported by the evidence. The location of such hole near the curb does not prevent its being an actionable defect since people can be expected to walk there in entering or leaving cars. Hales v. Wauwatosa, 275 W 445, 82 NW (2d) 301.

Where a sidewalk was uneven and lower than the ground on either side and water and ice had collected on the walk, it was a jury question whether plaintiff was justified in walking on a bank beside the walk at which place he was hurt. Mueller v. Milwaukee, 1 W (2d) 221, 83 NW (2d) 735.

A depression which was only three-fourths inch below level of a sidewalk and which consisted of metal electrical junction box installed by defendant city was a nonactionable defect as a matter of law. McChain v. Fond du Lac, 7 W (2d) 286, 96 NW (2d) 607.

An uneven sinking of a sidewalk of 2¾ to 4½ inches below the bottom of a normal step leading into a tavern presented a jury issue as to whether the walk was defective. Goelz v. Milwaukee, 10 W (2d) 491, 103 NW (2d) 551.

The limited scope of a municipality's liability under 81.15 is no longer applicable to sidewalk cases and the question in such cases is not whether there was a defect, want of repair, or insufficiency of the sidewalk which caused the injury, but whether under the ordinary common-law rules of negligence the duty to maintain sidewalks reasonably safe was breached. It was contemplated in Holytz v. Milwaukee, 17 W (2d) 226, that abrogation of the doctrine of governmental immunity would affect this area in that all the limitations of that section such as notice, amount of recovery, etc., apply to the city's common-law duty, and consequently no liability arises because of a natural accumulation of snow and ice existing less than 3 weeks. Stippich v. Milwaukee, 34 W (2d) 260, 149 NW (2d) 618.

A sidewalk may be unsafe and unreasonably so although it might not have been held to be an insufficiency or lack of repair as those terms have been previously construed. Among the circumstances to be considered in determining liability are the topography of the locality, the development of the locality, the standard of sidewalk construction which the particular part of the city had attained, the amount and character of traffic on the sidewalk and the intended use thereof by pedestrians. Westler v. Milwaukee, 34 W (2d) 272, 149 NW (2d) 624.

7. Roadway Defects.

A dangerous condition of a street or walk, suddenly caused by the elements, is not a defect till sufficient time has elapsed for its repair. Jaquish v. Ithaca, 36 W 108.

The question whether a rut 6 inches deep or more and 2 or 3 feet long constituted a defect was properly left to the jury. It does not follow that it was a defect simply because the plaintiff was thrown from his wagon by driving into it while using ordinary care, as the injury may have been accidental. Chappell v. Oregon, 36 W 145.

It is not the duty of towns to warn travelers not to drive off the highway to dangerous places. Green v. Bridge Creek, 38 W 449.

Where a railroad is being constructed across a highway the failure to keep it safe or use warning precautions will warrant a recovery. Hammond v. Mukwa, 40 W 35.

It is the duty of towns to guard embankments at the margins of traveled tracks so that they will be reasonably safe at any time,

and in ordinary weather. Kenworthy v. Ironton, 41 W 647.

The raising of one-half of a street in width by an embankment and leaving the side of such embankment next to the other half of the street precipitous and without guards or railing renders the street unsafe as a matter of law. Prideaux v. Mineral Point, 43 W 513.

Coasting is not an insufficiency or want of repair of a street under sec. 1339, R. S. 1878. If the authorities expressly license it the city would be liable for injury caused thereby, but not for an implied license by failing to prohibit it. Schultz v. Milwaukee, 49 W 254, 5 NW 342.

When streets are being improved the city is liable only for ordinary care; and if guards or signals put up by it are removed without its fault it will not be liable for an injury occasioned thereby without notice of such removal and the lapse of a reasonable time for guarding against the danger. Klatt v. Milwaukee, 53 W 196, 10 NW 162.

