

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 86.

Miscellaneous Highway Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to be an obstruction. *Jennings v. Johannott*, 149 W 660, 135 NW 170.

An obstruction of a public highway in any of the modes described in sec. 1326, Stats. 1915, is a crime punishable in a criminal action. Although not specifically enumerated in the section a fence wilfully placed in the traveled track constitutes an obstruction within its meaning. It is included within the language "other materials or substances intended or calculated to impede or incommode the lawful use of such highway." *Collins v. State*, 162 W 349, 156 NW 133.

86.025 History: 1903 c. 52 s. 1, 2; 1905 c. 183 s. 1; Supl. 1906 s. 1296b; 1911 c. 663 s. 149; 1923 c. 108 s. 216; Stats. 1923 s. 4446e; 1925 c. 4; Stats. 1925 s. 343.485; 1955 c. 696 s. 125; Stats. 1955 s. 86.025.

86.03 History: 1868 c. 87 s. 3; 1869 c. 152 s. 110, 111, 122, 127, 132; R. S. 1878 s. 1328, 1329, 1341, 1342, 1343, 1345; Stats. 1898 s. 1328, 1329, 1341, 1342, 1343, 1345; 1911 c. 459; Stats. 1911 s. 904m, 1328, 1329, 1341, 1342, 1343, 1345; 1919 c. 691 s. 62; Stats. 1919 s. 1328, 1329, 1341, 1342, 1343, 1344m, 1345; 1923 c. 43; 1923 c. 108 s. 217, 219, 220, 230 to 232, 234; 1923 c. 414 s. 2, 3; 1923 c. 446 s. 1; Stats. 1923 s. 86.03, 86.07, 86.08, 86.09, 86.11, 4446f; 1925 c. 4; Stats. 1925 s. 86.03, 86.07, 86.08, 86.09, 86.11, 343.486; 1943 c. 334 s. 140, 141; Stats. 1943 s. 86.03, 343.486; 1955 c. 696 s. 24, 126; Stats. 1955 s. 86.03.

Under sec. 1341, R. S. 1878, trees that are not reserved for the owner may be used for the repair of the highways. *Huston v. Fort Atkinson*, 56 W 350, 12 NW 444.

If the penalties imposed by sec. 1345, R. S. 1878, cannot be recovered for cutting down shade trees in a street because it had not been declared to be a public highway there may at least be a recovery for the trespass. *Andrews v. Youmans*, 78 W 56, 47 NW 304.

In addition to the authority of the village board, consent of the adjacent property owner must be obtained before a public service corporation may trim trees located in a public street. 9 Atty. Gen. 333.

86.04 History: 1869 c. 152 s. 102 to 108; R. S. 1878 s. 1330 to 1336; 1883 c. 31; Ann. Stats. 1889 s. 1332 to 1336; 1891 c. 154 s. 1, 2; 1891 c. 360 s. 2 to 4; Stats. 1898 s. 1330 to 1336; 1913 c. 83; 1923 c. 108 s. 221 to 227; 1923 c. 446 s. 2, 4; Stats. 1923 s. 86.04 to 86.06; 1939 c. 519; 1943 c. 334 s. 142 to 144; Stats. 1943 s. 86.04; 1967 c. 276 ss. 39, 40; 1969 c. 87; 1969 c. 500 s. 30 (2) (d), (e).

Under sec. 102, ch. 152, Laws 1869, upon an order requiring removal of fence or other fixture, if the occupant of land merely denies that the locus is a highway he becomes liable, upon failure to remove the obstruction as required, to the penalty prescribed by sec. 103, ch. 152, Laws 1869, if the land is a highway laid out and opened according to law. *State ex rel. Reynolds v. Babcock*, 42 W 138.

If the supervisors attempt to remove as an encroachment a fence which is not upon the highway they may be restrained from doing so. The action need not be brought against the town. *Uren v. Walsh*, 57 W 98, 14 NW 902.

