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FOREWORD

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

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

Because of the broad scope of highway and street work and the many interrelated provisions of Iowa law, and in the interests of keeping this volume in a convenient and usable size, some Code provisions which have some bearing on the principal subject were of necessity omitted. The volume has been compiled in loose leaf form with the expectation that periodic updates will keep the reader informed regarding changes in the law and/or new laws.

A general index is provided at the end of the text of this volume. Each major topic is divided into relevant subtopics and are accompanied by appropriate Code sections.

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

The reader is cautioned to consult legal counsel on all matters beyond the scope of this text.

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IOWA CONSTITUTION

ARTICLE 1, SECTION 18

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

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

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

1. Construction and application.

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

Court found a "taking" of property by city, requiring acquisition of property and compensation after the city repeatedly brought, dropped and reinstituted eminent domain proceedings, causing a nearly continuous threat to the property and its developmental potential. Substantial interference with use of property so as to constitute a "taking" is a fact question. Osborn v. City of Cedar Rapids, 324 N.W.2d 471 (Iowa 1982).

Condemnor's unavoidable failure to restore the tract to condemnees on time should not deprive condemnees of right to redress in tort, contract or other appropriate proceeding. Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (1971).

Landowner who is dissatisfied with assessment by condemnation commissioners and who desires to appeal to district court must substantially follow the procedure prescribed by chapter 472. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Where there is a temporary closing of a road for improvement, there is no actual "taking" as contemplated by this section, and property owners are not entitled to damages. Blank v. Iowa State Highway Commission, 252 Iowa 1128, 109 N.W.2d 713 (1961).

Testimony of valuation witness of condemnation commission that farm of owners was worth more after construction of new highway than before taking was properly stricken as being in violation of this section. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Provisions of section a limitation on its exercise and should be liberally interpreted. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Restriction or charge for use of navigable streams or lakes is "taking" within this section. Witke v. State Conservation Commission, 244 Iowa 261, 56 N.W.2d 582 (1953).

Should be broadly and liberally construed. Anderlik v. Iowa State Highway Commission, 240 Iowa 919, 38 N.W.2d 605 (1949).

Applies equally within or without municipal corporate limits. Id.

A county board of supervisors may, under the County Home Rule Amendment, regulate the drainage districts within the county on a county-wide basis by adopting ordinances regulating the drainage districts. O.A.G. March 13, 1980.

The Iowa relocation assistance act, § 316.1 et seq., provides for payments separate from and in addition to just compensation payable in condemnation proceedings. O.A.G. November 20, 1970.

2. Drains and drainage, 1908 amendment, construction and application.

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

Same rules apply for levee and drainage districts. Harris v. Board of Trustees of Green Bay Levee and Drainage Dist. No. 2, Lee County, 244 Iowa 1169, 59 N.W.2d 234 (1953).

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

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

Notice of establishment of drainage district not subject to attack where notice not required. Chicago & N. W. R. Co. v. Board of Supervisors Hamilton County, 182 Iowa 60, 162 N.W. 868 (1917), modified on other grounds, 182 Iowa 60, 165 N.W. 390.

Organization of drainage district regulated by character of public use. Hatcher v. Board of Supervisors of Green County, 165 Iowa 197, 145 N.W. 12 (1914).

Separate official organization for each drainage district and vote on officers by people affected not required. Id.

Nothing for Supreme Court to consider where assessment equitably apportioned based on benefits. Farley Drainage Dist. No. 7 v. Hamilton County, 140 Iowa 339, 118 N.W. 432 (1908).

3. Power of state or legislature generally.

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

Power of eminent domain inherent in sovereign and not dependent on constitutional grant. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952), 35 A. L. R.2d 1306.

Power of legislature over roads and streets "plenary," but must pay just compensation. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Legislature may take private property only for: (1) forfeiture for crime, (2) public use under eminent domain, (3) police power, (4) taxing power. Hanson v. Vernon, 27 Iowa 28, 1 Am. Rep. 215 (1869).

Legislature may authorize use of city streets held in fee by city by railroad without compensation. City of Clinton v. Cedar Rapids etc. R. Co., 24 Iowa 455 (1868).

4. Distinction between eminent domain and other powers.

There may be a "taking" without actual invasion or physical appropriation. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

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

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

Zoning ordinance prohibiting business operation not a "taking." City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096, 184 N.W. 823 (1921), 23 A. L. R. 1322.

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

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

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

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

Act authorizing city to extend corporate limits without owners consent unconstitutional. Morford v. Unger, 8 Iowa 82, 8 Clarke 82 (1859).

5. Police power generally, distinguished from eminent domain.

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

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

This section not designed to limit police power. City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096, 184 N.W. 823 (1921), 23 A. L. R. 1322.

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

6. Animals, regulations as to, distinguished from eminent domain.

Where conflicting evidence of reliability of bovine tests, not a "taking." Panther v. Dept. of Agriculture of Iowa, 211 Iowa 868, 234 N.W. 560 (1931).

7. Game and fish regulations, distinguished from eminent domain.

Section 109.14 declaring a dam without a fishway a nuisance not a "taking." State v. Meek, 112 Iowa 338, 84 N.W. 3 (1900), 51 L. R. A. 414, 84 Am. St. Rep. 342.

8. Drains and drainage, regulations as to, distinguished from eminent domain.

Crossing of R. R. right of way and requirement that railway bridge without compensation not a "taking." Chicago etc. Co. v. Board of Supervisors Appanoose County, Iowa, C. C., 170 F. 665 (1908), affirmed, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S., 1117, and 182 F. 301, 104 C. C. A. 583.

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

Abating of dam without fishway not a "taking." State v. Beardsley, 108 Iowa 396, 79 N.W. 138 (1899).

9. Schools, regulations respecting, distinguished from eminent domain.

Organization of school district not a "taking." Thie v. Consolidated etc. School Dist. of Mediapolis, 197 Iowa 344, 197 N.W. 75 (1924).

Condemnation of land for school construction not a violation. Munn v. Independent School Dist. of Jefferson, 188 Iowa 757 176 N.W. 811 (1920).

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

10. Streets and highways, regulations as to, distinguished from eminent domain.

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

Act of 1866 providing for taking of private property for private roads unconstitutional. Ch. J. Bankhead v. Brown, 25 Iowa 540 (1868).

11. Taxation and licensing, distinguished from eminent domain.

No invasion of constitutional rights by requiring person to make written application to National Resources Council when excavating or building on flood plains. Iowa Natural Resources Council v. Van Zee, 261 Iowa 1287, 158 N.W.2d 111 (1968).

Taxation of Missouri R. R. Bridge by city unconstitutional. Arnd v. Union Pac. R. Co., 120 F. 812, 57 C. C. A. 184 (1903).

General advantages and protection afforded by government sufficient benefit to grant power to tax. Dickinson v. Porter, 31 N.W.2d 110 (Iowa 1948).

Blue sky law section 502.1 constitutional. State v. Soeder, 216 Iowa 815, 249 N.W. 412 (1933).

Denial of applicant's permit to sell cigarettes not unconstitutional. Ford Hopkins Co. v. Iowa City, 216 Iowa 1286, 248 N.W. 668 (1933).

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

Act authorizing city to levy tax for benefit of private toll bridge not unconstitutional. Pritchard v. Magoun, 109 Iowa 364, 80 N.W. 512 (1899), 46 L. R. A. 381.

Tax of moneys and credits not unconstitutional. Hutchinson v. Board of Equalization City of Oskaloosa, 66 Iowa 35, 23 N.W. 249 (1885).

Laws 1870 permitting municipal taxation to aid railroads not unconstitutional. Stewart v. Board of Supervisors Polk County, 30 Iowa 9 (1870), 1 Am. Rep. 238, followed in Bonnifield v. Bidwell, 32 Iowa 149 (1871).

Enlargement of municipal boundaries may be "taking." Langworthy v. City of Dubuque, 16 Iowa 271 (1864).

Enlargement of municipal boundaries without owners' consent a "taking." Morford v. Unger, 8 Iowa 82, 8 Clarke 82 (1859).

12. Waters and water courses, regulations as to distinguished from eminent domain.

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

Littoral owner not entitled to compensation where public dock to be erected on public shore. Peck v. Alfred Olsen Const. Co., 216 Iowa 519, 245 N.W. 131 (1932), 89 A. L. R. 1147.

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

Erection of levee and assessment of cost not a "taking." Richman v. Board of Supervisors Muscatine County, 77 Iowa 513, 42 N.W. 422 (1889), 4 L. R. A. 445, 14 Am. St. Rep. 308.

13. Delegation of power.

Condemnation right delegable to railroads because use is public. Reter v. Davenport etc. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952), 35 A. L. R.2d 1306.

Proper delegation of right of eminent domain in legislature. Sisson v. Board of Supervisors Buena Vista County, 128 Iowa 442, 104 N.W. 454 (1905), 70 L. R. A. 440.

When eminent domain delegated to city it has same power as state. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

Off street parking a "public use" though resulting special benefit to private individuals. Ermels v. Webster City, 71 N.W.2d 911 (Iowa 1955).

14. Public use or purpose.

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

As long as use is public use, courts are not concerned with wisdom of law that delegates right to condemn, but it is for court to say whether condemnor has brought itself within the law so that it is empowered to condemn. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Right of eminent domain is a sovereign power limited to public uses or public purposes. Mid-America Pipeline Company v. Iowa State Commerce Commission, 253 Iowa 1143, 114 N.W.2d 622 (1962). City of Emmetsburg v. Central Iowa Telephone Company, 250 Iowa 768, 96 N.W.2d 445 (1959). R. & R. Welding Supply Co. v. City of Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

Courts decide "public use" when constitutionality of legislative grants questioned. Reter v. Davenport etc. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952).

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

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

Condemnor may not reserve to condemnee rights inconsistent with public use. DePenning v. Iowa etc. Co., 33 N.W.2d 503 (Iowa 1948), 5 A. L. R.2d 716.

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

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

Board of railroad commissioners order must comply with public use. Ferguson v. Illinois etc. Co., 202 Iowa 508, 210 N.W. 604 (1926), 54 A. L. R. 1.

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

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

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

Use by entire community not required. Sisson v. Board of Supervisors Buena Vista County, 128 Iowa 442, 104 N.W. 454 (1905), 70 L. R. A. 440.

Right to condemn for railroad right of way is a public one. Stewart v. Board of Supervisors Polk County, 30 Iowa 9 (1870), 1 Am. Rep. 238.

Section prohibits taking of private property for private use. Bankhead v. Brown, 25 Iowa 540 (1868).

15. Extent of use or benefit, public use.

In absence of showing by complaining property owner that restraint imposed on him outweighs collective benefit to people of state, it cannot be said that there is an illegal taking. Iowa Natural Resources Council v. Van Zee, 261 Iowa 1287, 158 N.W.2d 111 (1968).

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

If a use is public its extent is immaterial upon right of eminent domain. Dubuque etc. Co. v. Ft. Dodge etc. Co., 146 Iowa 666, 125 N.W. 672 (1910).

Public use is one which will inure to community as a whole. Sisson v. Board of Supervisors Buena Vista County, 128 Iowa 442, 104 N.W. 454 (1905), 70 L. R. A. 440.

16. Destruction of property, public use.

Destruction of property to prevent spread of fire not "taking." Field v. Des Moines, 39 Iowa 575 (1874), 28 Am. Rep. 46.

17. Particular uses or purposes.

A municipality, through its power of eminent domain, may take over a private water system bond payment of just compensation. O.A.G. (Curnan), April 26, 1978.

Condemnation by power company for power line granted easement only, not a fee. DePenning v. Iowa etc. Co., 239 Iowa 950, 33 N.W.2d 503 (1948), 5 A. L. R.2d 716.

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

Coal shed for sale for private profit not "public purpose." Ferguson v. Illinois etc. Co., 202 Iowa 508, 210 N.W. 604 (1926), 54 A. L. R. I.

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

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

18. Streets and highways, particular uses or purposes.

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

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

Landowner has private property right in highway which, when destroyed, is a taking. Schiefelbein v. U.S., C. C. A., 124 F.2d 945 (1942).

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

Vacation of highway cutting off convenient access a "taking." McCann v. Clarke, 149 Iowa 13, 127 N.W. 1011 (1910), 36 L. R. A., N. S., 1115.

Laws 1874 not unconstitutional in authorizing road to quarry for stone. Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1884).

Erection of embankment instead of bridge, and diverting stream a public use. Reusch v. Chicago etc. Co., 57 Iowa 687, 11 N.W. 647 (1882).

Legislature may authorize condemnation for highway by published and posted notice. Wilson v. Hathaway, 42 Iowa 173 (1875).

City parking lot a "public use." Ermels v. Webster City, 71 N.W.2d 911 (Iowa 1955).

19. Railroads, particular uses.

Probable use by public of spur track sufficient for "public use." Dubuque etc. Co. v. Fort Dodge etc. Co., 146 Iowa 666, 125 N.W. 672 (1910).

Right of way for mine railroad a public way. Morrison v. Thistle Coal Co., 119 Iowa 705, 94 N.W. 507 (1903).

Condemnation of land for channel change by railway a public use. Reusch v. Chicago etc. Co., 57 Iowa 687, 11 N.W. 647 (1882).

Failure of railroad to construct on condemned right of way does not prevent transfer of right of way to another railroad. Noll v. Dubuque etc. Co., 32 Iowa 66 (1871).

20. Levees and dikes, particular uses or purposes.

State and county may be liable as one permitting a nuisance if a proposed dike system becomes such, and they would be liable if the project results in a "taking" of property in violation of this section. O.A.G. April 8, 1968 (No. 68-4-23).

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

21. Drains and drainage, particular uses or purposes.

Increased flow of water through tile drain not "taking." Grimes v. Polk County, 34 N.W.2d 767 (Iowa 1948).

Taking for drainage of agricultural lands proper legislative grant. Sisson v. Board of Supervisors Buena Vista County, 128 Iowa 442, 104 N.W. 454 (1905), 70 L. R. A. 440.

Legislative grant of public benefit for drainage districts too broad. Hatch v. Pottawattamie Co., 43 Iowa 442.

Assessments for drainage not invalid. Oliver v. Monona County, 117 Iowa 43, 90 N.W. 510 (1902).

City may condemn for sewer outside corporate limits and in limits of another city. O.A.G. 1916, p. 59.

22. Property subject to appropriation.

One whose personal property is damaged, destroyed, or reduced in value in a condemnation is as much hurt as if it had been his real estate which the public agency appropriated, and such constitutes a taking for which compensation must be paid. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

"Property" not limited to corporeal thing. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d (1942).

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

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

23. Public property, property subject to appropriation.

Consolidation of property for school district not taking. State v. Grefe, 139 Iowa 18, 117 N.W. 13 (1908).

24. Public use or purpose, property previously devoted to as subject to appropriation.

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

Action of railroad commissioners in fixing rental value on right of way valid. Ferguson v. Illinois etc. Co., 202 Iowa 508, 210 N.W. 604 (1926), 54 A. L. R. 1.

Property devoted to public use cannot again be condemned for inconsistent public use. Town of Alvord v. Great Northern etc. Co., 179 Iowa 465, 161 N.W. 467 (1917).

Substitution of one public use to exclusion of other public uses not "taking." Board of Park Commissioners Des Moines v. Diamond Ice Co., 130 Iowa 603, 105 N.W. 203 (1905), 3 L. R. A., N. S., 1103, 8 Ann. Cas. 28.