A highway situated upon a curve where teams approaching could not be seen until they were very near each other, and for a long distance so narrow and so hedged in by an embankment on one side and a fence on the other that teams could not safely pass was defective. Fopper v. Wheatland, 59 W 623, 18 NW 514.

A driver may be in the exercise of reasonable care although he is lying upon his load wrapped in blankets. Parish v. Eden, 62 W 272, 22 NW 399.

Where the authorities made an excavation more than 2 feet deep at a distance of 2 feet from the traveled track of the highway, and no barrier had been erected or other warning given, the highway was unsafe. Seymer v. Lake, 66 W 651, 29 NW 554.

If the rise in a stream which occasioned an injury was unusual or extraordinary there is no liability. Hopkins v. Rush River, 70 W 10, 34 NW 909, 35 NW 939.

If there is a defect in a highway and it was such that the officers were in fault for not repairing it, and such defect was the proximate cause of the injury and rendered travel unsafe and the officers had knowledge of it, liability for injuries resulting therefrom follows as a legal conclusion. Koenig v. Arcadia, 75 W 62, 43 NW 734.

If a boat extending nearly across a street is permitted to remain in that situation for an unreasonable length of time and the authorities have knowledge of it, and it is calculated to frighten horses, it is a question for the jury as to whether the boat was a dangerous obstruction. Cairncross v. Pewaukee, 78 W 66, 47 NW 13.

A ditch 2 or 3 feet deep along the center of a street, immediately adjoining the graded track, which was just wide enough for teams to pass each other, and which is left without barriers, may be a defect. Hein v. Fairchild, 87 W 258, 58 NW 413.

A street railway lawfully laid and operated is not a defect. Bishop v. Belle City S. R. Co. 92 W 139, 65 NW 733.

If a highway is discontinued notice must be given or barriers erected, and if the barrier is insufficient or dangerous the town is liable for injuries resulting. Bills v. Kaukauna, 94 W 310, 68 NW 992.

A city is not bound to keep its streets and sidewalks in safe condition throughout but only the traveled part thereof. Rhyner v. Menasha, 97 W 523, 73 NW 41.

Voluntary choice of a temporary track outside of the highway precludes recovery. Stricker v. Reedsburg, 101 W 457, 77 NW 897.

A deep hole in a culvert near the traveled track, absence of guards and a sudden accumulation of water may constitute a defect. Jenewein v. Irving, 122 W 228, 99 NW 346, 903.

A rut from 8 to 23 inches deep is a defect. Kennedy v. Lincoln, 122 W 301, 99 NW 1038.

The absence of a guard is of no consequence when it would not have prevented the accident. Hamacher v. New Berlin, 124 W 249, 102 NW 489.

It is the duty of a town to construct and maintain its highways so they will be reasonably safe for travel by traction engines such as are in use in that part of the country. Johnson v. Highland, 124 W 597, 102 NW 1085.

The insufficiency or want of repair of a highway is a question for the jury, unless the conditions and circumstances are so clear and convincing as to leave no room for reasonable controversy. Kawiecka v. Superior, 136 W 613, 118 NW 192.

A ditch connecting with a culvert under the traveled portion of the highway amounts to an insufficiency. Sweetman v. Green Bay, 147 W 586, 132 NW 1111.

Testimony as to holes in a street was sufficient to warrant the verdict that the street was defective. Wanta v. Milwaukee E. R. &. L. Co. 148 W 295, 134 NW 133.

A stump in or so near the traveled track as to render the road dangerous to travelers ordinarily careful is a defect. Johnson v. Iron River, 149 W 139, 135 NW 532.

A highway which crossed a ravine 30 feet wide upon a fill about 4 feet deep at the deepest place and having a hard, smooth surface 12 feet wide at the narrowest point, and not wide enough at any point for 2 automobiles to pass each other safely, was not defective as a matter of law, where the highway was straight at that place so that cars coming in either direction could be seen at a considerable distance. Miner v. Rolling, 167 W 213, 167 NW 242.