The failure of the supervisors to cause the

removal of a fence which encroaches upon a highway is not an abandonment of the way. *State v. Wertz*, 62 W 184, 22 NW 150.

The penalty prescribed by sec. 1326, R. S. 1878, for the obstruction of a highway cannot be recovered for a mere encroachment. A fence which occupies part of a highway without hindering or rendering dangerous travel thereon is an encroachment. *State v. Pomeroy*, 73 W 664, 41 NW 726.

The right of an abutting landowner to use temporarily a part of the street for carrying on building operations upon his land does not arise from his ownership of the fee of one-half the street, but is founded on reasonable necessity alone; and the extent of the right depends upon the necessities of the situation, and is subject to reasonable municipal regulation. *Raymond v. Keseberg*, 84 W 302, 34 NW 612.

If the supervisors and pathmaster act unlawfully in the removal of a fence which is alleged to be an encroachment the town is liable for their acts and is a proper party to an action to restrain them. *Nicolai v. Vernon*, 88 W 551, 60 NW 999.

The fact that a person has encroached upon a road for many years does not bar the town from having it opened to its full width as originally surveyed and laid out. *Nicolai v. Davis*, 91 W 370, 64 NW 1001.

An action in equity brought to enjoin town officers from removing a fence, which they claimed to be an encroachment upon the highway, is not founded on the same cause of action as one brought to recover the penalty for a fence which encroached upon the highway. *Swennes v. Sprain*, 120 W 68, 97 NW 511.

A fence erected with the bona fide belief that it was on the town line, wholly outside the limits of the highway as originally attempted to be laid out, and at no point nearer than 2½ feet from the traveled track, is at most an encroachment, and not an obstruction which may be summarily removed. *Konkel v. Pella*, 122 W 143, 99 NW 453.

The owner of land bordered by a highway does not encroach by an excavation on his own land and outside of the lines of the highway as originally laid out if the traveled track in that locality is and has been within the limits of the highway as laid out. *Howard v. Brunette*, 158 W 5, 147 NW 995.

The "occupant" of land upon whom the order referred to in sec. 1330, Stats. 1913, was required to be served was the man who was in possession of and lived on the premises, managing and operating the farm and having control thereof, notwithstanding the fact that his sister owned a half interest in the property and lived on the premises with him. And an order sufficiently specified the extent of an encroachment which designated the center line of the highway, its width, the land to which the fences, which were crooked and irregular, were appurtenant and that portion of the highway upon which they encroached. *Mineral Point v. Kealy*, 164 W 351, 160 NW 63.

In an action by a town to recover a penalty for the encroachment of a highway the burden is on the town to show that the locus in quo was a public highway. *State v. Halvorson*, 187 W 611, 205 NW 426.

Where, in an action under 269.56, Stats. 1945, for a declaratory judgment determining the rights of the state and the defendants in lands traversed by a state trunk highway, there was no dispute as to the location of the buildings which were alleged to encroach on the highway, and the only litigated question, determined in favor of the state, was as to the title to the land on which it was alleged the buildings encroached, the trial court had jurisdiction to order the defendants to remove the encroaching buildings, within the rule that a municipality may maintain an action in equity to compel the removal of an encroachment where the title to land is in question notwithstanding that 86.04 prescribes a procedure for causing encroachments to be removed. *State v. Jewell*, 250 W 165, 26 NW (2d) 825, 28 NW (2d) 314.

86.04, Stats. 1939, does not grant authority to prohibit, as an encroachment, the mere use of the nontraveled portion of the highway. 28 Atty. Gen. 644.

86.05 History: 1929 c. 386; 1929 c. 516 s. 8; 1929 s. 81.34; 1943 c. 334 s. 145; Stats. 1943 s. 86.05; 1955 c. 340.

A town is not required to build bridges or culverts along a highway on the right of way to enable abutting owners to gain access to the highway, except one such bridge or culvert as provided in 81.34, Stats. 1935. 25 Atty. Gen. 720.