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Town may extend street over railroad right of way. Chicago etc. Co. v. Starkweather, 97 Iowa 159, 66 N.W. 87 (1896), 31 L. R. A. 183, 59 Am. St. Rep. 404.

25. Discretion in exercise of delegated power.

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26. Private use, taking for.

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Condemnation not authorized for private road. Richards v. Wolf, 82 Iowa 358, 47 N.W. 1044 (1891), 31 Am. St. Rep. 501.

Laying of drains for benefit of individuals not public use. Fleming v. Hull, 73 Iowa 598, 35 N.W. 673 (1887).

Entering private property for public use without condemnation or compensation a trespass. Hibbs v. Chicago etc. Co., 39 Iowa 340 (1874).

27. Determination of validity of exercise of power or necessity of taking.

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

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

A "taking" does not necessarily mean the appropriation of the fee, but may be anything which substantially deprives one of the use and enjoyment of his property or a portion thereof. Id.

Presumption in favor of municipal determination of public use but presumption not conclusive. In re Primary Road U.S. 30, West of Mechanicsville, Cedar County, Iowa, Project No. F-57, 230 Iowa 1069, 300 N.W. 287 (1941).

Absent fraud, municipal determination of public use not upset by courts. Ermels vs. Webster City, 71 N.W.2d 911 (Iowa 1955).

Courts and not legislature determine public use. Ferguson v. Illinois etc. Co., 202 Iowa 508, 210 N.W. 604 (1926), 54 A. L. R. 1.

Township trustees required to determine public use prior to review by court. Barrett v. Kemp, 91 Iowa 296, 59 N.W. 76 (1894).

Necessity for using eminent domain for legislature not the courts. Bankhead v. Brown, 25 Iowa 540 (1868).

Courts will not inquire into necessity or propriety of taking. Reter v. Davenport etc. Co., 243 Iowa 1112, 54 N.W.2d (1952), 35 A. L. R.2d 1306.

28. Nuisances.

Prior to abatement must show ownership and use. McLane v. Leicht, 69 Iowa 401, 29 N.W. 327 (1886).

29. Right to take.

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

30. Leases.

Lessee is entitled to an award of just compensation for the public taking of his leasehold interest. Twin-State Engineering & Chemical Co. v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

Lessee entitled to reasonable compensation for leasehold taken under condemnation. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

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

31. Urban renewal.

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32. Due process.

Fourteenth Amendment requires due process on condemnation. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

33. Electric transmission lines.

Eminent domain may be exercised in transmission of electric current for public use. Race v. Iowa Electric Light and Power Company, 257 Iowa 701, 134 N.W.2d 335 (1965).

Iowa State Highway Commission may authorize a telephone company to place an underground telephone cable along the untraveled portion of a controlled access highway, within primary road system of the state. O.A.G. March 13, 1970.

34. Partial taking.

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

Where partial takings are involved in an interstate highway project, the landowner is entitled to be compensated not only for the value of his land actually taken but also for diminution of the value of what is left to him after the taking; the proper measure of compensation is the difference between the fair and reasonable market value of the entire ownership immediately before the taking and the fair and reasonable market value of what is left immediately after the taking. Farmland Preservation Ass'n v. Goldschmidt, 611 F.2d 233 (1979).

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

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

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

II. NECESSITY OF COMPENSATION

61. In general, necessity of compensation.

Construction of bridge and causeway in such a manner as to cause greater flooding on adjoining property than previously was a "taking" thereof. Phelps v. Board of Sup'rs of Muscatine County, 211 N.W.2d 274 (Iowa 1973).

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

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

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

Municipality cannot take without payment therefor. Sioux City v. Tott, 244 Iowa 1285, 60 N.W.2d 510 (1953).

Just compensation required for taking by governmental subdivisions. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942). State ex rel. Board of R. R. Com'rs, State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), Certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

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

Fair compensation due owner for taking. DeCastello v. Cedar Rapids, 171 Iowa 18, 153 N.W. 353 (1915). Field v. Des Moines, 39 Iowa 575 (1874), 28 Am. Rep. 46.

Compensation for taking and right to be heard essential elements. Taylor v. Drainage Dist. No. 56, 167 Iowa 42, 148 N.W. 1040 (1914), L. R. A. 1916B, 1193; affirmed, 37 S. Ct. 651, 244 U.S. 644, 61 L. Ed. 1368.

Assessment of damages synonymous with "just compensation." Henry v. Dubuque etc. Co., 2 Iowa 288, 2 Clarke 288 (1856).

Issuance of warrant complies with payment. O.A.G. 1925-26, p. 245.

62. Waiver of or estoppel to claim compensation.

Waiver or part of money damages a limitation on requirement of payment. DePenning v. Iowa etc. Co., 239 Iowa 950, 33 N.W.2d 503 (1948), 5 A. L. R.2d 716.

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

Failure to file claim precluded charge of invalidity of proceedings where no damages appraised. Goeppinger v. Board of Supervisors of Sac, Buena Vista, and Calhoun Counties, 172 Iowa 30, 152 N.W. 58 (1915).

Failure to utilize remedies provided waives right to complain. Tharp v. Witham, 65 Iowa 566, 22 N.W. 677 (1885).

Landowner entitled to damages for right of way taken though he had no right to erect building. Renwich v. Davenport etc. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 226 L. Ed. 51.

Written agreement not complied with does not relieve necessity of compensation. Hibbs v. Chicago etc. R. Co., 39 Iowa 340 (1874).

Failure to claim damages in method prescribed waives question of constitutionality. Abbott v. Scott County Supervisors, 36 Iowa 354 (1873). Dunlap v. Pulley, 28 Iowa 469 (1870).

63. Property and rights subject of compensation.

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

Where corporation obtained necessary permits to erect and operate signs and billboards on its properties, theirs was a vested interest or property right which could not be arbitrarily interfered with. McCray System v. City of Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956).

"Property" subject to taking includes intangibles such as access, light, air and view. Anderlik v. Iowa State Highway Commission, 240 Iowa 919, 38 N.W.2d 605 (1949).

Tenant entitled to compensation for damage to leasehold. Des Moines etc. Laundry v. Des Moines, 197 Iowa 1082, 198 N.W. 486 (1924), 34 A. L. R. 1517.

Owner of abandoned town site property had compensable interest. Independent School Dist. of Marietta, Marshall County v. Timmons, 187 Iowa 1201, 175 N.W. 498 (1919).

Condemnor cannot collect rents from owners in lawful possession of condemned lands and buildings. O.A.G. April 20, 1970.

64. Riparian rights and water rights, necessity of compensation.

Appropriation of river front property improved without sanction of congressional act was federal question as to compensation. Davenport etc. Co. v. Renwick, 102 U.S. 180, 26 L. Ed. 51 (1880).

Compensation not required for taking of land below highwater mark on navigable stream. Barney v. Keokuk, 94 U.S. 324, 24 L. Ed. 224 (1876).

Taking of property on navigable river requires compensation but consequential injuries not compensable. Goodman v. U.S., C. C. A., 113 F.2d 914 (1940).

Drainage of meandered lake not a "taking" from abutting owner. Higgins v. Board of Supervisors Dickinson County, 188 Iowa 448, 176 N.W. 268 (1920).

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

Improvement of Des Moines river city property and controlling its use not "taking." Board of Park Commissioners Des Moines v. Diamond Ice Co., 130 Iowa 603, 105 N.W. 203 (1905), 3 L. R. A., N. S. 1103, 8 Ann. Cas. 28.

Value of spring taken should be considered. Winklemans v. Des Moines etc. Co., 62 Iowa 11, 17 N.W. 82 (1883).

Erection of building between high and low water not required to entitle one to compensation. Renwick v. Davenport etc. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

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

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

65. Easements and rights of way, necessity of compensation.

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

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

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

Pipe line company must give compensation for taking. Browneller v. Natural etc. Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

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

Compensation must be made for taking of public property. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

Postponed payment of crop damage until maturity not violation. Draker v. Iowa Electric Co., 191 Iowa 1376, 182 N.W. 896 (1921).

Right of access is a compensable property right. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

Vacated street occupied by street railway does not require compensation. Tomlin v. Cedar Rapids etc. Co., 141 Iowa 599, 120 N.W. 93 (1909), 22 L. R. A., N. S. 530.

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

Abutting owners have property right in streets subject to proper public use. Cadle v. Muscatine etc. Co., 44 Iowa 11 (1876).

Easement is a compensable interest in land. O.A.G. 1928, p. 112.

66. Payment secured.

Bond conditioned on payment of damages for taking sufficient security. Sisson v. Board of Supervisors Buena Vista County, 128 Iowa 442, 104 N.W. 454 (1905), 70 L. R. A. 440.

67. Payment - time of payment.

Promissory stipulation of taker not sufficient compensation. DePenning v. Iowa etc. Co., 239 Iowa 950, 33 N.W.2d 503 (1948), 5 A. L. R.2d 716.

Ascertainment and payment of amount prior to taking not required. U.S. v. 1.997, 66 Acres of Land, More or Less, in Polk County, Iowa, C. C. A., 137 F.2d 8 (1943).

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

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

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

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

Damages or security therefor must be deposited prior to occupation. Henry v. Dubuque etc. Co., 10 Iowa 540 (1860).

Allowance of damage rather than judgment is final result on appeal. O.A.G. 1925-26, p. 245.

68. Direct or consequential damages, necessity of compensation.

Duty of condemnation commissioners to consider all items of damage and, if requested by condemnee, to divide the damages as to a direct taking and as to those which are consequential. Wilkes v. State Highway Commission, 172 N.W.2d 790 (Iowa 1969).

Destruction of access a direct damage and not consequential. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Damages for property "taken" and not for consequential injuries. Pillings v. Pottawattamie County, 188 Iowa 567, 176 N.W. 314 (1920).

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

No liability in railroad for proper use of streets. O'Connor v. St. Louis etc. Co., 56 Iowa 735, 10 N.W. 263 (1881).

69. Streets and highways, necessity of compensation.

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

Damages payable for loss of light, air, view, and access. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Remedy of landowner not inadequate. Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363 (1923).

Street improvement and assessment of cost based on benefits not a "taking." Hutchins v. Hanna, 179 Iowa 912, 162 N.W. 225 (1917).

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

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

Use of streets by railroad involves no liability where act authorized such action. City of Clinton v. Cedar Rapids, etc. Co., 24 Iowa 455 (1868).

Failure to compensate entitles owner to injunction. Dinwiddie v. Roberts, 1 G. Greene 363 (1848).

70. Change of grade of street or highway, necessity of compensation.

Construction of viaduct not change of grade to preclude payment of damages. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

Excavation of adjoining lot and loss of lateral support not "taking." Talcott Bros. v. Des Moines, 134 Iowa 113, 109 N.W. 311 (1906), 12 L. R. A. N. S. 696, 120 Am. St. Rep. 419.

71. Obstruction of access, necessity of compensation.

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

Unless the question is free from doubt, it is for the jury's determination whether a property owner has been denied reasonable access. Stom v. City of Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

Property owner abutting condemned property cannot be deprived of all access by public authorities without just compensation. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

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

Where only means of ingress and egress for residential site adjoining controlled access highway would be by constructing a private service road parallel to highway between residential site and a driveway provided by state highway commission, another driveway should be permitted from such residential site to the highway or just compensation should be paid for taking of right of

access thereto. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Material interference with ingress and egress a "taking." Gates v. Bloomfield, 243 Iowa 671, 53 N.W.2d 279.

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

City without eminent domain power on access, light, air, or view but controlled by section 389.22. O.A.G. 1949, p. 11.

Destruction of interference with access a "taking." Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Substantial interference with access a "taking." Nalon v. Sioux City, 216 Iowa 1041, 250 N.W. 166 (1933).

72. Vacation of streets or highways, necessity of compensation.

Vacation of highway destroying access a "taking." Schiefelbein v. U.S., C. C. A., 124 F.2d 945 (1942).

Vacation of street or alley without prior assessment of damages authorized. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

Compensation for vacating street is required where access destroyed. Sutton v. Mentzer, 154 Iowa 1, 134 N.W. 108 (1912). Ridgway v. Osceola, 139 Iowa 590, 117 N.W. 974 (1908).

Erection of building on land sold by city which destroyed all access a "taking." Borghart v. Cedar Rapids, 126 Iowa 313, 101 N.W. 1120 (1905), 68 L. R. A. 306.

73. Railroads, necessity of compensation.

Railroads authorized to occupy streets without compensation. Barney v. Keokuk, 94 U.S. 324, 24 L. Ed. 224 (1876).

Authority for railroad to construct viaduct does not relieve liability for "taking." Wulke v. Chicago etc. Co., 189 Iowa 722, 178 N.W. 1009 (1920).

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

Unauthorized erection of building not a bar to recover for taking. Renwick v. Davenport etc. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

Authority to use city street by railroad without compensation proper. Clinton v. Cedar Rapids etc. Co., 24 Iowa 455 (1868).

III. AMOUNT OF COMPENSATION

101. Generally, amount of compensation.

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

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

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

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

Owner of apartment building, later taken by condemnation for public purpose, who, in reasonable anticipation of condemnation but prior to any taking, sold or removed all furnishings therefrom was entitled to no damages assessed for loss in value to personal property. Gaar v. Iowa State Highway Commission, 252 Iowa 1374, 110 N.W.2d 558 (1961).

Generally, no compensation is due a citizen by reason of damage to property from lawful exercise of the police power, but compensation must be made for what is taken by eminent domain. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

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

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

Forced sale of personal property on condemnation not elements of damage. Foster v. U.S., C. C. A., 145 F.2d 873 (1945).

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

Present value and immediate consequences are basis for compensation. Henry v. Dubuque etc. Co., 2 Iowa 288, 2 Clarke 288 (1855).

102. Just compensation.

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

Statutes pertaining to individual drainage rights. Peel v. Burk, 197 N.W.2d 617 (Iowa 1972).

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

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

Just compensation required. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937), 118 A. L. R. 862.

Just compensation to be assessed by jury. Bankhead v. Brown, 25 Iowa 540 (1868).

Fair equivalent in money for property taken required. Henry v. Dubuque etc. Co., 2 Iowa 288, 2 Clarke 288 (1855).

102.5. Nominal damages.

Proceeding to condemn right of way and easement for electric transmission line across part of farm. Danker v. Iowa Power & Light Co., 249 Iowa 327, 86 N.W.2d 835 (1958).

103. Value of land taken, amount of compensation.

A jury may, in determining value of land remaining after condemnation, consider the future uses to which the land may reasonably be put, as well as the advantages the land possesses which a seller would press to the attention

of a buyer. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

Compensation to which condemnees are entitled, for a partial taking, is the difference between fair market value of the entire tract of land immediately before and immediately after condemnation without regard to resultant benefit or betterment. Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (Iowa 1971).

In condemnation action wherein state highway commission sought to condemn strip of land along portion of farm, instruction of court to the effect that test of damages was not what the land was worth to landowners but fair market worth was not erroneous. Hamer v. Iowa State Highway Commission, 250 Iowa 1228, 98 N.W.2d 746 (1959).

Value to owner and loss to him and not necessities of public the test. U.S. v. Foster, C. C. A., 131 F.2d 3 (1943), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138. U.S. v. Buescher, C. C. A., 131 F.2d 3 (1943), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138.

Value before and after the taking only question involved. Eggleston v. Town of Aurora, 233 Iowa 559, 10 N.W.2d 104 (1943).

Value of lots before and after taking proper measure of damages. Fleming v. Chicago etc. Co., 34 Iowa 353 (1872).