The determination of the sufficiency of a highway involves a consideration of the topography of the locality, the development of the community, the standard of road construction therein attained, the amount and character of the traffic, etc.; and it is proper to charge the jury that the town "was in duty bound to keep so much of the width of the highway in such condition that it was reasonably safe for public travel over it with an automobile driven by persons while using ordinary care." Branegan v. Verona, 170 W 137, 174 NW 468.

An obstacle in a highway which is not in the traveled part, nor so connected with it as to affect the safety and convenience of those traveling along the road bed, does not render the municipality liable for an injury resulting from collision with it. McChesney v. Dane County, 171 W 234, 177 NW 12.

The question as to the negligence of the town in leaving a culvert pipe beside the high-

way for 8 days was for the jury. Jensen v. Oconto Falls, 186 W 386, 202 NW 676.

That part of a public highway where excavation is being done may be withdrawn from public use, and when withdrawn one traveling thereon does so at his peril. The fact that an opening had been left in the barrier could not be construed as an invitation to the public to drive on the highway in face of the positive and absolute warning conveyed by the barrier itself with a red lantern and a sign thereon. Shawano County v. Froemming Brothers, 186 W 491, 202 NW 186.

A highway is not required to be kept in perfect repair but reasonably safe. Calvert v. Appleton, 196 W 235, 219 NW 102.

The town was bound to anticipate danger which might result from a hole in the highway obviously so large as to be dangerous to travelers. Swiergul v. Suamico, 204 W 114, 235 NW 548.

The fact that a highway was slippery because thawing softened up the surface so that a thin coating of mud was formed did not render it a defective highway. Wisniewski v. Belmont, 213 W 34, 250 NW 859.

Whether a rut 5 to 7 inches deep, 14 to 18 inches wide and about 200 feet long on a highway within a city, used only by farmers adjacent to the highway and persons having business with them, constituted a defect in the highway, so as to render the city liable for injuries received by the plaintiff when a wagon tipped over because of the condition of the highway, was a jury question. Blaschke v. Watertown, 226 W 1, 275 NW 528.

A motorist, injured when his automobile ran into a washout at night, had the right to assume that the public highway was reasonably safe for travel, and that the road would be blocked off if there was a washout. Tande v. Vernon County, 226 W 602, 276 NW 350.

Where a highway was changed so that it turned instead of continuing straight ahead, and at the turn the county had merely dug a ditch across the abandoned road without placing a guard or warning of any kind the highway was insufficient as a matter of law. Martinson v. Polk County, 227 W 447, 279 NW 61.

The mere fact that a gravel strip at the side of the 18-foot macadam portion of a village street was wider at a right-angle turn did not indicate an insufficiency or want of repair, within 81.15, Stats. 1947. Loehe v. Fox Point, 253 W 375, 34 NW (2d) 126.

It is a jury question whether a defect in a crosswalk was insufficient under the statute where the defect was 3 feet long, with abrupt changes at each end and an irregular bottom as much as 3 or 4 inches below the level of the street. Becker v. La Crosse, 9 W (2d) 540, 101 NW (2d) 677.

An insufficiency of a highway is a defect caused by the governmental unit and constitutes negligence as a matter of law; a defect is a want of repair and the governmental unit is liable only for ordinary negligence. The comparative negligence law applies to both situations. Loose dirt left on a highway by a maintenance crew may constitute a defect. Cable v. Marinette County, 17 W (2d) 590, 117 NW (2d) 605.

Where a car left the road after crossing a windrow of gravel put there by a grader, and the jury found that the county was guilty of a small percentage of causal negligence, the county was liable for contribution for injuries to guests in the car, since the intervening negligence of the driver does not eliminate the finding of negligence by the county. Heritage Mut. Ins. Co. v. Sheboygan County, 18 W (2d) 166, 118 NW (2d) 118.

A "sufficient" street is a relative term, the same care not being required with respect to the carriage way that is required for the sidewalks, though where the sidewalk is blocked so that pedestrians will be forced to use the carriage way, the city must anticipate such use and act accordingly. A pedestrian may use any part of the street for public travel, though bound to proceed cautiously if knowing of obstructions. Superior v. Olt, 239 F 100.