86.05, Stats. 1947, applies where an existing ditch along a highway is deepened by cleaning out and cutting so as to deprive the property owner of his former access to the highway, and he is entitled to have a suitable entrance to his premises constructed as a part of the improvement. 37 Atty. Gen. 32.

Where a county has made a highway improvement involving the cutting, filling or grading of a highway in front of an entrance to abutting premises and has provided the owner with a suitable entrance as required by 86.05, Stats. 1947, it is under no obligation to provide additional entrances at other points along the highway to subsequent purchasers of parcels of land from said original owner. 37 Atty. Gen. 262.

Unity of ownership is not a deciding factor in the restoration of existing driveways, but the use and independence as economic units of the properties should control. 46 Atty. Gen. 200.

86.06 History: 1919 c. 684; Stats. 1919 s. 1326o; 1923 c. 108 s. 92; 1923 c. 446 s. 1; Stats. 1923 s. 81.10; 1943 c. 334 s. 146; Stats. 1943 s. 86.06.

The right of a town board to erect and maintain barriers on a public highway is limited to such time as is reasonably required to restore the highway to such condition that it may be safely used for public travel. *State ex rel. Wollner v. Schloemer*, 200 W 350, 228 NW 487.

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

86.07 History: 1915 c. 533 s. 17; Stats. 1915 s. 1317m—9 sub. 10; 1917 c. 431; Stats. 1917

s. 1317m—9 subs. 10, 11a; 1923 c. 108 s. 141; 1923 c. 446 s. 1; Stats. 1923 s. 83.10; 1943 c. 334 s. 147, 147a; Stats. 1943 c. 86.07; 1945 c. 320; 1959 c. 639 s. 3a; 1967 c. 224; 1969 c. 500 s. 30 (2) (e).

86.07 (2), Stats. 1953, does not authorize restoration of a highway to its former condition by the highway authority maintaining the highway once that authority has granted a permission for the alteration. *Russell Dairy Stores v. Chippewa Falls*, 272 W 138, 74 NW (2d) 759.

It is the duty of a county highway committee to grant a permit to a gas company to replace a gas main in a highway with a larger main, under conditions, restrictions, etc., contemplated by 83.10 (2), Stats. 1923. There is no right to consider, on the application for a permit, objections of remonstrants based on complaints of unsatisfactory rates charged, that a larger main will serve other localities, or that easements have not been procured from abutting property owners for laying of such main. 12 Atty. Gen. 347.

86.075 History: 1963 c. 572; Stats. 1963 s. 86.075.

86.08 History: 1937 c. 357; Stats. 1937 s. 82.02 (19); 1941 c. 124; 1943 c. 334 s. 148; Stats. 1943 s. 86.08; 1947 c. 429; 1949 c. 229; 1969 c. 500 s. 30 (2) (e).

Highways must be made dust-free at all points within 400 feet of any part of a licensed dairy plant. To do this it may be necessary that the 400 feet be measured from one or more parts of each particular plant depending upon the location of the highway or highways with reference thereto. 36 Atty. Gen. 432.

86.08 (2), Stats. 1947, created by ch. 429, Laws 1947, relating to dust-free highway surfacing at dairy plants, became operative on its passage and it is the duty of a county to cause such work to be done where the local unit of government failed to do so by June 1, 1947. The state highway commission or other state officers have no duty to compel the county highway commissioner to perform the dust-free surfacing required under the statute. The attorney general cannot advise how a private litigant should proceed against a county or its officers. 36 Atty. Gen. 451.

86.09 History: 1923 c. 94; Stats. 1923 s. 80.48 (7); 1943 c. 334 s. 149; Stats. 1943 s. 86.09.

86.10 History: 1923 c. 446 s. 2; Stats. 1923 s. 87.16; 1943 c. 334 s. 151; Stats. 1943 s. 86.10.

87.16, Stats. 1937, does not apply to bridges on discontinued highways. *Carpenter v. Spring Green*, 231 W 72, 285 NW 409.