104. Growing trees and crops, amount of compensation.

Value of growing crops proper item to consider. Bracken v. Albia, 194 Iowa 596, 189 N.W. 972 (1922).

105. Improvements and fixtures, amount of compensation.

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

Sale of buildings on condemned lots after condemnation and before appeal did not preclude recovery for them by owner. Hollingsworth v. Des Moines etc. Co., 63 Iowa 443, 19 N.W. 325 (1884).

106. Value for special use, amount of compensation.

Jury may award for most advantageous and valuable use. U.S. v. Foster, C. C. A., 131 F.2d 3 (1943), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138. U.S. v. Buescher, C. C. A., 131 F.2d 3 (1943), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138.

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

Contiguous tracts used for different purposes by single owner considered as separate tracts. Hoeft v. State, 221 Iowa 694, 266 N.W. 571 (1936), 104 A. L. R. 1008.

Peculiar adaptability for purpose for which sought may be shown by owner. Tracy v. Mt. Pleasant, 165 Iowa 435, 146 N.W. 78 (1914).

Jury may consider prospective location of depot on railway condemnation. Snouffer v. Chicago etc. Co., 105 Iowa 681, 75 N.W. 501 (1898).

107. Property not taken, amount of compensation.

Damages do not include unlawful acts of condemnor which may result. Fleming v. Chicago etc. Co., 34 Iowa 353 (1872). King v. Iowa Midland R. Co., 34 Iowa 458 (1872).

Denial of damages not warranted where landowner refused to permit removal of buildings. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

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

Damages include damage to entire tract if occupied as a whole even though only part taken. Haggard v. Independent School Dist. of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Value immediately before and immediately after taking, less benefits, is proper measure in city sewer condemnation. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

108. Value of land, property not taken, amount of compensation.

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

Effect of proper use of land taken on balance of tract proper to consider in assessing damages. Kukkuk v. Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Market value before and after condemnation is actual price it may be sold to willing buyer. Watters v. Platt, 167 Wis. 470, 168 N.W. 808 (1918).

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

Value of whole tract prior to taking and value of remainder after taking proper measure. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

Premises after taking with damages assessed should equal in value premises prior to taking. Henry v. Dubuque Co., 2 Iowa 288, 2 Clarke 288 (1855).

109. Injuries to property not taken, amount of compensation.

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

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

Where soil taken in condemnation damages not restricted to value of soil taken. Parott v. Chicago etc. Co., 127 Iowa 419, 103 N.W. 352 (1905).

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

Quality and condition of building and its loss of use proper to consider where building destroyed. Freeland v. Muscatine, 9 Iowa 461 (1859), followed in Kahn v. Muscatine, 9 Iowa 461 (1859).

110. Diminution in value of land not taken, amount of compensation.

State highway commission cannot avoid payment of compensation for the taking of right of access to highway by express waiver of abandonment thereof. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Landowner entitled to reimbursement for difference in fair and reasonable market value before and after. Harris v. Board of Trustees of Green Bay etc. Dist. No. 2, Lee County, 244 Iowa 1169, 59 N.W.2d 234 (1953).

Difference between fair and reasonable market value before and after taking proper. Gregory v. Kirkman Consol. etc. Dist., 193 Iowa 579, 187 N.W. 553 (1922).

Damages not allowed for improper construction of improvement. Richardson v. Centerville, 137 Iowa 253, 114 N.W. 1071 (1908).

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

Immediate and not remote consequences considered. Fleming v. Chicago etc. Co., 34 Iowa 353 (1872).

All circumstances that immediately depreciate value of premises considered and none others. Henry v. Dubuque etc. Co., 2 Iowa 288, 2 Clarke 288 (1856).

Fair market value of premises before and after disregarding benefits the test. Sater v. Burlington etc. Co., 1 Iowa 386, 1 Clarke 386 (1855).

111. Easements or rights of way, amount of compensation.

Landowner seeking recovery for loss of access to his property is not limited to recovery by terms of § 364.15, providing, inter alia that city shall pay owner of property amount of damage or injury by reason of alteration of the established grade of any street; if landowner can show that he had been deprived of reasonable access to his property he may demand compensation under Iowa Const. Art. 1, § 18, for a valuable property right which has been taken. Stom v. City of Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

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

Damages need not necessarily equal amount required to construct another. Gear v. C. C. & D. R. Co., 39 Iowa 23 (1874).

112. Railroads, property not taken, amount of compensation.

Damages are fair value of whole tract before and after appropriation. Henry v. Dubuque etc. Co., 2 Iowa 288, 2 Clarke 288 (1855). Ham v. Wisconsin, etc. Co., 61 Iowa 716, 17 N.W. 157 (1883).

Proper for jury to consider duty of railroad to construct crossing. Lough v. Minneapolis etc. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Proper to instruct that measure of damages fair market value before taking where whole lot taken. Hollingsworth v. Des Moines etc. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Negligence in construction not to be considered but damage to remaining lot may be. Cummins v. Des Moines etc. Co., 63 Iowa 397, 19 N.W. 268 (1884).

Obstruction of view and interfering with privacy proper to be considered. Ham v. Wisconsin etc. Ry. Co., 61 Iowa 716, 17 N.W. 157 (1883).

Where railway through entire farm, instruction on value of separate tracts was error. Winklemans v. Des Moines etc. Co., 62 Iowa 11, 17 N.W. 82 (1883).

Value is in then condition and not as in city lots if not so laid out. Everett v. Union Pac. etc. Co., 59 Iowa 243, 13 N.W. 109 (1882).

Depreciation in market value of entire farm proper and not restricted to value of governmental subdivisions. Hartshorn v. Burlington etc. Co., 52 Iowa 613, 3 N.W. 648 (1879).

Adjacent landowner to street used by railway may recover all damages proximately resulting from its use. Kucheman v. C. C. etc. Co., 46 Iowa 366 (1877).

Where negligent construction, only proper construction is to be considered in assessing damages. Cadle v. Muscatine etc. Co., 44 Iowa 11 (1876).

Owner entitled only to compensation for appropriation. Gear v. C. C. etc. Co., 39 Iowa 23 (1874).

Enhanced value because of improvement not considered. Henry v. Dubuque etc. Co., 5 Iowa (Cole Ed.) 576 (1858).

113. Streets and highways, amount of damages.

Damage may be greater to farm than value per acre when attached to farm. Luthi v. Iowa State Highway Commission, 224 Iowa 678, 276 N.W. 586 (1938).

Fair and reasonable market value before and after condemnation the measure of damages. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932). Randall v. Iowa State Highway Commission, 214 Iowa 1, 214 N.W. 685 (1932).

Damage to be considered as a whole - not separate items. Dean v. State, 211 Iowa 143, 233 N.W. 36 (1930).

Measure is value immediately before and immediately after without considering benefits. Beal v. Iowa State Highway Commission, 209 Iowa 1308, 230 N.W. 302 (1930).

Jury should not award sum of specific items but rather damage as a whole. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

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

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

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

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

If damages for new road located over vacated old road are less than damages for old road owner is entitled to nothing. Jewett v. Israel, 35 Iowa 261 (1872).

114. Expenses necessitated by taking in general, amount of compensation.

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

Recovery for fences not amount expended but is amount reasonable and proper. Bland v. Hixenbaugh, 39 Iowa 532 (1874).

115. Benefits, deduction or set-off of, amount of compensation.

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

Benefits not considered where land taken for school purposes. Gregory v. Kirkman etc. School Dist., 193 Iowa 579, 187 N.W. 553 (1922). Haggard v. Independent School Dist. Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Benefits not considered where land taken for drain. Gish v. Castner etc. Co., 137 Iowa 711, 115 N.W. 474 (1908).

All benefits and advantages are excluded. Britton v. Des Moines etc. Co., 59 Iowa 540, 13 N.W. 710 (1882).

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

Appreciation in value because of improvement not considered. Koestenbader v. Pierce, 41 Iowa 204 (1875).

Benefits because of erection of fences not considered. Bland v. Hixenbaugh, 39 Iowa 532 (1874).

Jury charge to disregard benefits not erroneous. Brooks v. Davenport etc. Co., 37 Iowa 99 (1873).

Drainage and improvement of land not to be considered. Frederick v. Shane, 32 Iowa 254 (1871).

Advantages arising out of improvement not considered. Israel v. Jewett, 29 Iowa 475 (1870). Deaton v. Polk County, 9 Iowa 594 (1859). Sater v. Burlington & Mt. P. etc. Co., 1 Iowa 386, 1 Clarke 386 (1855).

116. General or special benefits, deduction or set-off, amount of compensation.

Benefits excluded mean road itself as well as use made of it. Frederick v. Shane, 32 Iowa 254 (1871).

117. Limited estates or interests in property, amount of compensation.

Leasehold entitled to compensation. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

Tenants recovery is value of unexpired term less rent reserved. Des Moines etc. Laundry v. Des Moines, 199 Iowa 1082, 198 N.W. 486 (1924), 34 A. L. R. 1517.

Where lessee not permitted to connect to viaduct, error to show grant of right to do so. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

Error to show whether leasehold listed for taxation. Id.

Lessee entitled to value of annual use before and after taking. Werthman v. Mason City etc. Co., 128 Iowa 135, 103 N.W. 135 (1905). Renwick v. Davenport etc. Co., 49 Iowa 664 (1878), affirmed 102 U.S. 180, 26 L. Ed. 51.

118. Interest, amount of compensation.

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

Acceptance of award by one tenant does not preclude recovery by another tenant. Ruppert v. Chicago etc. Co., 43 Iowa 490 (1876).

Interest allowed from date of possession. Beal v. Iowa State Highway Commission, 209 Iowa 1308, 230 N.W. 302 (1930).

Interest allowed from date of possession if evidence of that date. Quinn v. Iowa etc. Co., 131 Iowa 680, 109 N.W. 209 (1906).

Interest from first date of month following possession proper. Lough v. Minneapolis etc. Co., 116 Iowa 31, 89 N.W. 77 (1902).

119. Inadequate or excessive compensation.

Evidence in action by landowner seeking award for loss of access to lots fronting on platted but unopened street was inadequate to support verdict. Stom v. City of Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

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

Fair value of property basis even though less than owners investment. Foster v. U.S., C. C. A., 145 F.2d 873 (1945).

$2,000 not excessive for 1.2 acres including trees which are part of landscaping plan. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

$1,020 for easement 100 feet wide over 34 acres not excessive when evidence in conflict. Evans v. Iowa etc. Co. of Delaware, 205 Iowa 283, 218 N.W. 66 (1928).

$3,875 not excessive for 3.9 acres where cattle pass inadequate. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

120. Market value.

In condemnation proceeding, award for taking condemnees right to direct access to and from its business property was not so large as to call for interference of Supreme Court on appeal. Twin-State Engineering & Chemical Co. v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

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

Jury specifically instructed to make award of fair and reasonable market value of interest as of date of condemnation. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

IV. REMEDIES AND PROCEDURE

141. Nature and form of proceeding.

Determination of damages is civil in nature and removable to federal court where other requisites exist. Kirby v. Chicago etc. Co., C. C., 106 F. 551 (1901). Myers v. Chicago etc. Co., 118 Iowa 312, 91 N.W. 1076 (1902).

Taking without compensation subjects taking to action in ejectment. Daniels v. Chicago etc. Co., 35 Iowa 129, 14 Am. Rep. 490 (1872).

Failure to follow remedy provided waives right to resist road opening. Dunlap v. Pulley, 28 Iowa 469 (1870).

Owner only entitled to compensation in manner prescribed by law. Connoly v. Griswold, 7 Iowa 416, 7 Clarke 416 (1858).

142. Persons entitled to maintain proceedings for compensation or damages.

Damages cannot be recovered by one who sustains same damages as general public. Ellsworth v. Chickasaw County, 40 Iowa 571 (1875), Brady v. Shinkle, 40 Iowa 576 (1875).

143. Injunction.

Generally, exercise of power of eminent domain by governmental body may not be stayed or interfered with by injunction. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

Maintenance of action by owners to enjoin commission from proceeding with construction of highway not justified. Rhodes v. Iowa State Highway Commission, 250 Iowa 416, 94 N.W.2d 97 (1959).

Question of right to condemn by special charter city can be raised on appeal, not injunction. Heinz v. Davenport, 230 Iowa 7, 296 N.W. 783 (1941).

Injunction proper against corporation attempting to evade constitutional requirement. Scott v. Price Bros. Co., 207 Iowa 191, 217 N.W. 75 (1927).

144. Mandamus.

Appeal from judgment awarding condemnee mandamus to compel condemnor to make deposit would be considered. Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510 (Iowa 1978).

Mandamus is a proper remedy to compel condemnation when property is appropriated to the power of eminent domain or when the appropriating agency refuses to make payment for the property taken. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Mandamus proper to compel condemnation. Anderlik v. Iowa State Highway Commission, 240 Iowa 919, 38 N.W.2d 605 (1949). Baird v. Johnson, 230 Iowa 161, 297 N.W. 315 (1941).

145. Jury trial.

Counsel in condemnation cases should not argue to jury about governmental unit paying for project, but should direct their efforts toward central issue of difference in value of property taken before and after condemnation. Perry v. Iowa State Highway Commission, 180 N.W.2d 417 (Iowa 1970).

There is no constitutional protection in respect to jury trial available to state highway commission in condemnation case if commission fails to demand jury trial. Iowa Development Co. v. Iowa State Highway Commission, 122 N.W.2d 323 (Iowa 1963).

Owner entitled to jury trial on appeal. Kirby v. Chicago etc. Co., C. C., 106 F. 551 (1901).

Not violation of due process to refuse jury trial. In re Bradley, 108 Iowa 476, 79 N.W. 280 (1899).

Owner entitled to jury trial on appeal without moving to set aside proceedings. Sigafoos v. Talbot, 25 Iowa 214 (1863).

Owner entitled to jury trial on appeal. O.A.G. 1930, p. 59.

146. Jury questions.

No question of fact was presented for jury as to assessment of damages for the taking of right of access. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Question of damages for jury. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

Where access made more difficult jury question on damages. Nalon v. Sioux City, 216 Iowa 1041, 250 N.W. 166 (1933).

Removal of lateral support, question of damages for jury. Hathaway v. Sioux City, 244 Iowa 508, 57 N.W.2d 228 (1953).

147. Pleading.

Permitting late amendment to petition of landowner who alleged lost access to lots fronting on platted but unopened street did not constitute an abuse of discretion. Stom v. City of Council Bluffs, 189 N.W.2d 522 (Iowa 1971).

Allowing landowners in condemnation case to amend their petition was within sound discretion of trial court. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Where alternative relief asked damages for taking proper. Birk v. Jones County, 221 Iowa 794, 226 N.W. 553 (1936).

Owner may controvert necessity of taking by answering application for condemnation. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

148. Evidence - admissibility of evidence.

Evidence of "comparable sales" not inadmissible on grounds the sales occurred after the date of condemnation. Booras v. Iowa State Highway Commission for Use and Benefit of State, 207 N.W.2d 566 (Iowa 1973).

Generally, evidence of business profits is inadmissible as an independent element of damage or as relevant in determining the value of land because it is too uncertain and depends upon too many contingencies. Twin-State Engineering & Chemical Co. v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

In order to assure just compensation to the condemnee, evidence descriptive of the injury resulting to the leaseholder by condemnation should be considered in determining the fair and reasonable value of the lease interest. Id.

Error to permit introduction of evidence by condemnor relative to acquisition of other land for use in same development program. Thornberry v. State Bd. of Regents, 186 N.W.2d 154 (Iowa 1971).