8. Bridge Defects.

Absence of railings upon a bridge forming a part of the highway is a fact from which the jury may find that it was defective. Houf v. Fulton, 29 W 296.

The fact that a boy aged 8 years fell through a hole in a bridge which had existed for a long time and of which he is presumed to have had notice, does not raise a presumption of negligence on his part. Strong v. Stevens Point, 62 W 255, 22 NW 425.

It does not necessarily follow that one is negligent because he used a bridge with knowledge that there was a defect in it. Spearbracker v. Larrabee, 64 W 573, 25 NW 555.

It is the duty of a municipality to make a drawbridge reasonably safe for the passage of travelers by day and in the nighttime. If it was not safe without a barrier to protect travelers from falling from the bridge when the draw was open the city was at fault; if it was not reasonably safe at night without being lighted it was the duty of the city to light it and it is responsible for its negligence. Stephani v. Manitowoc, 89 W 467, 62 NW 176.

In an action against a city for injuries sustained by occupants of an automobile when the automobile collided with a leaf of a drawbridge as the leaf started to rise, the evidence established that the bridge was sufficiently equipped to warn and protect persons traveling on it if properly operated, and that the plaintiffs' injuries were caused, not by any insufficiency of the bridge for public travel, but by the manner of operating the bridge. Sylvester v. Milwaukee, 236 W 539, 295 NW 696.

A city is liable for the act of a bridge tender in inviting a traveler to cross a bascule drawbridge, where the bridge was raised after plaintiff was upon it, causing him to slide off and be injured. Naumberg v. Milwaukee, 146 F 641.

9. Defects Adjacent to Highway.

A structure on private property, wholly outside a street or highway, is not an insufficiency though it is maintained or used in a way to interfere with the safety of travelers. Hubbell v. Viroqua, 67 W 343, 30 NW 847.

10. Ice and Snow.

Ice which forms on a walk because of drip-

pings from a building adjoining it, which extends only about half way cross the walk, and which is not piled up or uneven where a person would walk upon it, is not a defect. Hausmann v. Madison, 85 W 187, 55 NW 167.

An accumulation of ice on a crossing did not constitute an actionable defect. Mueller v. Milwaukee, 110 W 623, 86 NW 162.

An accumulation of snow and ice upon a highway has "existed for 3 weeks" if it has remained dangerous during the whole time, notwithstanding changes of form and bulk resulting from storms or climatic conditions. Lindquist v. Bradley, 161 W 175, 152 NW 827.

Under the undisputed evidence, a city is not liable for an injury sustained by a pedestrian slipping on frozen mist on a slanting concrete approach across a sidewalk to a garage, the presence and condition of which he knew, regardless of any defective construction. (Stilling v. Thorp, 54 W 528, 11 NW 906, and Hill v. Fond du Lac, 56 W 242, 14 NW 25, so far as inconsistent with said statute and with Mundell v. Milwaukee, 191 W 508, 210 NW 677, and later cases, overruled.) Thiele v. Green Bay, 206 W 660, 238 NW 834.

Evidence that a city had permitted an accumulation of snow and ice on a sidewalk extending along the side of a windswept athletic field owned by the city, with rough, uneven, ridged ice underneath the snow, and that a pedestrian slipped on top of a ridge where it was slippery, but did not trip, was insufficient to render the city liable for the injuries thereby sustained. (Hyer v. Janesville, 101 W 371, and Steele v. Chippewa Falls, 217 W 1, applied.) Thomas v. Appleton, 256 W 163, 40 NW (2d) 575.