86.105 History: 1947 c. 262; Stats. 1947 s. 86.105.

It is common knowledge that snowplowing of public highways causes large amounts of snow to be piled into private driveways, creating a greater obstruction than already existed. The removal of snow is an emergency situation and public safety of the community in general is directly affected. *Heimerl v. Ozaukee County*, 256 W 151, 40 NW (2d) 564.

Proposed amendments of 86.105 are discussed in 42 Atty. Gen. 88; and later proposed

amendments of 86.105 are discussed in 50 Atty. Gen. 98.

86.11 History: 1887 c. 493; Ann. Stats. 1889 s. 1299c; Stats. 1898 s. 1299h; 1923 c. 108 s. 106; 1923 c. 446 s. 1; Stats. 1923 s. 81.18; 1929 c. 114; 1943 c. 334 s. 152; Stats. 1943 s. 86.11.

A railroad company is not liable for any of the expense of a subway in a town highway unless it assumes such expense in whole or in part by agreement with the town; and it cannot be compelled to pay damages to the owner of the land cut down to provide approaches to the subway. Application of Doss, 171 W 52, 174 NW 718.

86.12 History: 1913 c. 377; Stats. 1913 s. 1299h-9; 1923 c. 108 s. 107; Stats. 1923 s. 81.19; 1943 c. 334 s. 153; Stats. 1943 s. 86.12.

It is not necessary for a railroad company to maintain a greater width than that used for public travel. Schuenemann v. Director General of Railroads, 177 W 218, 187 NW 983.

A railroad company need not pave the outside of its right of way. State v. Chicago, M. & St. P. R. Co. 182 W 605, 197 NW 247.

86.13 History: 1907 c. 120; Stats. 1911 s. 1299h-1; 1915 c. 97; 1921 c. 475; 1923 c. 108 s. 108; 1923 c. 446 s. 4; Stats. 1923 s. 81.20; 1939 c. 249; 1943 c. 334 s. 154; Stats. 1943 s. 86.13.

Under sec. 1299h-1, Stats. 1921, there can be no liability on the part of the railroad company for the cost of paving the highway space outside of its right of way and fronting adjacent depot grounds. State v. Chicago, M. & St. P. R. Co. 182 W 605, 197 NW 247.

86.14 History: 1869 c. 152 s. 119; 1876 c. 230 s. 2; R. S. 1878 s. 1325; Stats. 1898 s. 1325; 1911 c. 642; Stats. 1911 s. 1322m, 1322n, 1322o, 1325; 1919 c. 269; 1923 c. 108 s. 252; 1923 c. 446 s. 4; Stats. 1923 c. 87.07; 1943 c. 334 s. 155; Stats. 1943 s. 86.14; 1951 c. 79, 560; 1969 c. 500 s. 30 (2) (e).

The liability of all persons who participate in subjecting a bridge to an excessive load is absolute, irrespective of the liability of defendants as among themselves. State v. Yellow B. & T. Co. 211 W 391, 247 NW 310.

86.15 History: 1917 c. 334; 1917 c. 579 s. 1, 2; Stats. 1917 s. 959-131, 1347t; 1921 c. 422 s. 33; Stats. 1921 s. 1347t, 1347u; 1923 c. 108 s. 238; Stats. 1923 s. 86.15; 1943 c. 334 s. 156.

86.16 History: 1895 c. 84; Stats. 1898 s. 1329a; 1907 c. 313; 1913 c. 215; 1921 c. 422 s. 43; 1923 c. 108 s. 239; 1923 c. 446 s. 4; Stats. 1923 s. 86.16; 1925 c. 61; 1943 c. 334 s. 157; 1947 c. 302, 327; 1953 c. 274, 631; 1969 c. 500 s. 30 (2) (d), (e).

Official authorization of construction and maintenance of electric power lines along highways does not grant rights in the nature of indeterminate permits in towns. South Shore U. Co. v. Railroad Comm. 207 W 95, 240 NW 784.