Admission of evidence concerning sales of nearby farmland was within trial courts discretion. Perry v. Iowa State Highway Commission, 180 N.W.2d 417 (Iowa 1970).

Presence of metal deposits in land is proper element to consider in valuing property condemned. Townsend v. Mid-America Pipe Line Co., 168 N.W.2d 30 (Iowa 1969).

In proceeding to condemn realty for highway purposes, admitting evidence of enhancement of value by making of improvement is proper. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

In condemnation proceedings, evidence of recent sales of comparable properties should be admitted, where evidence shows similarity in all major respects. Redfield v. Iowa State Highway Commission, 251 Iowa 332, 99 N.W.2d 413 (1959).

Testimony as to monthly net income derived by lessee from operation of service station abutting on highway and gross income from abutting cafe was inadmissible. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Striking out of improper testimony of valuation witness of commission that farm of owners was worth more after construction of new highway than before taking cured damage to owners because of such testimony. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Present or near future wants of community is basis for admission of value testimony. U.S. v. Foster, C. C. A., 131 F.2d 3 (1942), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138. U.S. v. Buescher, C. C. A., 131 F.2d 3 (1942), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138.

Testimony of value for industry improper where no use other than farm shown. Id.

Disturbing of peace, quiet and privacy by stopping of passers-by admissible. Stoner v. Iowa State Highway, 227 Iowa 115, 287 N.W. 269 (1939).

Obstruction to access a taking where fence erected across highway. Graham v. Sioux City, 219 Iowa 594, 258 N.W. 902 (1935).

Undesirable points after taking as well as good points prior to taking may be shown. Randall v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

Testimony of viaducts in other city improper where conditions not the same. Western Newspaper Union v. Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

Witnesses not limited to present use but may testify as to reasonable probable future use. Lough v. Minneapolis etc. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Sale of land similiarly situated where differences pointed out admissible. Town of Cherokee v. Sioux City etc. Co., 52 Iowa 279, 3 N.W. 42 (1880).

149. Presumptions and burden of proof.

Statutes relating to filing notice of appeal to district court in condemnation proceedings must be presumed constitutional. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Statutes delegating power of eminent domain are strictly construed. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Under 28 U.S.C.A., sec. 41(20) Burden on owner to show flooding a permanent condition. Goodman v. U.S., C. C. A., 113 F.2d 914 (1940).

Unusual changes not presumed contemplated when land acquired from abutters. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Absent allegation and proof no presumption vacation of alley hostile to abutters. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1919).

150. Weight and sufficiency of evidence.

Must show total lack of public use to enjoin condemnation. Heinz v. Davenport, 230 Iowa 7, 296 N.W. 783 (1941).

151. Instructions and interrogatories.

Instruction providing that "the law provides that a fair and just compensation means the payment of such a sum of money to the owner of the property taken or appropriated that will serve to make the owner whole" was not objectionable. Booras v. Iowa State Highway Commission for Use and Benefit of State, 207 N.W.2d 566 (Iowa 1973).

Not error to instruct jury that the "fair and reasonable market value" before and after taking was standard for measuring damages, not withstanding condemnor's contention that omission of word "cash" implied that credit transaction could be considered. Stortenbecker v. Iowa Power & Light Co., 250 Iowa 1073, 96 N.W.2d 468 (1959).

Instruction that mere colorable compliance not enough is not objectionable. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

Where no claim of unlawful use, instruction that use is lawful properly refused. Cutler v. State, 224 Iowa 686, 278 N.W. 327 (1938).

"Just compensation" defined as sum as would make landowner whole not prejudicial. Witt v. State, 223 Iowa 156, 272 N.W. 419 (1937).

Right of owner to remain in undisturbed possession and value before and after proper. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937), 118 A. L. R. 862.

Term "value" not prejudicial where other instructions refer to fair and reasonable market value. Hoeft v. State, 221 Iowa 694, 266 N.W. 571 (1936), 104 A. L. R. 1008.

Fixing of damages without regard to crossing proper. Lough v. Minneapolis etc. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Fair market value of land condemned and difference in value before and after erroneous as confusing. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

In change of street grade cost of restoring property less benefits erroneous. Stewart v. Council Bluffs, 84 Iowa 61, 50 N.W. 219 (1891).

Submission of interrogatories on value of separate parcels properly refused. Winklemans v. Des Moines etc. Co., 62 Iowa 11, 17 N.W. 82 (1883).

152. Setting aside verdict and new trial.

To justify new trial because of misconduct of jurors, it must appear that misconduct was calculated to influence verdict and that it is reasonably probable that it did so. Townsend v. Mid-America Pipe Line Co., 168 N.W.2d 30 (Iowa 1969).

Affidavits of jurors that during consideration of case several jurors argued that elements of damage which had been withdrawn from their consideration by instruction should be considered in fixing damages to be awarded could be considered to impeach verdict. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Court has same power over verdict in condemnation as in other cases. Campbell v. Iowa State Highway Commission, 222 Iowa 544, 269 N.W. 20 (1936).

Verdict which is inadequate, excessive or result of passion or prejudice may be set aside. Id.

Reopening case tried without jury for material testimony not error. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

153. Conclusiveness and effect of award or judgment.

Relevant matters overlooked by the condemnation commission can and should be brought before the district court in an appeal petition. Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969).

Assessing tribunal presumed to consider all foreseeable uses affecting value. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Damages are assessed once and for all and include all injuries. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Judgment fixing block boundaries not res judicata against abutting property owner. Long v. Wilson, 119 Iowa 267, 93 N.W. 282 (1903), 60 L. R. A. 720, 97 Am. St. Rep. 315.

154. Award or judgment, effect.

Where road established and order of non-assessment of damages, none need be paid. McCrory v. Griswold, 7 Iowa 248, 7 Clarke 248 (1858). Connolly v. Griswold, 7 Iowa 416, 7 Clarke 416 (1858).

Compensation paid only where fixed by jury. Connolly v. Griswold, 7 Iowa 416, 7 Clarke 416 (1858).

155. Amendment of award or judgment.

Where amount of interest merely matter of computation, court could add. Beal v. Iowa State Highway Commission, 209 Iowa 1308, 230 N.W. 302 (1930).

156. Costs, fees and expenses.

Trial court's refusal to fix and award attorney fees to condemnees in connection with first and second trials, on ground that ultimate recovery could not be determined until case had been finally disposed of on appeal, was not error. Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (Iowa 1971).

Attorney fee award deemed not excessive. Perry v. Iowa State Highway Commission, 180 N.W.2d 417 (Iowa 1970).

Where owner appealed, motion to require government to print record at its expense properly denied. Goodman v. U.S., C. C. A., 113 F.2d 914 (1940).

Attorney fees and expenses not within "just compensation." Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).

Attorney fees not included in "just compensation." Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).

Attorney fees not to be taxed except where expressly authorized. Nichol v. Neighbour, 202 Iowa 406, 210 N.W. 281 (1926).

157. Review.

The court must decide whether taking by eminent domain is constitutional. Simpson v. Low-rent Housing Agency of Mt. Ayr, 224 N.W.2d 624 (Iowa 1974).

Right of appeal in condemnation case is purely a creature of I.C.A. § 472.18, and if an appeal is to be taken, notice thereof must be given in substantial compliance with statute. Merritt v. Interstate Power Co., 261 Iowa 174, 153 N.W.2d 489 (1967).

Supreme Court could assume in absence of contrary assertion that provision of this section requiring just compensation for taking homes and provision of I.C.A. § 364.15 requiring payment of amount of injury or damage resulting from change in established street grade would be complied with. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

The right to appeal or to have a judicial determination of damages in condemnation case, although provided by constitution, is limited by reasonable and proper statutory procedure for protecting an appeal to the district court. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Certiorari is available in condemnation cases involving jurisdictional questions, substantial departure from statutory requirements, and other illegalities by lower tribunal, board or commission. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Trial court did not commit prejudicial error in striking testimony of witness that location of new highway would give ready access to all parts of city. Redfield v. Iowa State Highway Commission, 251 Iowa 332, 99 N.W.2d 413 (1959).

Where trial court sat as trier of fact as well as law in condemnation case, its findings had effect of special verdict, and if supported by substantial evidence, they were binding upon Supreme Court on appeal. Kaperonis v. Iowa State Highway Commission, 251 Iowa 39, 99 N.W.2d 284 (1959).

In absence of evidence of permanent flooding of land petition properly dismissed. Goodman v. U.S., C. C. A., 113 F.2d 914 (1940).

Manner of construction properly excluded where testimony amply disclosed it to jury. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1930).

Verdict not upset where conflicting evidence. Id.

Question of value after condemnation omitting reference to exclusion of benefits no cause for complaint by condemnor. Moran v. Iowa State Highway Commission, 223 Iowa 936, 274 N.W. 59 (1937).

Award of $4,680 for 15.71 acres from tract of 310 acres purchased by owner nine months prior to condemnation for $6,500 grossly excessive. Campbell v. Iowa State Highway Commission, 222 Iowa 544, 269 N.W. 20 (1936).

Discretion of city council as to public purpose interfered with only if abused. Bennett v. Marion, 106 Iowa 628, 76 N.W. 844 (1898).

Instruction by county judge to condemnation jury not disturbed where no prejudice shown. City of Des Moines v. Layman, 21 Iowa 153 (1866).

158. Abandonment of proceedings.

In connection with trial in district court of appeal in condemnation proceeding, condemnor may, by express waiver or abandonment, proceed to condemn less property than was originally listed in notice of condemnation. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

159. Personal property.

A condemnee is entitled to compensation for damage to, destruction of, or reduction in value of personal property even if it is not located on the condemned land, as long as it was used in connection with a business operated on that land. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Due process requires that those holding liens or encumbrances of record on personal property which may be damaged, destroyed or reduced in value by condemnation proceedings against real estate be given notice of the proceedings. Id.

Cost of moving from condemned premises certain personal property, the market value of which was not reduced because of the move, was not a "reduction in value" within I.C.A. § 472.14. Skaff v. Sioux City, 120 N.W.2d 439 (Iowa 1963).

160. Jurisdiction.

The district court has appellate jurisdiction only in condemnation cases. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Failure to notify sheriff of appeal to district court in condemnation proceeding would defeat jurisdiction of district court to proceed with the review. Id.

161. Notice of proceedings.

Where plaintiffs were shown to hold record legal title to personal property alleged to have been damaged, destroyed, or reduced in value pursuant to condemnation, provision of this section stating that private property shall not be taken for public use without just compensation first being made required that plaintiffs be compensated for any damage sustained, and to that end, they were entitled to notice of the condemnation proceedings. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

CHAPTER 17A

ADMINISTRATIVE PROCEDURE ACT

17A.1 Citation and Statement of Purpose

1/2 In general.

For annotations, see I.C.A.

1. Notice and Hearing.

City Council not required to make findings of fact in conjunction with overruling of objections asserted at public hearing on proposed public improvement of project. Dunphy v. City Council of City of Creston, 256 N.W.2d 913 (Iowa 1977).

"Fair day in court" not defeated by fact that hearing is before same administrative authority which lawfully conducted prehearing investigation or preferred charges. Cedar Rapids Steel Transp., Inc. v. Iowa State Commerce Commission, 160 N.W.2d 825 (Iowa 1968).

Administrative agency generally required, even apart from any statutory mandate, to make findings of fact on issues presented in any adjudicatory proceeding. Id.

Administrative bodies may act within the limits of their legislative authority without giving notice or providing hearing unless statute so requires or unless some constitutional right is transgressed thereby. Zwingle Independent School Dist. v. State Bd. of Public Instruction, 160 N.W.2d 299 (Iowa 1968).

2. Delegation of powers.

Presence or absence of procedural safeguards is important in determining whether delegation of legislative power to administrative bodies is reasonable. Elk Run Tel. Co. v. General Tel. Co. of Iowa, 160 N.W.2d 311 (Iowa 1968).

Propriety of delegation of legislative power to administrative bodies. Id.

3. Disclosure of records.

For case citation, see I.C.A.

4. Judicial Review.

If on review of administrative order, case is heard de novo in trial court, it is generally considered de novo on appeal. Buda v. Fulton, 261 Iowa 981, 157 N.W.2d 336 (1968).

17A.2 Definitions

1/2 In general.

State Civil Rights Commission is administrative agency governed by provisions of state administrative procedure act. Sommers v. Iowa Civil Rights Commission, 337 N.W.2d 470 (1983).

Neither administrative procedure act nor case law interpreting it precludes agency from later reconsidering its own findings made at prehearing conference. Chicago and North Western Transportation Company v. Iowa Transportation Regulation Board, 322 N.W.2d 273 (Iowa 1982).

Agency or agency member's failure or refusal to respond to discovery is "agency action". Christensen v. Iowa Civil Rights Commission, 292 N.W.2d 429 (Iowa 1980).

Plaintiff landowners, seeking to permanently enjoin condemnation of easement, could not avoid doctrine of exhaustion of administrative remedies. Kerr v. Iowa Public Service Co., 274 N.W.2d 283 (Iowa 1979).

"Reassignment" of an administrative agency from one larger unit of state government to another does not affect the validity of the agency's administrative rules. O.A.G. June 17, 1980.

1. Agency.

Local pension board not a board "of the state" despite origin in state law, thus not an "agency" and not subject to administrative procedure act. Benson v. Fort Dodge Police Pension Board of Trustees, 312 N.W.2d 548 (Iowa 1981).

Commerce Commission's order overruling a motion to dismiss utility's petition for an electric transmission line franchise was "agency action". Richards v. Iowa State Commerce Commission, 270 N.W.2d 616 (Iowa 1978).

City council not required to make findings of fact in conjunction with its overruling of objections asserted at public hearing on proposed public improvement project. Dunphy v. City Council of City of Creston, 256 N.W.2d 913 (Iowa 1977).

2. Rules.

For case citations, see I.C.A.

3. Statutory authority.

Rules. O.A.G. March 27, 1969.

For additional citations, see I.C.A.

4. Internal matters, rules.

For annotations, see I.C.A.

5. Prior law, submission of proposed rules.

For annotations, see I.C.A.

6. Contested case.

Defined. Oliver v. Teleprompter Corp., 299 N.W.2d 683 (Iowa 1980).

For additional citations, see I.C.A.

17A.3 Public Information - Adoption of Rules - Availability of Rules and Orders

1/2. In general.

An adjudication under Administrative Procedure Act can result only by following procedures outlined therein. Young Plumbing and Heating Co. v. Iowa Natural Resources Council, 276 N.W.2d 377 (Iowa 1979).

1. Disclosure and public inspection of records.

For annotations, see I.C.A.

2. Validity of rules.

For annotations, see I.C.A.

17A.4 Procedure for Adoption of Rules

1. In general.

Subsection one relating to request that agency issue statement of reasons for and against adoption of rules is not subject to time constraint when filed

prior to adoption of rules, that is, section does not require concise statement at time rule is adopted. Iowa Bankers Association v. Iowa Credit Union Department, 335 N.W.2d 439 (Iowa 1983).

Department of Social Services' decision to release nursing home Medicaid payment cost reports did not violate statutory procedures since they did not make a rule when it decided to release the reports but applied statute which details requirements for examination of records to a particular report. Craigmont Care Center v. Department of Social Services, 325 N.W.2d 918 (Iowa Ct. App. 1982).