A natural accumulation of ice and snow may constitute an actionable defect without there being any structural defect. To constitute a defect the ice must, while adhering to the walk, assume a form which would be a structural defect if the walk itself were so constructed. If at the beginning of the 3-week period there was an accumulation of snow or ice in such ridged or rutted condition as to constitute an actionable defect and if such accumulation continued in substantially the same condition for 3 weeks or more recovery may be had by reason of such defect even though there was some incidental change in the surface due to freezing and thawing or adding to the accumulation caused by snowfall. Trobaugh v. Milwaukee, 265 W 475, 61 NW (2d) 866.

81.15, Stats. 1955, applies only to a natural accumulation of snow or ice, and not to an accumulation artificially created by the municipality. This section makes no distinction between the negligence of a city in causing the insufficiency of a sidewalk and negligence of the city in allowing such a condition to exist. Laffey v. Milwaukee, 8 W (2d) 467, 99 NW (2d) 743.

Liability of municipal corporation for failure to remove accumulations of ice or snow. 1961 WLR 668.

11. Notice of Injury.

Proof that notice was given must be made. Schroth v. Prescott, 63 W 652, 24 NW 405.

If a minor is injured notice may be given by his natural guardian. Reed v. Madison, 83 W 171, 53 NW 547.

Notice of injury need not be personal but when sent by mail to an officer of the town is sufficient. Small v. Prentice, 102 W 256, 78 NW 415.

The question whether notice is served may be a question for the jury. Hildman v. Phillips, 106 W 611, 82 NW 566.

The notice need not be served in order to allow recovery for the death of a person resulting from the insufficiency of a highway. Laconte v. Kenosha, 149 W 343, 135 NW 843.

Since the amendment by ch. 305, Laws 1899, notice of injury is not rendered insufficient or invalid by failure to describe correctly the defect, if there was no intention to mislead and the municipality was not in fact misled. Steinke v. Oshkosh, 159 W 124, 149 NW 715; Frankfort G. Ins. Co. v. Milwaukee, 164 W 77, 159 NW 581.

The notice which a person injured is required to give is insufficient if it omits to state "that satisfaction therefor is claimed of such municipality." The statutory notice is a prerequisite to a recovery. Hogan v. Beloit, 175 W 199, 184 NW 687.

In an action against a city for injuries sustained by one coasting on a street, a portion of which was blocked off by the city for coasting purposes, in colliding with a sleigh parked on the street by an abutting property owner, the complaint, sustainable only if charging a failure of the city to perform its statutory duty to maintain the street in a reasonably safe and sufficient condition, is demurrable for failure to allege the giving of written notice of injury to the city within the time required. Skiris v. Port Washington, 223 W 51, 269 NW 556.

Where the plaintiff alleged in her notice of injury to the city and in her complaint that her injury was caused by the presence of metal spikes protruding several inches above the crosswalk, and introduced proof at the trial that her fall was caused by her foot becoming wedged between a protruding bent spike and a plank, the fact that the plaintiff did not also introduce proof in support of an additional allegation in the notice of injury and complaint, that her injury was caused by the presence of rotted openings in the planks, was not a fatal variance or material conflict or inconsistency, and did not render the notice of injury misleading and insufficient. Fay v. Green Bay, 240 W 36, 1 NW (2d) 767.

A complaint to recover damages against a county, for its negligent repair of a highway, which alleges the giving of the notice to the county clerk specified by 81.15, Stats. 1955, but which fails to allege the filing of a claim for such damages, as required by 59.76 and 59.77, is subject to demurrer, and particularly where the notice alleged to have been given did not comply with the requirements of 59.77 in at least the important particular of stating the amount of the plaintiff's claim. Strict compliance with 59.76 and 59.77 is required as a condition precedent to an action for a money judgment against the county. Firemen's Ins. Co. v. Washburn County, 2 W (2d) 214, 85 NW (2d) 840.

The right of a plaintiff to maintain an ac-

tion against a municipality for injuries caused by a defect in a city street or sidewalk is purely statutory, and the conditions imposed, requiring the giving of written notice within 30 days, stating the place of accident, the insufficiency or want of repair, and that satisfaction is claimed of the city, are precedent to a right of action against the city, so that failure to allege compliance with them in a complaint against a city is fatal on general demurrer thereto by the city. Rudolph v. Currer, 5 W (2d) 639, 94 NW (2d) 132.