A city having annexed territory, including a street in a town, after a public utility corporation had installed, at considerable cost and without objection by the town, electric cables and conduits in compliance with proper engineering standards under the street, following

a written application to the town board for a permit therefor with the verbal consent of the town chairman accompanied by the statement that consent in writing was not necessary, is estopped to deny the lawful presence thereof and the city on annexation of the territory obtained no greater rights than the town would have had. Milwaukee E. R. & L. Co. v. Milwaukee, 209 W 668, 245 NW 860.

Where a high voltage line located 12 feet beyond the limits of a highway had a clearance of 17 feet, there was no violation of the electric code or of 86.16, Stats. 1933, so as to impose liability on the power company for the death by electrocution of an employe of a telephone company which occurred when telephone wires came in contact with the high voltage wire. Nicolai v. Wisconsin P. & L. Co. 227 W 83, 277 NW 674.

A public service company cannot molest shade trees on a public highway without first having its franchise approved by the state highway commission. 9 Atty. Gen. 311.

It is unlawful for a utility company, in construction of a transmission line along a public highway, to cause shade trees in the highway to be injured or destroyed, or to in any way molest such trees, even with the consent of the owner of adjoining land, without permission of the state highway commission; the company and all persons concerned in such acts are liable to penalties provided by law for injury to such trees. 14 Atty. Gen. 358.

86.16, Stats. 1927, does not confer on the state highway commission power to authorize construction of gas lines in a town. 16 Atty. Gen. 501.

A permit granted by a town board to erect electric light poles on a highway must enumerate the particular highways along which poles are to be erected. 16 Atty. Gen. 622.

Corporations within 180.17, Stats. 1929, are given the right to occupy highways and as to such corporations permits granted by a town board or by the state highway commission are police power regulations only and do not confer franchise rights. A permit granted by a town board to any other person or corporation carries with it franchise rights and the granting of such permits is a legislative function in the discretion of the town board. In such cases the commission has power to grant a permit if the town board refuses to do so. 19 Atty. Gen. 378.

Appeal by a corporation to the state highway commission from the determination of a town board under 86.16 (5) need not be determined unless a showing is made that a certificate has been granted by the public service commission. 20 Atty. Gen. 1068.

Under 86.16 (1), Stats. 1937, a permit from the town board is the condition precedent to issuance of construction of transmission line orders by the state highway commission, and such town board permit and approval by the commission are required as to all classes of highways. 28 Atty. Gen. 126.

As a town permit is a condition precedent to the issuance of an order authorizing construction of a transmission line, an applicant for such order to the state highway commission should furnish the commission with the best available evidence as to terms of the per-

mit issued by the town board. If such permit is conditioned, the application should show that conditions have been complied with. 29 Atty. Gen. 260.

86.17 History: 1897 c. 224; Stats. 1898 s. 1347c, 4468a; 1923 c. 108 s. 240; Stats. 1923 s. 86.17, 4468a; 1925 c. 4; Stats. 1925 s. 86.17, 343.701; 1943 c. 334 s. 158; 1955 c. 696 s. 25, 139; Stats. 1955 s. 86.17.

Sec. 1347c, Stats. 1898, does not authorize the driving of cattle to drink out of a ditch in the highway in which the water runs during wet weather. Van Roy v. Watermolen, 125 W 333, 104 NW 97.

86.18 History: 1919 c. 639; 1919 c. 702 s. 62 to 65; Stats. 1919 s. 1310a, 1310b, 1310c; 1923 c. 108 s. 242; Stats. 1923 s. 86.18; 1927 c. 490; 1943 c. 334 s. 159; 1957 c. 132; 1959 c. 640 s. 17; 1963 c. 6; 1965 c. 252.

86.185 History: 1913 c. 754; Stats. 1913 s. 1301m sub. 2; 1923 c. 108 s. 79; Stats. 1923 s. 80.64 (2); 1925 c. 233; 1927 c. 249; 1943 c. 334 s. 6; Stats. 1943 s. 59.08 (44); 1955 c. 651 s. 11, 23; Stats. 1955 s. 86.185.