Where supreme court upheld subrule taxing auto repair services on cars by auto dealers, dealers association and repair companies, who challenged validity of subrule, were not entitled to attorney's fees, their cross appeal challenging sufficiency of attorney fee award in district court was moot. Iowa Auto Dealers Assn. v. Iowa Dept. of Revenue, 301 N.W.2d 760 (Iowa 1981).

Department of Revenue had burden in action by dealers association and dealer for judicial review, to establish that the portion of the rule objected to was not unreasonable or otherwise beyond authority delegated to it. Id.

An agency rule has a binding effect of law, whereas decision of contested case is but of precedential value. Young Plumbing and Heating Co. v. Iowa Natural Resources Council, 276 N.W.2d 377 (Iowa 1979).

Objections made pursuant to Chapter 17A must be made before a rule becomes effective. O.A.G. Dec. 6, 1979.

For additional annotations, see I.C.A.

2. Statutory authority.

For annotations, see I.C.A.

3. Notice and hearing.

For annotations, see I.C.A.

4. Amendment of rules.

Amendment to a statute or regulation may indicate either an intent to change the existing law or merely clarify it, depending upon the circumstances. Hutchison Nursing Home, Inc. v. Burns, 236 N.W.2d 312 (Iowa 1975).

5. Interpretation of rules by courts.

Administrative rules seeking to implement statutes must be finally interpreted by courts. Michigan-Wisconsin Pipe Line Co. v. Johnson, 247 Iowa 583, 73 N.W.2d 820 (1956).

6. Prior law, submission of proposed rules.

A policy or guideline which constituted a "standard of general application" in this section fell within the definition of a rule, and such rule should have been submitted for review unless such policy was one of internal application only. O.A.G. Dec. 5, 1969.

Departmental rules submitted by the Iowa State Highway Commission to the Attorney General were approved except the rule which would limit the issuance of annual permits to Iowa based license vehicles only, since such rule would unconstitutionally discriminate against movers in interstate commerce. O.A.G. Jan. 8, 1969 (No. 69-1-6).

Proposed administrative rules had to be submitted to the departmental rules review committee and to the Attorney General in the style and form prescribed by the Code Editor before the forty-five and thirty day periods provided for in this chapter begin to run. O.A.G. Oct. 9, 1967.

7. Parole revocation.
For annotations, see I.C.A.

8. Review.
Civil Rights Commission's adoption of rule involving employment policies. Davenport Community School District v. Iowa Civil Rights Commission, 277 N.W.2d 907 (Iowa 1979).
Trial court excessively restricted its review to the test of whether the action was unreasonable, arbitrary or capricious or characterized by abuse of discretion. Schmitt v. Iowa Dept. of Social Services, 262 N.W.2d 739 (Iowa 1978).
For additional annotations, see I.C.A.

17A.5 Filing and Taking Effect of Rules

1. In general.
Objections made pursuant to Chapter 17A must be made before a rule becomes effective. O.A.G. Dec. 6, 1979.
Attorney General's failure to pass upon validity of agency rule before formal adoption thereof did not estop state agency from questioning validity of rule. Iowa Dept. of Revenue v. Iowa Merit Employment Commission, 243 N.W.2d 610 (Iowa 1976).
"Temporary rules" may be promulgated and filed without conforming to the procedure prescribed for the adoption of permanent rules or rules other than "temporary rules". O.A.G. June 28, 1963.

17A.6 Publications

1. Construction and application.
Code Editor is required to keep and index all rules and not simply those that became effective after the passage of the Administrative Procedure Act in 1975. O.A.G. Oct. 3, 1979.

17A.7 Petition for Adoption of Rules

1. In general.
The purpose of this section is to enable interested persons to initiate reasoned consideration by agency as to whether rules should be issued, amended or repealed. Community Action Research Group v. Iowa State Commerce Commission, 275 N.W.2d 217 (Iowa 1979).

17A.8 Administrative Rules Review Committee (No Annotations)

17A.9 Declaratory Rulings by Agencies

1. In general.
Agency should have discretion to abstain from ruling on merits of petition where issue raised has been settled by change in circumstances. Women Aware v. Reagen, 331 N.W.2d 88 (Iowa 1983).
This section governing issuance of declaratory rulings by administrative agencies contemplates declaratory ruling by agencies on purely hypothetical sets of facts and contemplates that such rulings will be subject of judicial review. City of Des Moines v. Public Employment Relations Bd., 275 N.W.2d 753 (Iowa 1979).

17A.10 Informal Settlements - Waiver (No Annotations)

17A.11 Presiding Officer - Administrative Hearing Officers

Two hearings of revocation or suspension are both contested cases within the meaning of section 17A.2, but collateral estoppel will ordinarily preclude relitigation, a board may delegate to a hearing officer the authority to preside over any evidentiary hearing relating to any remaining factual issues. O.A.G. (Schantz), September 1, 1981.

17A.12 Contested Cases - Notice - Hearing - Records

For annotations, see I.C.A.

17A.13 Subpoenas - Discovery

For annotations, see I.C.A.

17A.14 Rules of Evidence - Official Notice

1. In general.

Unsubstantiated references to person failing polygraph test insufficient alone to warrant conclusion that person allowed false report made without informing authorities of falsity. Herring v. Iowa Law Enforcement Academy, 341 N.W.2d 65 (Iowa 1983).

Agencies are not bound by rules of evidence, hearsay is generally admissible at administrative hearing. It was not error to admit hearsay evidence on claim for unemployment. McConnell v. Iowa Dept. of Job Service, 327 N.W.2d 234 (Iowa 1982).

17A.15 Final Decisions - Proposed Decisions - Conclusiveness - Review by the Agency

1. In general.

Exhaustion rule does not prevent judicial review unless remedy exists for claimed wrong and statutes require that remedy be exhausted before resorting to court. Leaseamerica Corporation v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

17A.16 Decisions and Orders - Rehearing

1. In general.

Where employee seeking unemployment benefits sought rehearing of decision denying benefits but did not mail notice to employer, authority of agency to determine controversy was lost. Cunningham v. Iowa Department of Job Service, 319 N.W.2d 202 (Iowa 1982).

Even though unemployment compensation claimant was told that she did not need to give notice to employer by agency, department cannot waive notice and department is not estopped to deny its authority. Id.

Jurisdiction challenge of agency to render decision on rehearing because of defective notice can be raised at any stage in proceeding, special appearance is appropriate for this purpose. Id.

Construction of provision of employment security law providing an application for rehearing filing pursuant to the Administrative Procedure Act is that if judicial review is desired petition must be filed pursuant to requirements of the act, and does not impose a duty to apply for rehearing precedent to seeking judicial review of an adverse decision. Kehde v. Iowa Department of Job Service, 318 N.W.2d 202 (Iowa 1982).

Where commissioner did not separately state facts and conclusions of law in deciding workers compensation claim, but court could work backward from deputy commissioner's summary statement to deduce what must have been his legal conclusions, and reject assignment of error based on commisioner's failure. Ward v. Iowa Dept.of Transportation, 304 N.W.2d 236 (Iowa 1981).

Workman's compensation claimant may be awarded cost of appeal in spite of benefit denial where commissioner failed to separately state facts and conclusions of law. Id.

Application for rehearing of administrative decision denied when not ruled on by agency. Ford Motor Co. v. Iowa Dept. of Transp. Regulation Bd., 282 N.W.2d 701 (Iowa 1979).

17A.17 Ex Parte Communications and Separation of Functions

For annotations, see I.C.A.

17A.18 Licenses

1. In general.

A contested revocation case decision becomes final when all administrative remedies have been exhausted. O.A.G. April 27, 1979.

17A.19 Judicial Review

1. In general.

In general, rules of statutory construction and interpretation govern rules and regulations of administrative agencies. Messina v. Iowa Department of Job Service, 341 N.W.2d 52 (Iowa 1983).

Rules and regulations of agencies must be construed with statute to harmonize, using common sense. Id.

Although agency's decision must be supported by evidence in record made before agency when that record is reviewed as a whole, substantial evidence is that which a reasonable mind accepts as adequate to reach conclusion, even if court draws contrary inference. Id.

Supreme Court gives administrative tribunals reasonable range of discretion in interpreting and applying their own rules. Dameron v. Neumann Brothers Inc., 339 N.W.2d 160 (Iowa 1983).

Administrative agency's rule not valid if violates any seven criteria of subdivision 8 of this section governing judicial review. Sommers v. Iowa Civil Rights Commission, 337 N.W.2d 470 (Iowa 1983).

State Administrative Procedure Act provides means of judicial review by district court action of state's Civil Rights Commission. Id.

Interpretation of statute for judicial review of agency is question of law, Supreme Court is final arbiter. Iowa Banker's Association v. Iowa Credit Union Department, 335 N.W.2d 439 (Iowa 1983).

Test to determine if litigant is "aggrieved or adversely affected" thereby entitled to appeal, is if party demonstrated specific interest in subject matter of agency decision and shown injuriously affected. Id.

County attorney was not agency within meaning of Iowa Administrative Procedure Act. Iowans for Tax Relief v. Campaign Finance Disclosure Commission, 331 N.W.2d 862 (Iowa 1983), appeal denied 104 S. Ct. 220 (1983).

County lacked standing on constitutional issue of whether review of county budgetary process by state appeal board was lawful, whether board's reduction of budget was unconstitutional as delegation of special lawmaking, and whether board's failure to adopt rules denied county due process. Polk County v. Iowa State Appeal Board, 330 N.W.2d 267 (Iowa 1983).

To interpret statute, standard for judicial review of agency in contested proceeding is usually whether supported by evidence in record. In such case, court may give weight to agency's interpretation, but is not bound. Sullivan v. Iowa Departmental Hearing Board of Iowa Beer and Liquor Control Department, 325 N.W.2d 923 (Iowa Ct. App. 1982).

Administrative Procedure Act applies to Chapter 247A work release revocation and the APA is exclusive means for challenging revocation. Dougherty v. State, 323 N.W.2d 249 (Iowa 1982).

In denying unemployment benefits, review by Court of Appeals limited to determining whether district court made errors of law in exercising its power of review of agency action. Woods v. Iowa Department of Job Service, 315 N.W.2d 838 (Iowa Ct. App. 1981).

Court of Appeals can reverse or modify agency action only if unsupported by evidence in record before agency, when record is reviewed as a whole. Court limited to record made before hearing officer. Gipson v. Iowa Department of Job Service, 315 N.W.2d 834 (Iowa Ct. App. 1981).

Fact that agency can draw two inconsistent conclusions from evidence, does not mean one of the conclusions is unsupported by substantial evidence. Id.

Judicial review provisions of Administrative Procedure Act provide exclusive means for challenging agency action. Benson v. Fort Dodge Police Pension Board of Trustees, 312 N.W.2d 548 (Iowa 1981).

Where review obtained by certiorari without compliance with procedural requisites of Administrative Procedure Act, district court without jurisdiction if act applies. Id.

Local pension board not a board "of the state" despite origin in state law, thus not an "agency" and not subject to Administrative Procedure Act. Id.

Employer and insurer not precluded from making claim in their answer that claimant's decedent was not their employee at time of fatal auto collision in spite of not filing cross petition for judicial review within requisite 30 days. Ross v. Ross, 308 N.W.2d 50 (Iowa 1981).

After district court acted in appellate capacity to correct errors of law, the Court of Appeals was limited to question of whether district court correctly applied the law. Iowa Civil Rights Commission v. Woodbury County Community Action Agency, 304 N.W.2d 443 (Iowa Ct. App. 1981).

Where first sentence of subsection 3 of this section requires petition for judicial review of agency within 30 days after agency's final decision in contested case where second sentence of same provision provides a petition for review other than a decision in contested case can be filed anytime petitioner was aggrieved or adversely affected. There was no implied 30 day period of limitations for situations covered by the second sentence. Oliver v. Teleprompter Corporation, 299 N.W.2d 683 (Iowa 1980).

When damaged car can be repaired in as good a condition as before injury, insurer must pay reasonable cost of repair, plus reasonable value of use of the car while being repaired, with ordinary diligence not exceeding value of car before injury, insurer cannot only pay diminution in value of car caused by accident unless and until repair is undertaken. Aetna Casualty and Insurance Company v. Insurance Department of Iowa, 299 N.W.2d 484 (Iowa 1980).

This section, governing judicial review of agency action provides exclusive means of such review. Northbrook Residents Ass'n v. Iowa State Dept. of Health, Office for Health Planning and Development, 298 N.W.2d 330 (Iowa 1980).

Statute governing appeals of administrative decisions prescribes conditions and such procedures which are jurisdictional and with which petitioner must comply before invoking relief from district court for review. Neumeister v. City Development Bd., 291 N.W.2d 11 (Iowa 1980).

Both before and after enactment of this section governing judicial review of administrative decisions, the Supreme Court was obligated to review record as a whole to determine reasonableness of agency findings. Hawk v. Jim Hawk Chevrolet - Buick, Inc., 282 N.W.2d 84 (Iowa 1979).

"Agency action" for purposes of this section providing exclusive means of judicial review of agency action includes declaratory ruling or refusal to issue such ruling. Public Employment Relations Bd. v. Stohr, 279 N.W.2d 286 (Iowa 1979).

This section provides exclusive means of judicial review of agency action. Id.

Whether administrative rule is within authority of agency promulgating it is subject to judicial review. Hiserote Homes, Inc. v. Riedemann, 277 N.W.2d 911 (Iowa 1979).

Rule should be held to be within agency's power to adopt when a rational agency could conclude that the rule is within its delegated authority. Id.

"Substantial rights" language in this section governing judicial review of agency rulings has no bearing on person or party's standing to obtain judicial review. City of Des Moines v. Public Employment Relations Bd., 275 N.W.2d 753 (Iowa 1979).

Judicial review of administrative proceedings is a right conferred by statute. Kerr v. Iowa Public Service Co., 274 N.W.2d 283 (Iowa 1979).

For additional annotations, see I.C.A.

2. Exhaustion of administrative remedies.

Only a clear showing of irreparable injury from anticipated agency action justifies judicial intervention prior to exhaustion of administrative remedies. Iowa Indus. Com'r v. Davis, 286 N.W.2d 658 (Iowa 1979).

Monetary losses caused by litigation expenses ordinarily are insufficient to justify judicial intervention prior to exhaustion of administrative remedies. Id.

Doctrine of exhaustion of administrative remedies has never been thought to be absolute; if agency is incapable of granting the relief sought during subsequent administrative proceedings, a fruitless pursuit of these remedies is not required. Salsbury Laboratories v. Iowa Dept. of Environmental Quality, 276 N.W.2d 830 (Iowa 1979).

When the legislature has given an administrative agency jurisdiction to entertain a particular controversy, the jurisdiction is exclusive and must be exhausted before resort to courts, unless contrary intent is clearly manifested by legislature. Rowen v. Le Mars Mut. Ins. Co. of Iowa, 230 N.W.2d 905 (Iowa 1975).

For additional annotations, see I.C.A.

3. Doctrine of primary jurisdiction.

Defined. Rowen v. Le Mars Mut. Ins. Co. of Iowa, 230 N.W.2d 905 (Iowa 1975).

This doctrine presupposes an ability of administrative agency to adjudicate issues of law or fact which are alleged to be appropriate for administrative resolution. Id.

4. Driver's license revocation.

For annotations, see I.C.A.

5. Jurisdiction.

Requirements of Administrative Procedure Act providing for judicial review of agency action are jurisdictional and must be met. Iowa Indus. Com'r. v. Davis, 286 N.W.2d 658 (Iowa 1979).