A city may be estopped by statements of the mayor as to how to make a claim from asserting the defense that no written notice was filed. Lang v. Cumberland, 18 W (2d) 157, 118 NW (2d) 114.

The notice requirement is a condition precedent upon the right to maintain an action and not a limitation upon the time of commencement thereof. Nothing in Holytz v. Milwaukee, 17 W (2d) 26 (1962), changed the effect of the notice requirement. The contention that the 120 day statutory time within which suit may be instituted, when applied to minors, was arbitrary and unreasonable and hence unconstitutional had no merit. Ocampo v. Racine, 28 W (2d) 506, 137 NW (2d) 477.

As to tort actions arising out of highway defects 81.15 controls over 895.43 and the failure to give notice is a bar even though the city had actual notice. Raisanen v. Milwaukee, 35 W (2d) 504, 151 NW (2d) 129.

See note to 895.43, citing Dusek v. Pierce County, 42 W (2d) 498, 167 NW (2d) 246.

12. Husband or Parent.

The proviso added to sec. 1339 by ch. 305, Laws 1899, as to action by husband or parent does not exempt the municipality from liability to the person injured, but simply deprives the husband or parent of the right of action for loss of services. Johnson v. Eau Claire, 149 W 194, 135 NW 481.

The gist of an action by parents to recover damages sustained in consequence of the loss of a child by drowning in a water hole located partly in a highway is negligence, even though the water hole be an "attractive nuisance." Matson v. Dane County, 177 W 649, 189 NW 154.

A minor, suing a county for injury sustained by reason of a defective highway, is not entitled to recover medical expenses on the ground that the father had assigned all his claims to the son, since the father under this section had no right of action against the county. An emancipated minor may recover for such medical expenses. Tande v. Vernon County, 226 W 602, 276 NW 359.

81.17 History: 1889 c. 471 s. 1, 2; Ann. Stats. 1889 s. 1339b, 1339c; Stats. 1898 s. 1340a; 1923 c. 108 s. 101; Stats. 1923 s. 81.17; 1943 c. 334 s. 76.

Ch. 471, Laws 1889, applies to cities whose charters contain different provisions; it applies to an injury for which suit was pending at the time it took effect. The injured party need not exhaust his remedy against the principal wrongdoer; but he may proceed against both at the same time. Raymond v. Sheboygan, 76 W 335, 45 NW 125.

Where a city is liable for defects in a sidewalk caused by the negligence of another, such other is made primarily liable. Smith v. Clayton C. Co. 189 W 91, 206 NW 67.

Primary liability of an abutting owner for injuries on the nonroadway part of street can arise only when by some independent, active negligence on his part he creates a situation for which the municipality is not primarily liable. Brown v. Milwaukee T. R. Co. 199 W 575, 224 NW 748.

Under 81.17, Stats. 1945, a county is a "person" which may be sued with a city in a proper case. Holl v. Merrill, 251 W 203, 28 NW (2d) 363.

An abutting owner who obstructs or interferes with a road or sidewalk in such way as to create a dangerous and defective condition is guilty of maintaining a nuisance, and is primarily liable to a party injured because of the defect, while the municipality which has the duty of keeping the highway free from such obstructions or defects is secondarily liable. The evidence supported the jury's finding that a defect in a city curb was caused by activities of the abutting owner in building its own curb and in asphalting the former grass strip from the curb to the sidewalk. First Nat. Bank & Trust Co. v. S. C. Johnson & Sons, 264 W 404, 59 NW (2d) 445.

If both a property owner and a city are liable because of a defect in the highway, whether that be a nuisance or otherwise, the city is only secondarily liable and need pay only that part of the judgment which the plaintiff has been unable to collect from the property owner, so that, in such a case, the property owner can have no cause of action to recover from the city anything which he has had to pay the plaintiff. Weis v. A. T. Hipke & Sons, Inc. 271 W 140, 72 NW (2d) 715.