86.19 History: 1925 c. 96; Stats. 1925 s. 86.19; 1927 c. 346; 1927 c. 478 s. 2; 1937 c. 419; 1943 c. 334 s. 160; 1955 c. 221; 1959 c. 88; 1969 c. 500 s. 30 (2) (e).

Advertising signs erected or maintained on public highways of the state or on line fences along such highways are unlawful, and are subject to removal; persons responsible for their erection are liable to the penalties imposed by 86.19, Stats. 1925, and under the circumstances specified in 343.482 the erection and maintenance thereof may be a violation of that section. 16 Atty. Gen. 150.

Advertising signs, although not on or within the limits or overhanging a highway, if they are so located as to obstruct the view of travelers on a highway as to railroad and highway crossings, or other sources of danger, or by reason of illumination, flashing lights, or other conditions of maintenance or operation, in fact constitute a cause of danger to traffic on highways, are in violation of 86.19 (2), and may also be in violation of 343.482, subjecting them to summary removal, and persons owning or maintaining them to penalties as provided by said statutes. Advertising signs which overhang a highway or revolve within or above it, although supports thereof are on private property without the limits of the highway, to the extent that they so overhang or are brought by their revolutions within or over the highway, are clearly prohibited by 86.19, irrespective of whether they constitute a cause of danger to traffic, and it is the duty of the officers named in said section to cause their removal. The state highway commission may, by regulations prescribed under 86.19 (2), prohibit the erection or maintenance of all advertising signs which it reasonably determines are in fact, by reason of specified types of construction, operation or location in proximity to highways, the cause of danger to traffic; and violations of such regulations will be punishable as provided in 86.19 (3). The statutes referred to and regulations of the state highway commission thereunder are a reasonable exercise of police

power of the state for protection of lives and property of its citizens, and the private right of advertising must yield thereto. 16 Atty. Gen. 303.

A county highway commissioner has power to remove signs placed within the limits of trunk highways, even within the corporate limits of a city or village. 16 Atty. Gen. 627; 17 Atty. Gen. 528.

Campaign material in the form of placards and posters, advertising the candidacy of an individual, are signs, and when placed within the limits of a public street or highway they violate 86.19, Stats. 1937. 27 Atty. Gen. 808.

86.191 History: 1919 c. 313 s. 2; Stats. 1919 s. 4446b; 1925 c. 4; Stats. 1925 s. 343.482; 1955 c. 696 s. 122; Stats. 1955 s. 86.191; 1959 c. 88.

See note to 32.09, citing Smuda v. Milwaukee County, 3 W (2d) 473, 89 NW (2d) 186.

86.192 History: 1919 c. 313 s. 2; Stats. 1919 s. 4446a; 1925 c. 4; Stats. 1925 s. 343.481; 1955 c. 696 s. 121; Stats. 1955 s. 86.192.

86.20 History: 1897 c. 194; Stats. 1898 s. 1786f; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 190.33; 1929 c. 504 s. 31; Stats. 1929 s. 87.054; 1943 c. 334 s. 161; Stats. 1943 s. 86.20.

86.21 History: 1915 c. 231; Stats. 1915 s. 1325m; 1917 c. 24; 1923 c. 108 s. 256; Stats. 1923 s. 87.11; 1937 c. 132; 1941 c. 65; 1943 c. 334 s. 162; Stats. 1943 s. 86.21; 1947 c. 362 s. 2; 1961 c. 653; 1965 c. 252.

86.22 History: 1913 c. 449; 1915 c. 604 s. 28; 1915 c. 636 s. 3; Stats. 1915 s. 1325n; 1923 c. 108 s. 257; Stats. 1923 s. 87.12; 1943 c. 334 s. 163; Stats. 1943 s. 86.22.