Failure to timely file application for judicial review of ruling of the Transportation Regulations Board. Ford Motor Co. v. Iowa Dept. of Transp. Regulations Bd., 282 N.W.2d 701 (Iowa 1979).

Once resolution of controversy has been delegated to administrative agency, district court has no original authority to declare rights of parties. Public Employment Relations Bd. v. Stohr, 279 N.W.2d 286 (Iowa 1979).

For additional annotations, see I.C.A.

6. Nature of review.

Courts do not hear contested cases under Administrative Procedure Act de novo. Cook v. Iowa Dept. of Job Service, 299 N.W.2d 698 (Iowa 1980).

For additional annotations, see I.C.A.

7. Substantial evidence.

For annotations, see I.C.A.

8. Taxation.

For annotations, see I.C.A.

9. Intermediate judicial review.

For annotations, see I.C.A.

10. Agency action.

Approval of annexation petition by city development committee was "agency action". Neumeister v. City Development Bd., 291 N.W.2d 11 (Iowa 1980).

For additional annotations, see I.C.A.

11. Additional evidence.

For annotations, see I.C.A.

12. Presumptions and burden of proof.

Burden is on party attacking validity of an agency's rule to make a clear and convincing showing that the rule is ultra vires. Hiserote Homes, Inc. v. Riedemann, 277 N.W.2d 911 (Iowa 1979).

For additional annotations, see I.C.A.

13. Summary judgment.

Motion for summary judgment not proper means by which to dispose of petition for judicial review involving contested case under Administrative Procedure Act. Young Plumbing Co. v. Iowa Natural Resources Council, 276 N.W.2d 377 (Iowa 1979).

14. Unemployment compensation appeals.

For annotations, see I.C.A.

15. Stay.

For annotations, see I.C.A.

16. Time for proceedings.

For annotations, see I.C.A.

17. Workers' compensation cases.
For annotations, see I.C.A.

18. Civil rights complaints.
For annotations, see I.C.A.

17A.20 Appeals

Court of Appeal's review of determination of industrial commission in workers compensation case is limited to whether commission is supported by evidence in record when reviewed as a whole. Beck v. Rounds, 332 N.W.2d 109 (Iowa Ct. App. 1982).

1. Construction and application.
Supreme Court's scope of review. Caterpillar Davenport Emp. Credit Union v. Huston, 292 N.W.2d 393 (Iowa 1980). Community Action Research Group v. Iowa State Commerce Commission, 275 N.W.2d 217 (Iowa 1979).
For additional annotations, see I.C.A.

17A.21 Inconsistency with Federal Law (No Annotations)

17A.22 Agency Authority to Implement Chapter (No Annotations)

17A.23 Construction

Review by district court and supreme court de novo where complaint filed before Civil Rights Commission on January 16, 1975 was proceeding in process on July 1, 1975. Therefore review provisions of administrative procedure act were inapplicable. First Judicial District Department of Correctional Services v. Iowa Civil Rights Commission, 315 N.W.2d 83 (Iowa 1982).

17A.24 - 17A.30 Reserved

17A.31 Small Business Regulatory Flexibility Analysis (No Annotations)

17A.32 Time Limit Applicable to Emergency Rules (No Annotations)

17A.33 Review by Administrative Rules Review Committee (No Annotations)

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

23.1 Terms Defined

1. Construction and application.

Public competitive-bids are not required for a contract between an area solid waste disposal unit organized pursuant to section 455B.76 and a contractor where a contract will not involve the expenditure of public funds. O.A.G. Oct. 23, 1978.

City was authorized to enter into joint project with power company and others for generating electricity. Sampson v. City of Cedar Falls, 231 N.W.2d 609 (Iowa 1975).

The purpose of budget law to provide economy and fair prices. Carlson v. Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Reconstruction of a county plat book system is not a public improvement. O.A.G. Dec. 6, 1974.

Although sections 111A.6 governing acquisition of real estate by county conservation boards subjects all expenditures in excess of $5,000.00 to the requirements of this section et. seq., the latter applies to public improvements, which, as defined in this section, does not include the acquisition of real estate. O.A.G. Sept. 30, 1969.

Supervisors may, subject to Highway Commission approval, determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.

Section 23.2 does not control type of advertising required by section 309.40, 311.5. O.A.G. 1938, p. 731.

Requirement of competitive bidding does not prohibit board of control from hiring superintendent. O.A.G. 1938, p. 38.

Municipal contract to replace machinery not a contract contemplated in section 23.2. O.A.G. 1928, p. 330.

Park board subject to restrictions of this section. O.A.G. 1928, p. 378.

State board of education must comply if cost is more than $5,000.00. O.A.G. 1925-26, p. 110.

23.2 Notice of Hearing

1. Construction and application.

When time is computed from a particular day, or act is to be performed within specified period, first day is excluded and last day of specified period is included. Central Nat. Ins. Co. v. Le Mars Mut. Ins. Co. of Iowa, 294 F. Supp. 1396 (1968).

Contract for street improvement not void on ground that it exceeded estimate of cost by more than 10%. Husson v. City of Oskaloosa, 240 Iowa 681, 3776 N.W.2d 310 (1949).

Where no public improvement contract, school district was merely property owner. Schumacher v. Clear Lake, 214 Iowa 34, 239 N.W. 71 (1931).

Reconstruction of a county plat book system not a public improvement requiring public hearing or competitive bids. O.A.G. Dec. 6, 1974.

Public hearing required when school district utilizes services of construction manager. O.A.G. July 30, 1974.

Chapter 23 does not require contracts for work on public improvement exceeding $5,000.00. O.A.G. May 1, 1973.

Use of "design-build" method of obtaining bids for schools is not prohibited. O.A.G. Nov. 7, 1972.

Gift of money for construction of auditorium placed in schoolhouse fund to be treated as public money. O.A.G. Nov. 24, 1971.

Provisions of section 332.7, requiring written contract for building where cost of labor and materials exceeds $2,000.00, do apply to contracts for the erection of 2-car garage and tool shed. O.A.G. July 15, 1968 (No. 68-7-10).

Board of regents delegating statutory duties relating to contracts for capitol improvements. O.A.G. July 12, 1966.

Publication of notice must strictly conform to statute involved. O.A.G. 1934, p. 365.

Park board subject to restrictions of this section. O.A.G. 1928, p. 378.

Municipal contract to replace machinery not a contract contemplated in section 23.2. O.A.G. 1928, p. 330.

State board of education must comply if cost is more than $5,000.00. O.A.G. 1925-26, p. 110.

Code of 1923 governs city in writing contract for bridge construction. O.A.G. 1925-26, p. 72.

2. Municipality.

State Fair Board is a municipality if improvements are determined to be in the interest of the state. O.A.G. Oct. 12, 1965.

Under "municipality" definition, section 23.2 does not control type of advertising required by sections 309.40, 311.5.

3. Buildings.

This section not applicable to construction of industrial buildings under act authorizing city to construct for purpose of securing and developing industry. Green v. City of Mt. Pleasant, 256 Iowa 1184, 131 N.W.2d 5 (1965).

Removal of two supervisors for exceeding cost limitation not warranted when legalizing act passed and the Comptroller and Attorney General consulted. Dwyer v. Sullivan, 230 Iowa 945, 299 N.W. 411 (1941).

Installment payment of cost of construction not authorized. O.A.G. 1940, p. 538.

4. Street improvements and repairs.

Street improvement contract costing more than $5,000.00 held not within budget requirements. Schumacher v. Clear Lake, 214 Iowa 34, 239 N.W. 71 (1931).

Engaging contractor for work on street improvement costing more than $5,000.00 per day not within budget requirements. Carlson v. Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Distinction exists between "construction work" and "repairs" in suit to recover by contractor. Johnson County Sav. Bank v. Creston, 212 Iowa 929, 231 N.W. 705 (1930).

5. Sewer improvement and repairs.

Payment to a city may be made upon completion of improvement from county general fund by resolution of board of supervisors. O.A.G. August 19, 1964.

6. Public utility contracts.

Taxpayer could not complain of failure to pay total contract price where contract required payment of 90% on contract and balance on completion. Poor v. Town of Duncombe, 231 Iowa 907, 2 N.W.2d 294 (1942).

7. Form and contents of notice.

Notice of hearing on joint project sufficient even though notice did not state cost of project or how cost would be paid. Sampson v. City of Cedar Falls, 231 N.W.2d 609 (Iowa 1975).

8. Publication of notice.

Notice of hearing may be published either in county where improvement to be made or seat of state board of education. O.A.G. 1925-26, p. 105.

Notice of hearing on plans and specifications and on hearing of necessity may be published in same notice. O.A.G. 1928, p. 190.

Contract not void on ground that it exceeded 10% of estimated cost. Husson v. City of Oskaloosa, 240 Iowa 681, 37 N.W.2d 310 (1949).

9. Elections.

Use of word "extend" in election does not invalidate election. Johnson v. Inc. Town of Remsen, 215 Iowa 1033, 247 N.W. 552 (1933).

23.3 Objections - Hearing - Decision

1. Construction and application.

Property owners not subject to special assessment for street improvement could not object to resolution of necessity. Husson v. City of Oskaloosa, 240 Iowa 681, 37 N.W.2d 310 (1949).

Construction manager superintending construction and letting bids for specific parts of construction. O.A.G. May 17, 1974.

Park board subject to restrictions of this section. O.A.G. 1928, p. 378.

2. Bonds.

This section not repealed by implication by chapter dealing with rights of cities and towns to issue general obligation bonds. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

3. Sewer improvements and repairs.

Payment to city for sewer improvement to county home made from county general fund by resolution of board of supervisors. O.A.G. August 19, 1964.

4. Errors and irregularities.

Alleged erroneous reason for State Board of Appeal's determination that improvement contract was not to best interest of municipality. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

5. Injunction.

Injunction will lie only if proceedings are absolutely void. Husson v. City of Oskaloosa, 240 Iowa 681, 37 N.W.2d 310 (1949).

6. Estoppel.

Record of city council's vote sufficient even though on role cards specially prepared for that purpose. Nixon v. Burlington, 141 Iowa 316, 115 N.W. 239 (1908).

Legality of bonds in hands of innocent holder may be questioned by taxpayers though no objection to their issuance. McPherson v. Foster Bros., 43 Iowa 48 (1876).

23.4 Appeal

1. Construction and application.

Director of budget not superior of, or a court of appeal in administration of municipal affairs. Carlson v. Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

2. Jurisdiction.

State Appeal Board had jurisdiction to disapprove proposed street improvement contract. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

Jurisdiction where cost of improvement by municipality to be paid for in whole or in part by use of taxable funds or issuance of bonds payable from taxation. O.A.G. June 26, 1963.

3. Notice of appeal.

Notice of appeal must be "served on" not merely filed with town clerk. Incorporated Town of Casey v. Hogue, 204 Iowa 3, 214 N.W. 729 (1927).

4. Parties.

Owners of property in municipality were interested objectors. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

5. Appearance.

Appearance before state budget director does not confer jurisdiction on director. Incorporated Town of Casey v. Hogue, 204 Iowa 3, 214 N.W. 729 (1927).

6. Injunction.

Injunction will lie only if proceedings are absolutely void. Husson v. City of Oskaloosa, 240 Iowa 681, 37 N.W.2d 310 (1949).

7. Decisions of Appeal Board.

Alleged erroneous reason for State Board of Appeal's determination that improvement contract was not to best interest of municipality. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

Decision of State Appeal Board final and cannot be challenged by certiorari. Independent School Dist. Cedar Rapids, Linn County, v. State Appeal Bd., 230 Iowa 924, 299 N.W. 440 (1941).

8. Dismissal of appeal.

Motion to dismiss appeal from judgment adverse to property owners sustained. Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1962).

Return of party serving notice may be impeached on motion to dismiss appeal. Incorporated Town of Casey v. Hogue, 204 Iowa 3, 214 N.W. 729 (1927).

23.5 Information Certified to Appeal Board (No Annotations)

23.6 Notice of Hearing on Appeal

1. Construction and application.

Notice of hearing on joint project sufficient even though notice did not state cost of project or how cost would be paid. Sampson v. City of Cedar Falls, 231 N.W.2d 609 (Iowa 1975).

Insufficient signers on notice of appeal voids appeal. Incorporated Town of Casey v. Hogue, 204 Iowa 3, 214 N.W. 729 (1927).

1929 amendment of Code of 1927 merely struck out surplusage. O.A.G. 1930, p. 129.

23.7 Hearing and Decision

1. Construction and application.

Director of budget not supervisor of, or court of appeal in, administration of municipal affairs. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Construction of a sewage disposal lagoon is an improvement to be constructed under the provisions of this chapter. O.A.G. Oct. 28, 1965.

2. Plans and specifications - in general.

Requirement of competitive bidding does not prohibit board of control from hiring superintendent. O.A.G. 1938, p. 38.

Engineer and budget director required to keep within standard plans and specifications and the director may reject entire plans. O.A.G. 1925, 1926, p. 480.

3. Approval of plans and specifications.

Budget director's approval of plans held final decision as regards validity. Johnson v. Incorporated Town of Remsen, 215 Iowa 1033, 247 N.W. 552 (1933).

Approval of highway commission required before contract for a bridge on secondary road becomes effective. O.A.G. 1925, 1926, p. 480.

4. Changes in plans and specifications.

Changes by budget director in plans and specifications should be consistent with standard plans and specifications. O.A.G. 1925, 1926, p. 480.

5. Advertisement for bids - in general.

Statutory provision for advertisement is mandatory. Johnson v. Incorporated Town of Remsen, 215 Iowa 1033, 247 N.W. 552 (1933).

6. Time of advertisement.

Advertisement for and opening bids prior to budget director's approval not invalidating. Johnson v. Incorporated Town of Remsen, 215 Iowa 1033, 247 N.W. 552 (1933).

7. Bids.

Judicial notice taken of provisions for extension of time. Miller v. Incorporated Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

Rejection of all bids and renegotiation at lower figure with bidder not invalidating. Johnson v. Incorporated Town of Remsen, 215 Iowa 1033, 247 N.W. 552 (1933).

23.8 Enforcement of Performance

1. Construction and application.

This section applies only where contract let for an improvement. O.A.G. 1925, 1926, p. 400.

2. Appeal.
Appeal to budget director does not lie for failure to build according to certain plans and specifications. O.A.G. 1925, 1926, p. 400.

23.9 Nonapproved Contracts Void

1. In general.
Taxpayer and user of electricity could maintain certiorari and injunction without showing special damage. Poor v. Incorporated Town of Duncombe, 231 Iowa 907, 2 N.W.2d 294 (1942).
Amount of prospective tax increase immaterial to right to sue. Miller v. City of Des Moines, 143 Iowa 409, 122 N.W. 226 (1909).

23.10 Witness Fees - Costs (No Annotations)

23.11 Report on Completion (No Annotations)

23.12 Issuance of Bonds - Notice

1. Construction and application.
Supervisors may, subject to highway commission approval, determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.
Statutes regarding publication of notice must be strictly construed. O.A.G. 1934, p. 365.
This section refers only to creating original indebtedness and not to funding or refunding bonds. O.A.G. 1930, p. 372.
County road bonds may be refunded at any time at lower interest without giving statutory notice. O.A.G. 1930, p. 353.

2. Jurisdiction of Appeal Board.
Jurisdiction where cost of improvement by municipality to be paid for in whole or in part by use of taxable funds or issuance of bonds payable from taxation. O.A.G. June 26, 1963.

3. Borrowing money.
Contract by city to pay one who has assumed debt of city not a "borrowing of money." Gelpcke v. City of Dubuque, 68 U.S. 221, 1 Wall. 221, 17 L. Ed. 519 (1863).