One who negligently creates an artificial accumulation of ice on a public sidewalk may be liable to one injured thereby. Where the property owner was guilty of affirmative conduct creating a condition dangerous to passers-by rightfully using the sidewalk, and the pedestrian had no reason to expect ice when the streets and sidewalks were otherwise clear, a pedestrian properly using a sidewalk without reason to believe it defective is not bound to scrutinize its surface constantly for defects, and the trial court's apportionment of the total causal negligence at 90 per cent to the property owner and only 10 per cent to the pedestrian will not be disturbed as contrary to the great weight and clear preponderance of the evidence. Heims v. Hanke, 5 W (2d) 465, 93 NW (2d) 455.

81.17, Stats. 1957, is intended to establish the order of responsibility where both an abutting property owner and a city are at fault for the condition of a defective sidewalk, and it is not intended to eliminate, in such circumstances, compliance with the notice and other requirements of 81.15. Rudolph v. Currer, 5 W (2d) 639, 94 NW (2d) 132.

Abutting owners and users of a sidewalk may be held liable for obstructions or dangerous conditions on the sidewalk, resulting from negligence. Abutting owners who obstruct or interfere with a road or sidewalk in such a way as to create a defective and dangerous condition may be held liable for maintaining a

nuisance; but in order to substantiate a claim of nuisance, it must be shown that the dangerous condition existed long enough so that by the exercise of ordinary care the defendant could have discovered the danger and removed it before the accident. Kunz v. Wauwatosa, 6 W (2d) 652, 95 NW (2d) 760.

A "wrong" means a breach or violation of a duty or the doing of injury to another, "default" implies a failure to perform a legal duty or failure to do a required act, and "negligence" implies either an overt act or a failure to perform a required act or duty, none of which was chargeable against a county where the defect in the public sidewalk adjacent to its property arose as a result of the natural growth of the roots of a tree located on its property. Hei v. Durand, 22 W (2d) 101, 125 NW (2d) 341.

81.35 History: 1869 c. 59 s. 1, 2; R. S. 1878 s. 1346; 1891 c. 49; Stats. 1898 s. 1346; 1923 c. 108 s. 236; Stats. 1923 s. 86.13; 1943 c. 334 s. 78; Stats. 1943 s. 81.35.

A person owning land on one side of a highway which borders on the other side on a lake, has neither a common law nor a statutory right to construct a channel or tunnel under or across such highway, even though he owns the fee subject to the easement. Lawler v. Brennan, 150 W 115, 134 NW 154, 136 NW 1058.

The owner of abutting lands may use the opening under a bridge on a highway as a tunnel for the passage of stock under proper restrictions. 6 Atty. Gen. 117.

81.36 History: 1885 c. 175; 1889 c. 509; Ann. Stats. 1889 s. 1347b; 1891 c. 367; Stats. 1898 s. 1347b; 1899 c. 197 s. 1; 1903 c. 424 s. 1; Supl. 1906 s. 1347b; 1909 c. 255; 1923 c. 108 s. 237; 1923 c. 446 s. 1; Stats. 1923 s. 86.14; 1943 c. 334 s. 79; Stats. 1943 s. 81.36.

Where a bridge broke down under an engine, and the owner did not span the bridge with plank as required by ch. 367, Laws 1891, he could not recover for injury to the engine. Welch v. Geneva, 110 W 388, 85 NW 970.

When the engine is approaching a team standing still there is no duty to signal or to stop. Cudd v. Larson, 117 W 103, 93 NW 810.

In the absence of a causal relation between the failure to comply with this statute and the breaking of a bridge, there can be no recovery by the plaintiff. Walker v. Ontario, 118 W 564, 95 NW 1086.