86.23 History: 1882 c. 130; Ann. Stats. 1889 s. 1325a; Stats. 1898 s. 1325a; 1923 c. 108 s. 253; Stats. 1923 s. 87.08; 1943 c. 334 s. 164; Stats. 1943 s. 86.23.

86.25 History: 1945 c. 214, 391; Stats. 1945 s. 86.25; 1951 c. 446; 1957 c. 132 s. 15, 16; 1969 c. 500 s. 30 (2) (d), (e).

86.26 History: 1963 c. 131; Stats. 1963 s. 86.26.

86.31 History: 1925 c. 11 s. 4; Stats. 1925 s. 20.49 (8); 1931 c. 22 s. 2; 1931 c. 362; 1933 c. 140 s. 4; 1933 c. 387; 1933 c. 494 s. 3; 1937 c. 286; 1939 c. 42; 1939 c. 142 s. 3; 1941 c. 49 s. 60; 1943 c. 334 s. 2; 1947 c. 431; 1949 c. 499; 1951 c. 373; 1953 c. 318 s. 13; 1953 c. 577, 615; 1953 c. 674 s. 19; Stats. 1953 s. 86.31; 1955 c. 179; 1961 c. 205, 345, 377, 677; 1963 c. 131; 1965 c. 3, 110; 1965 c. 432 s. 6; 1967 c. 92 s. 22; 1967 c. 291 s. 14; 1969 c. 99; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d).

Towns, cities and villages are not entitled to allotments for roads and streets in state parks and Indian reservations. 14 Atty. Gen. 459.

The selection of a town highway to be improved is made by the town; such selection is not effective until approved by the county highway committee; and the work of improvement must be done under supervision of the county highway committee. 16 Atty. Gen. 437; 18 Atty. Gen. 234.

A town may authorize its road improvement for a year to be done by the county and

direct that its allotment for the next year under 20.49 (8), Stats. 1937, be turned over to the county in payment for such work done by a county. 26 Atty. Gen. 522.

A county highway committee may not set a uniform wage scale to be paid by all towns and villages in expending funds allotted. 27 Atty. Gen. 366.

An allotment should not be made to a city for roads over lands owned by a city outside its corporate limits, but to the town in which the lands are located. 27 Atty. Gen. 408.

The term "improvement" as used in 20.49 (8), Stats. 1937, includes grading, surfacing and straightening of curves on highways which are open and used for travel, but does not include purchase of right of way or any construction work on highways which have not been opened and used for travel. 28 Atty. Gen. 160.

Towns are entitled to obtain allotments for improvement of town roads over lands owned by the U. S. government in the Camp McCoy Military Reservation where the state has not ceded jurisdiction over the lands in question to the United States. Roads are "open and used for travel" when they are physically passable and used in fact for travel. 32 Atty. Gen. 191.

The state highway commission must consider a highway as public for purposes of distributing aids if the order establishing it is not open to collateral attack and is not set aside by direct attack. 33 Atty. Gen. 4.

See note to 990.01 (29), citing 41 Atty. Gen. 18.

86.315 History: 1969 c. 470; Stats. 1969 s. 86.315.

86.32 History: 1929 c. 528 s. 2; Stats. 1929 s. 84.10 (1); 1931 c. 22 s. 2; 1935 c. 30, 299, 540; 1943 c. 81; 1943 c. 334 s. 129; 1943 c. 491 s. 11; 1945 c. 391; 1953 c. 318 s. 23; Stats. 1953 s. 86.32; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d).

The term "traffic regulation" as used in 84.10 (1) (b), Stats. 1935, includes upkeep and repair of traffic control signals such as speed signs, stop signs and stop and go lights. 25 Atty. Gen. 211.

Funds may not be used by municipalities for street lighting but may be used for the following purposes when actually performed on selected connecting streets: routine sweeping or cleaning of streets, including flushing or sprinkling with water; painting vehicle or pedestrian lane markings and restricted parking area designations; policing to prevent traffic violations or to apprehend traffic violators; policing for purpose of directing traffic. 30 Atty. Gen. 82.