4. Petition.
Petition by city electors for special election on question of issuance of flood protection improvement bonds could not constitute a petition of taxpayers for hearing before the State Appeal Board. Kochen v. Young, 252 Iowa 389, 107 N.W.2d 81 (1961).

23.13 Objections

1. Construction and application.
Supervisors may, subject to highway commission approval, determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.
Withdrawal of signatures of objectors does not affect status of appeal after appeal is perfected. O.A.G. 1925, 1926, p. 485.

2. Jurisdiction of Appeal Board.
Jurisdiction of appeals where cost of improvement initiated by municipality to be paid for in whole or in part by use of taxable funds or issuance of bonds payable from taxation. O.A.G. June 26, 1963.

No jurisdiction of either appeals involving improvements or bonds payable out of special assessment. Id.

23.14 Notice of Hearing

1. Construction and application.

Supervisors may, subject to highway commission approval, determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.

23.15 Decision

1. Construction and application.

Supervisors may, subject to highway commission approval, determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.

23.16 Bonds and Taxes Void

1. Construction and application.

Purpose of law is to secure economy and fair prices for construction work paid out of public funds. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

23.17 Unpaid Revenue Bonds - Effect

1. Construction and application.

Intent of this section permitting municipality to issue revenue bonds was to permit issuance of revenue bonds notwithstanding existence of other unmatured revenue bonds. Douglass v. Iowa City, 218 N.W.2d 908 (Iowa 1974).

23.18 Bids Required - Procedure

1. In general.

Public competitive-bids are not required for a contract between an area solid waste disposal unit organized pursuant to section 455B.76 and a contractor where the contract will not involve the expenditure of public funds. O.A.G. October 23, 1978.

Not necessary to submit to voters question of whether courthouse should be remodeled when estimated probable cost does not exceed $50,000 and funds are available. O.A.G. September 19, 1973.

Chapter 23 does not require contracts for work on public improvement exceeding $5,000. O.A.G. May 1, 1973.

Use of "design-build" method of obtaining bids for schools is not prohibited. O.A.G. Novemeber 7, 1972.

Gift of money for construction, received in the schoolhouse fund, must be treated as public money. O.A.G. November 4, 1971.

Municipality has authority to include code of fair practices in its contract specifications. O.A.G. September 2, 1971.

Requirements of this section as to bid security are not available for contracting procedures under chapter 397, relating to contracting procedures for utility projects. O.A.G. November 24, 1965.

State Fair Board is a municipality - board need not hold hearings or let bids for certain improvements. O.A.G. October 12, 1965.

2. Insurance.

Governmental subdivisions not required to let bids for fire and casuality insurance, although it may be recognized as good business practice to do so. O.A.G. July 11, 1973.

3. County plat book system.
Reconstruction of a county plat book system not a public improvement within chapter 23. O.A.G. December 6, 1974.

4. Actuarial services.
For case citations, see I.C.A.

23.19 Sale of Municipal Bonds Without Hearing or Contract (No Annotations)

23.20 Bid Bonds (No Annotations)

23.21 Bid Preference Under Certain Conditions (No Annotations)

CHAPTER 25

CLAIMS AGAINST THE STATE AND BY THE STATE.

25.1 Receipt, Investigation, and Report

1. Construction and application.

Tort Claims Act providing for the filing, passing upon and paying claims against State on account of damages to or loss of property or for personal injury or death by negligent or wrongful act or omission of any State employee acting within scope of his employment waives State's immunity as to class of claims for which it provides redress, but has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Statute relating to operation of motor vehicle while intoxicated did not contain an appropriation whereby claims of private treatment centers could be paid by the state. O.A.G. September 21, 1966.

For additional annotations, see I.C.A.

25.2 Examination of Report - Approval or Rejection - Payment

1. Construction and application.

Where state appeal board approves claims for refund of monies illegally exacted as motor vehicle registration fees, this section provides for the payment of such claims from the road use tax fund. O.A.G. April 4, 1967.

State appeal board's authorization to approve claims for refunds does not include authority to approve payment of interest thereon. O.A.G. July 22, 1969.

2. Intergovernmental Claims.

U.S. department of labor procedures to recover from State Department of Public Safety. O.A.G. September 29, 1969.

3. Tort claims.

Tort Claims Act providing for the filing, passing upon and paying claims against State on account of damages to or loss of property or for personal injury or death by negligent or wrongful act or omission of any State employee acting within scope of his employment waives State's immunity as to class of claims for which it provides redress, but has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Tort claims filed under the provisions of ch. 25A, as amended, may not be paid from the primary road fund nor any allocation thereof. O.A.G. March 2, 1970.

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

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

25.3 Filing with General Assembly - Testimony

1. Construction and application.

Tort Claims Act providing for the filing, passing upon and paying claims against State on account of damages to or loss of property or for personal injury or death by negligent or wrongful act or omission of any State employee acting within scope of his employment waives State's immunity as to class of claims for which it provides redress, but has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Provisions of this section with respect to time of filing of report of Appeal Board is directory and not mandatory. O.A.G. February 1, 1955.

25.4 Assistant Attorney General - Salary (No Annotations)

25.5 Testimony - Filing with Board (No Annotations)

25.6 Claims by State Against Municipalities (No Annotations)

25.7 Claims Refused - Effect

1. In general.

Tort Claims Act providing for the filing, passing upon and paying claims against State on account of damages to or loss of property or for personal injury or death by negligent or wrongful act or omission of any State employee acting within scope of his employment waives State's immunity as to class of claims for which it provides redress, but has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

25.8 Limitation on Claims to be Considered

Consideration and allowance of claims. O.A.G. February 1, 1955.

CHAPTER 25A

STATE TORT CLAIMS ACT

25A.1 Citation and Applicability

1. Validity.

Denial of plaintiff's right to bring action against state for breach of contract did not deprive plaintiff of any right protected by federal constitution. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Iowa Tort Claims Act did not unconstitutionally delegate legislative power. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

2. Construction and application.

Tort Claims Act abrogates sovereign immunity for tort claims against state with certain exceptions. Adam v. Mt. Pleasant Bank and Trust Company, 340 N.W.2d 251 (Iowa 1983).

Since Iowa Tort Claims Act is based on Federal Tort Claims Act, the Supreme Court assumes that legislature intended Iowa act to have same meaning as federal statute. Id.

Federal decisions interpreting Federal Tort Claims Act are entitled to great weight when interpreting Iowa Tort Claims Act. Id.

Under this act, state may be sued in tort only in manner and to extent to which legislature has given consent. Hansen v. State, 298 N.W.2d 263 (Iowa 1980).

Procedures prescribed in State Tort Claims Act must be exhausted before state court has jurisdiction over claim against state and its agencies. Jontz v. Mahedy, 293 N.W.2d 1 (Iowa 1980).

Same exhaustion requirement applies where private suit is sought against state employee. Id.

Federal interpretations of phrase, which is in Federal Tort Claims Act and which consists of the words "negligent or wrongful act or omission" of an employee, may be utilized in interpreting the same phrase in State Tort Claims Act. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

By enacting legislation governing tort liability of governmental subdivisions, legislature impliedly repealed previous statute requiring filing of notice of unliquidated claims against county. Dan Dugan Transport Co. v. Worth County, 243 N.W.2d 655 (Iowa 1976).

Breach of contract action against the state would not lie in absence of state's consent. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Iowa Tort Claims Act does not create a new cause of action, but gives recognition to and a remedy for a cause of action already existing. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

Member of board of architectural services while performing services for state fell within the purview of this chapter. O.A.G. August 30, 1976.

3. Purpose of act.

Tort Claims Act does not create a new cause of action but simply provides jurisdictional foothold for pursuing rights or causes already existing. Seiber v. State, 211 N.W.2d 698 (Iowa 1973).

Iowa Tort Claims Act disclosed no intent on General Assembly's part to waive existing governmental immunities of those entities or subordinate units of the state commonly classified as political subdivisions. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

4. Operational effect.

Supreme Court would not overrule cases concerning common law governmental immunity. Barrad v. Jefferson County, 178 N.W.2d 376 (Iowa 1970).

5. Federal tort claims.

State court interpreting this chapter is guided by interpretation given by federal courts to identical statutory language in Federal Tort Claims Act. Saxton v. State, 206 N.W.2d 85 (Iowa 1973).

6. Respondeat superior.

Under Iowa Tort Claims Act, the rule of respondeat superior becomes applicable. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

7. Access to state property.

It is an administrative decision of the state agency involved, to allow or deny access by the public, across the property occupied by that agency, and state could be liable to a licensee for injuries. O.A.G. July 26, 1972.

Provision of standard form of license that the state of Iowa, has licensee, shall hold the United States harmless from any and all claims arising out of activities of the state on leased property conducted exclusively for the benefit of the state denied the power of the state to assume obligations of the United States and violates const. art. 7, § 1. O.A.G. June 19, 1967.

8. Actions against public employees.

Volunteers performing services for area agencies which receive federal or state funds from the Commission on Aging are not state employees for purposes of this act. O.A.G. February 28, 1978.

9. Injunctions.

This act does not abrogate the right, under proper circumstances, to injunctive relief against state highway commission. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

10. Appropriations.

Tort claims were not "debts contracted" as that term was used in the constitution, and are therefore not unconstitutional. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

11. Disbursement of funds.

Disbursement of funds under Iowa Tort Claims Act for torts committed prior to effective date of the Act would not constitute payment of money the subject matter of which was not provided for by any previously enacted law which would be in violation of const. art.3, § 31. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

12. Review.

Review by Court of Appeals under Tort Claims Act is not de novo but is on errors of law assigned, in light most favorable to trial court's findings. Clites v. State, 322 N.W.2d 917 (Iowa Ct. App. 1982).

Supreme Court's review of judgment upholding Iowa Tort Claims Act in its entirety and denying injunctive relief would be de novo. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

13. Jurisdiction.

If one of enumerated exceptions to state liablity set out in Tort Claims Act applies, a court does not have subject matter jurisdiction of the claim and it must be dismissed. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

14. Amendment

Amendment requiring tort claims against state employees be presented to state appeal board prior to court action. Jones v. Bowers, 256 N.W.2d 233 (Iowa 1977).

15. Negligence in general.

Must be causal connection between negligence and plaintiffs' injuries. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

16. Alcoholic beverages.

Recovery not precluded in action based on state's negligence in design and construction of highway. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

17. Prisoners, injuries to.

For annotations, see I.C.A.

25A.2 Definitions

1. Construction and application.

Alleged willful and wanton conduct on part of defendant magistrate did not fall within provisions of the State Tort Claims Act. Jontz v. Mahedy, 293 N.W.2d 1 (Iowa 1980).

Duty of state to indemnify its employee does not extend to actions based on willful and wanton conduct. Id.

Federal interpretations of phrase which is within the Federal Tort Claims Act and which consists of the words "negligent or wrongful act or omission" of an employee, may be utilized in interpreting the same phrase in State Tort Claims Act. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

Final construction and interpretation of Iowa statutory law is for Iowa Supreme Court. Hubbard v. State, 163 N.W.2d 904 (Iowa 1969).

2. Employees of the state.

National guard pilot of national guard plane was "employee of state." Morrison v. State, 179 N.W.2d 439 (Iowa 1970).

Individual members of the Air Quality Commission protected from personal liability. O.A.G. September 29, 1976.

Member of board of architectural services while performing services for state, upon request of state, with or without compensation, falls within purview of section 25A.1 et seq. O.A.G. August 30, 1976.

One who performs services for the State, upon request of the State, without compensation, may fall within the purview of this chapter for purposes of employee defenses and indemnification. O.A.G. July 27, 1976.

Paid and volunteer workers fall within the provisions of the Iowa Tort Claims Act. O.A.G. September 22, 1965.

Residents and fellow physicians and dentists of the University Hospitals and interns and residents of the College of Veterinary Medicine are employees of the state and generally covered by the provisions of this chapter. O.A.G. June 23, 1977.

3. Claim.

Claims resulting from negligent investigation by Department of Criminal Investigation agents is not a tort under Iowa Tort Claims Act. Smith v. State, 324 N.W.2d 299 (Iowa 1982).

General rule that possessor of property is not obligated to eliminate known and obvious dangers does not apply to city to keep its thoroughfares and public places safe for public use. Such rule likewise does not negate State's obligation to maintain primary roads. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Accumulated water in "frost heave" - state's negligence in failing to eliminate hazard after a notice thereof. Id.

Tort Claims Act has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Iowa Tort Claims Act makes no distinction between employee driving a state-owned vehicle or a private vehicle but only requires that the claim arise while the employee is acting within the scope of his employment. O.A.G. May 17, 1965.

4. State agency.

This act does not abrogate the right, under proper circumstances, to injunctive relief against State Highway Commission. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

Political subdivisions of state such as cities and counties were neither agencies of the state nor corporations as those terms were employed and defined in Iowa Tort Claims Act, and such were not included within its clear intent and purpose. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

25A.3 Adjustment and Settlement of Claims

1. In general.

Amendment of chapter 25A effective July 1, 1975, requiring claims against state employees to be presented to state appeal board prior to court will be retroactively applied to bar motorist seeking contribution against state troopers for injuries in auto accident on September 28, 1973. Jones v. Bowers, 256 N.W.2d 233 (Iowa 1977).

Negligence of state in maintaining drop-off between edge of pavement and shoulder without adequate warning of such condition. Stanley v. State, 197 N.W.2d 599 (Iowa 1972).

2. Claims.

Tort Claims Act has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

3. Exhaustion of remedies.

Action by landowner against Iowa State Highway Commission for damages for commissions alleged tortious interference with landowners contract to sell adjoining tract of land, said to have occurred because of commission's refusal to grant access to frontage road, could be brought only under Tort Claims Act after administrative remedies had been exhausted. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

25A.4 District Court to Hold Hearings

1. In general.

Rules defining commencement of suit and identification of person to be served. Hansen v. State, 298 N.W.2d 263 (Iowa 1980).

Tort Claims Act has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

Under Iowa Tort Claims Act, rule of respondeat superior becomes applicable. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

2. Exhaustion of remedies.

State Appeal Board has "primary" or "exclusive" jurisdiction of tort claims against state. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Doctrine of exhaustion of remedies may properly be invoked where tort claimants against state do not "in the first instance" submit their claims to the board for consideration and disposition. Id.

Action by landowner against Iowa State Highway Commission for damages for commissions alleged tortious interference with landowner's contract to sell adjoining tract of land. Id.

3. Negligence.

Posting of "bump" sign in vicinity of frost heave in highway did not excuse state from performing its duty to repair such defect. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Duty of governmental body to maintain streets or highways includes duty to repair. Id.

General rule that possessor of property is not obligated to eliminate known and obvious dangers does not apply to city's mandatory duty to keep its thoroughfares and public places safe for public use they were designed to serve. Id.

Such rule likewise does not negate state's obligation to maintain primary roads. Id.

Failure to warn of impaired highway conditions where repair site marked only by saw horse 10 feet from construction area. Weisbrod v. State, 193 N.W.2d 125 (Iowa 1971).

4. Damages.

Personal injury action by automobile passenger paralyzed from chest down as result of highway accident. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Shortened life expectancy used to reduce damages. Id.

Sick and infirm person entitled to increased damages which are natural and proximate result of wrongful act. McBroon v. State, 226 N.W.2d 41 (Iowa 1975).