Where complaint shows that a traction engine with its equipment exceeds 7 tons in weight, and that the bridge broke when the engine was on it, and that the plaintiff had failed to span the bridge with planks as required, it fails to state a cause of action for insufficiency of the bridge, even though it alleges that the accident was due to the want of repair of the bridge and that the failure to put planks on the bridge did not contribute to the injury, and that the engine alone weighing less than 7 tons was on the span of the bridge which gave way. Stone v. Tilden, 122 W 290, 99 NW 1026.

The use of highways and bridges by traction engines is justified by sec. 1347b, Stats. 1898, as amended, and it is the duty of the proper authorities to keep such highways and bridges in proper condition for such use. The question as to the insufficiency of the highway is for the jury. Johnson v. Highland, 124 W 597, 102 NW 1085.

Sec. 1347b, Stats. 1898, has no application to damage caused by a thresher moving along the highway coming in contact with a guy wire of a telephone line. Chant v. Clinton T. Co. 130 W 533, 110 NW 423.

81.38 History: 1869 c. 152 s. 115, 116; R. S. 1878 s. 1319; 1879 c. 126; 1881 c. 315; 1885 c. 187; 1889 c. 508; Ann. Stats. 1889 s. 1319; 1895 c. 180; 1897 c. 269; Stats. 1898 s. 1319; 1903 c. 225 s. 1; 1905 c. 288 s. 1; Spl. S. 1905 c. 1 s. 1; Supl. 1906 s. 1319; 1909 c. 397; 1911 c. 435; 1919 c. 458; 1921 c. 341; 1923 c. 108 s. 246; 1923 c. 446 s. 3; Stats. 1923 s. 87.01; 1925 c. 454 s. 7; 1929 c. 70; 1937 c. 52; 1943 c. 334 s. 80; Stats. 1943 s. 81.38; 1945 c. 118; 1959 c. 237; 1965 c. 273; 1969 c. 435.

In mandamus proceedings to compel a county board to levy a tax for repairing or building bridges after a petition has been presented, the allegations of the petition are conclusive as to the necessity for repairing or building; and the town board has power to determine the general character of the repairs or of the bridge to be built and to fix the amount necessary to be expended for the purpose; and to determine the location, within the limits of highways, where bridges shall be built. The amount of the equalized valuation of the property in the town cannot be alleged to be fraudulent in such a proceeding. It is essential to the right of a town which seeks to compel the county board to levy a tax for building or repairing bridges to make an estimate or determination of the cost of doing so, before the petition is presented to the county board. The town need not adopt plans and specifications, but simply fix the expense of the improvement as near as possible. State ex rel. Star Prairie v. St. Croix County, 83 W 340, 53 NW 608.

To give a county jurisdiction under sec. 1319, Stats. 1898, to aid the towns, the conditions prescribed must be fulfilled by the towns. Where 2 towns are jointly liable for the maintenance of a bridge their concurrent action is necessary to give the county jurisdiction. State ex rel. Shawano County v. Sexton, 124 W 352, 102 NW 24.

There is no authority to levy a general county tax to pay for a portion of a town bridge after its construction. State ex rel. Hamburg v. Vernon County, 145 W 191, 130 NW 104.

Property in a city required by law to maintain its own bridges is not taxable under sec. 81.38, Stats. 1915, for the building of bridges in towns. Rinder v. Madison, 163 W 525, 158 NW 302.

The term "bridge" does not include tunnels or excavations through or under obstructions to the highway. 1908 Atty. Gen. 982.

Where the amount raised by a town for building a bridge is, when taken with the aid received from the county and state, insufficient for that purpose, upon the town taking the proper proceedings before the bridge is built, the county is obliged to contribute its share of the additional amount required. 3 Atty. Gen. 82.

The county highway commissioner has no

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Definitions used in Standard Specifications for Road and Bridge Construction should be used to determine whether or not a span is a "bridge" and eligible for county aid in construction. 46 Atty. Gen. 202.

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

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

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

CHAPTER 83.

County Highways.

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

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

On eligibility for office see notes to 66.11.

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

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

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

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

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

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