Funds allotted by the state highway commission to cities for connecting streets may be used to retire bonds where the cost of construction for which the bonds were issued might properly have been paid from such funds in the first instance. 32 Atty. Gen. 345.

86.33 History: 1929 c. 528 s. 2; Stats. 1929 s. 84.10 (2); 1943 c. 334 s. 129; Stats. 1943 s. 84.10 (3); 1945 c. 391; Stats. 1945 s. 84.10 (2); 1953 c. 318 s. 23; Stats. 1953 s. 86.33; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d).

86.331 History: 1943 c. 334 s. 129; Stats. 1943 s. 84.10 (6); 1945 c. 391; Stats. 1945 s. 84.10 (4); 1953 c. 318 s. 23; Stats. 1953 s. 86.331.

86.34 History: 1943 c. 148, 491; Stats. 1943 s. 86.24; 1947 c. 474; 1953 c. 318 s. 26, 27; 1953 c. 616 s. 10; 1953 c. 631 s. 57; Stats. 1953 s. 86.34; 1955 c. 10 s. 80, 81; 1963 c. 118; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (2) (d), (e).

Moneys received in state disaster aid for damage to town bridges under 86.34, Stats. 1953, should be applied solely to the bridge damage and the remaining costs divided by the town and county pursuant to 81.38. Adjustments between the town and county should be made on this basis in cases where their respective shares have been appropriated prior to receiving disaster aid. The county may allow towns to pay their share on an instalment basis under contract pursuant to 59.08 (35). 43 Atty. Gen. 192.

86.35 History: 1931 c. 22 s. 3; 1931 c. 445; Stats. 1931 s. 20.49 (2); 1933 c. 387; 1937 c. 199; 1953 c. 318 s. 6; 1953 c. 320 s. 1; 1953 c. 636; Stats. 1953 s. 86.35; 1957 c. 260 s. 20 to 22; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 500 s. 30 (3) (d), (g).

Appropriations under 20.49 (2) (a), Stats. 1937, are to be expended by various municipalities in construction, improvement and repair of highways. 27 Atty. Gen. 527.

CHAPTER 87.

Flood Control.

87.01 History: 1931 c. 481; Stats. 1931 s. 79.01; 1943 c. 490; Stats. 1943 s. 87.01; 1953 c. 61 s. 86; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (6).

87.02 History: 1931 c. 481; Stats. 1931 s. 79.02; 1943 c. 490; Stats. 1943 s. 87.02; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (6).

On taking private property for public use see notes to sec. 13, art. I; on internal improvements see notes to sec. 10, art. VIII; and on navigable waters see notes to sec. 1, art. IX, and notes to sec. 30.10.

87.03 History: 1931 c. 481; Stats. 1931 s. 79.03; 1943 c. 490; Stats. 1943 s. 87.03; 1965 c. 614 s. 57 (2g).

87.04 History: 1931 c. 481; Stats. 1931 s. 79.04; 1943 c. 490; Stats. 1943 s. 87.04; 1957 c. 523; 1965 c. 252; 1965 c. 614 s. 57 (2g).

87.05 History: 1931 c. 481; Stats. 1931 s. 79.05; 1943 c. 490; Stats. 1943 s. 87.05; 1963 c. 305; 1965 c. 614 s. 57 (2g).

87.06 History: 1931 c. 481; Stats. 1931 s. 79.06; 1943 c. 375 s. 15; 1943 c. 490; Stats. 1943 s. 87.06; 1945 c. 511.

87.07 History: 1931 c. 481; Stats. 1931 s. 79.07; 1943 c. 375 s. 16; 1943 c. 490; Stats. 1943 s. 87.07; 1945 c. 511; 1963 c. 305, 474; 1965 c. 252; 1965 c. 614 s. 57 (2g).

87.075 History: 1965 c. 481; 1965 c. 614 s. 57 (2g); Stats. 1965 s. 87.075.

87.076 History: 1965 c. 481; Stats. 1965 s. 87.076.