4.5. Punitive damages.

"Subject matter" within section 25A.8 providing that final judgment there under shall be complete bar to any action by claimant against a state employee by reason of the same subject matter includes action for punitive damages. Speed v. Beurle, 251 N.W.2d 217 (Iowa 1977).

5. Evidence.

Hospital breached obligation to obtain patient's informed consent. Clites v. State, 322 N.W.2d 917 (Iowa Ct. App. 1982).

On appeal from award of damages to plaintiff in tort action against State, Supreme Court would view evidence in light most favorable to judgment

and construe trials court's findings liberally in order to support result reached. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Evidence supported trial court's finding, in action by automobile passenger or damages sustained when vehicle left road after encountering water which had accumulated in "frost heave" that State was negligent in failing to eliminate hazard after notice thereof. Id.

Traumatic effect of loss of hand by prisoner. McBroon v. State, 226 N.W.2d 41 (Iowa 1975).

6. Presumptions and burden of proof.

Faced with trial court's adverse holding in action under the Tort Claims Act, plaintiff must demonstrate state's negligence as a matter of law if he is to prevail. Barnard v. State, 265 N.W.2d 620 (Iowa 1978).

Evidence in automobile passenger's action against state for damages for injuries sustained when automobile left highway after encountering water which had accummulated in "frost heave" supported finding that state did not carry its burden of proof on issue of passengers contributory negligence. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

7. Findings.

Action against state to recover for personal injuries, tried to court under tort claims act. Stanley v. State, 197 N.W.2d 599 (Iowa 1972).

8. Review.

Review by court of appeals under tort claims act is not de novo but is on errors of law assigned. Clites v. State, 322 N.W.2d 917 (Iowa Ct. App. 1982).

Supreme Court's standard of review of trial courts noninjuring case under tort claims act was assigned errors at law. Wernimont v. State, 312 N.W.2d 568 (Iowa 1981).

Under proper circumstances, punitive damages are allowable against governmental subdivision in tort actions. Young v. City of Des Moines, 262 N.W.2d 612 (Iowa 1978).

Determination that plaintiff sufficiently answered state's written interrogatories was not reversible error. McBroon v. State, 226 N.W.2d 41 (Iowa 1975).

On appeal from denial of claim under Iowa Tort Claims Act, review of supreme court is not de novo but is only on errors assigned. DeYarman v. State, 226 N.W.2d 26 (Iowa 1975).

Alleged negligence in construction and maintenance of shoulder abutting highway. Id.

In claim under Iowa Tort Claims Act, trial court's findings of fact are binding on Supreme Court if supported by substantial evidence. Id.

9. Alcoholic beverages.

For case citations, see I.C.A.

25A.5 When Suit Permitted

1. In general.

District court had subject matter jurisdiction where plaintiff failed to withdraw claim before state appeal board because their complaint substantially complied with withdrawal requirements. Clites v. State, 322 N.W.2d 917 (Iowa Ct. App. 1982).

State of Illinois was not a "person" for 14th Amendment suit seeking a bar of negligence against it in an Iowa court. Struebin v. State, 322 N.W.2d 84 (Iowa 1982).

Amendment of chapter 25A requires that tort claims against state employees be presented to State Appeal Board prior to court action. Jones v. Bowers, 256 N.W.2d 233 (Iowa 1977).

Tortious or wrongful interference with contractual relations is actionable under Iowa law. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Landowner could not recover damages from state highway commission because of its alleged interference with contractual relations by failing to grant access to frontage road. Id.

Doctrine of exhaustion of remedies may properly be invoked where tort claimants against state do not "in the first instance" submit their claims to board for consideration and disposition. Id.

Suit may not be brought under Iowa Tort Claims Act until the administrative remedy is exhausted. Weisbrod v. State, 193 N.W.2d 125 (Iowa 1971).

Tort Claims Act has no application to action for breach of contract. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

25A.6 Applicable Rules

1. In general.

Tort claims not "debts contracted" as that term was used in the constitution. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

2. Petition.

Petition alleging false and unlawful arrest and detention of minor by town's police officer. Strong v. Town of Lansing, 179 N.W.2d 365 (Iowa 1970).

25A.7 Appeal

1. Construction and application.

On appeal from denial of claim under Iowa Tort Claims Act, review of Supreme Court is not de novo but is only on errors assigned. DeYarman v. State, 226 N.W.2d 26 (Iowa 1975).

In claim under Iowa Tort Claims Act, trial courts findings of fact are binding on supreme court if supported by substantial evidence. Id.

25A.8 Judgment as Bar

1. In general.

"Subject matter" within section 25A.8 providing that final judgment thereunder shall be complete bar to any action by claimant against state employee by reason of the same subject matter includes action for punitive damages. Speed v. Beurle, 251 N.W.2d 217 (Iowa 1977).

25A.9 Compromise and Settlement (No Annotations)

25A.10 Award Conclusive on State (No Annotations)

25A.11 Payment of Award

1. Construction and application.

Tort claims filed under the provisions of this chapter, as amended, may not be paid from the primary road fund nor any allocation thereof. O.A.G. March 2, 1970.

2. Amount.

Damage award not clearly insufficient. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Reasonableness. Stanley v. State, 197 N.W.2d 599 (Iowa 1972).

3. Future costs.

Warranted allowance. Stanley v. State, 197 N.W.2d 599 (Iowa 1972).

4. Evidence.

Personal injury action by automobile passenger. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

25A.12 Report by Comptroller (No Annotations)

25A.13 Limitation of Actions

1. In general.

Identification of person to be served - commencement of suit. Hansen v. State, 298 N.W.2d 263 (Iowa 1980).

Landowner could not recover damages from state highway commission because of its alleged interference with contractual relations by failing to grant access to frontage road where before instituting its court action against commission, landowner had failed to exhaust administrative remedies. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

25A.14 Exceptions

1. Construction and application.

Department of Transportation design and placement of freeway guardrail and decisions over the years not to update were made at operational level and judged according to state's duty to use care in making freeway reasonably safe. Butler v. State, 336 N.W.2d 416 (Iowa 1983).

Statutory provisions for disability pension and death benefits for specified peace officers serve the same purpose of workers compensation and are exclusive of the right to sue employer. Goebel v. City of Cedar Rapids, 267 N.W.2d 388 (Iowa 1978).

If one of enumerated exceptions to state liabilities set out in Tort Claims Act applies, a court does not have subject matter jurisdiction of the claim and it must be dismissed. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

Tort Claims Act is not a waiver of sovereign immunity in all instances and state or its agency is subject to suit only in manner and to extent to which consent has been given. Lloyd v. State, 251 N.W.2d 551 (Iowa 1977).

Tort Claims Act does not create a new cause of action but simply provides jurisdictional foothold for pursuing rights or causes already existing. Seiber v. State, 211 N.W.2d 698 (Iowa 1973).

In enacting State Tort Claims Act provision exempting state from liability in certain cases. Use of "abuse or process" was clerical error which would be reformed to read "abuse of process" and state could not be held liable for tortious conduct of its agents in attempting wrongful eviction. Jones v. Iowa State Highway Commission, 207 N.W.2d 1 (Iowa 1973).

Claim arising out of "deceit." Saxton v. State, 206 N.W.2d 85 (Iowa 1973).

Though decision to keep highway open during construction was a discretionary one for which no liability would attach, negligence in carrying out that policy could not be excused on grounds that the negligent acts were performed in the exercise of discretion within the meaning of exemption in the

Tort Claims Act; in particular, negligence in creating and maintaining a dropoff of ten to twelve inches between edge of new pavement and shoulder and in failing to give adequate warning of such condition was not within such exemption. Stanley v. State, 197 N.W.2d 599 (Iowa 1972).

Legislature has not made actionable a claim against state resulting from statements or representations which allegedly induced persons to act to their detriment. Hubbard v. State, 163 N.W.2d 904 (Iowa 1969).

In view of fact that State Tort Claims Act, and particularly this section, does not preclude a suit against the individual, even though the acts complained of may have been performed in the line of duty, insurance coverage may be obtained. O.A.G. Nov. 28, 1969.

2. Appropriations.

Tort claims were not "debts contracted" as that term was used in the Constitution. Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

3. Discretionary function.

Statutory exception to Tort Claims Act, including discretionary function exception, are jurisdictional defenses. Lloyd v. State, 251 N.W.2d 551 (Iowa 1977).

Evidence supported trial court's finding, in action by automobile passenger for damages sustained when vehicle left road after encountering water which had accumulated in "frost heave" that state was negligent in failing to eliminate hazard after notice thereof. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Policy determination of highway commission not to post "deer crossing" signs along highways of state and particularly at point in highway where decedent's automobile collided with deer involved the exercise of discretion at the planning stage and came within exception of this section of tort claims act. Seiber v. State, 211 N.W.2d 698 (Iowa 1973).

4. Malicious prosecution.

Vander Linden v. Crews, 231 N.W.2d 904 (Iowa 1975).

5. Highways.

Provision of this section that "the provisions of this chapter shall not apply to...any claim based upon...the exercise of performance or the failure to exercise or perform a discretionary function or duty..." was not preclusive of plaintiffs' right to recover against state on theory that automobile collision arose from state's negligence, in light of fact that the negligence claims did not focus on decision to build highway, but on alleged negligence of state in implementing that decision. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

6. Summary judgment.

State's motion for summary judgment based on assertions that plaintiff's specifications of negligence in regard to highway were barred by discretionary function exception to state liability. Lewis v. State, 256 N.W.2d 181 (Iowa 1977).

Entry of summary judgment for state in Tort Claims Act action, on jurisdictional ground of discretionary function exception, was improper, appropriate disposition being dismissal. Lloyd v. State, 251 N.W.2d 551 (Iowa 1977).

7. Inmates.

If prisoner's heart attack resulted from prison work, survivors are entitled to workmans compensation for injuries or death because of improper care after attack but would not be titled to seek relief in tort. Heumphreus v. State, 334 N.W.2d 757 (Iowa 1983).

If prisoner's heart attack did not result from prison work, but would have occurred anyway, survivors not entitled to workmans compensation, but entitled to try to establish tort liability for death resulting from alleged negligent care of prisoner. Id.

8. Dismissal.

If state is covered by one of statutory exceptions under Tort Claims Act, trial court must dismiss the action. Butler v. State, 336 N.W.2d 416 (Iowa 1983).

9. Misrepresentation.

Misrepresentation exception in Iowa Tort Claims Act did not bar action against state by farmers who alleged sustained damages in lost grain when company went bankrupt and they sustained damages as result of breach of statutory duties of licensing, inspection, bonding and general regulation of grain company by state commerce commission and who did not base action on communication of misinformation by commission. Adam v. Mt. Pleasant Bank and Trust Company, 340 N.W.2d 251 (Iowa 1983).

10. Any claim based on enforcement of chapter 455D. (No Annotations)

25A.15 Attorney's Fees and Expenses

1. Construction and application.

Iowa legislature could not control federal court by directing hearing be held upon matter of attorney fees. State of Iowa v. Union Asphalt & Roadoils, Inc., 281 F. Supp. 391 (1968).

25A.16 Remedies Exclusive

1. Construction and application.

Procedures prescribed in State Tort Claims Act must be exhausted before state court has jurisdiction over claim against state and its agencies. Jontz v. Mahedy, 293 N.W.2d 1 (Iowa 1980).

Same exhaustion requirement applies where private suit sought against state employee. Id.

Alleged willful and wanton conduct did not fall within provisions of State Tort Claims Act. Id.

Actions under State Tort Claims Act must be brought against state, not agency or officer alleged to have been guilty of wrongful conduct. Jones v. Iowa State Highway Commission, 207 N.W.2d 1 (Iowa 1973).

This act does not abrogate the right, under proper circumstances, to injunctive relief against state highway commission. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

25A.17 Adjustment of Other Claims (No Annotations)

25A.18 Extension of Time (No Annotations)

25A.19 Claims Before Appeal Board (No Annotations)

25A.20 Liability Insurance

1. In general.

Additional insurance charges are not reimbursable expense for those state employees who use their private automobiles on state business. O.A.G. May 17, 1965.

25A.21 Employees Defended and Indemnified

1. In general.

Alleged willful and wanton conduct did not fall within provisions of State Tort Claims Act. Jontz v. Mahedy, 293 N.W.2d 1 (Iowa 1980).

Duty to indemnify does not extend to actions based on willful and wanton conduct. Id.

Members of soybean promotion board and beef cattle association are not state employees covered by this chapter. O.A.G. March 17, 1980.

An employee of the Iowa Beer and Liquor Control Department is afforded liability protection. O.A.G. Feb. 8, 1978.

The phrase "tort claim or demand" in this section encompasses every type of action for damages, including those which are statutory in origin, other than actions for breach of contract. O.A.G. Dec. 29, 1976.

This section to be broadly construed to achieve goal of protecting state employees from liability while in performance of their duties. Id.

25A.22 Actions in Federal Court

1. In general.

Eleventh amendment claim could not be decided on motion to dismiss in civil rights complaint that defendent state official acted willingly and wantonly. Health Care Equalization Committee of Iowa Chiropractic Soc. v. Iowa Medical Soc., 501 F. Supp. 970 (D.C. 1980).

This section to be broadly construed to achieve goal of protecting state employees from liability while in performance of their duties. O.A.G. Dec. 29, 1976.

25A.23 Employee Liability (No Annotations)

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

28E.1 Purpose

1. Validity.

Legal creation of a new body corporate and politic to jointly exercise and perform powers and responsibilities of cooperating governmental unit would not be unconstitutional so long as the new body politic is doing only what its cooperating members already have power to do. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

2. In general.

Pursuant to § 613A.2, agency or board established pursuant to Chapter 28E may be held liable for its torts and those of its officers, employees and agents acting within the scope of their employment. O.A.G. March 13, 1980.

Pursuant to Chapter 28E agreement between Kossuth County and several cities in Kossuth County, money which is reimbursed to Kossuth County Secondary Road Fund by the cities is a portion of the Kossuth County engineer's total salary set by the Kossuth County Board of Supervisors, not in addition thereto. O.A.G. April 17, 1979.

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

Governing board operating under Chapter 28E is generally required to comply with the open meeting law of this state. O.A.G. Nov. 27, 1978.

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

This chapter authorizes cities and towns to do jointly what they are empowered to do individually, whether it be construed to be a proprietary enterprise or a governmental function. O.A.G. March 16, 1967.

This chapter is not invocable where other statutes expressly provide for cooperation on specific projects. O.A.G. Jan. 18, 1966.

3. Assessors offices.

Offices of city assessor and county assessor may be combined by appropriate ordinance. O.A.G. Sept. 30, 1971.

4. Planning.

Public monies controlled by regional planning commission need not be placed in public depositories. O.A.G. Nov. 18, 1974.

County regional planning commission formed under Chapter 473A may join a multi-county regional planning commission under Chapter 28E. O.A.G. July 30, 1973.

5. Sewage and waste.

Members of board of directors of county area solid waste agency protected under provisions of Chapter 613A. O.A.G. Dec. 11, 1975.

Contracts between sanitary sewer districts are permissible under Chapter 28E. O.A.G. July 25, 1974.

County can contribute money to fund a legal entity created under § 28E.1 et. seq. for a governmental purpose authorized by law without holding an election; limitation of § 345.1 does not apply to a public facility owned by an entity other than the county; no statutory authority for a council of

government created under § 28E.1 et. seq. to hold an election to authorize the expenditure of funds for a solid waste disposal facility. O.A.G. Feb. 19, 1974.

Joint agreement establishing sanitary disposal system authorized by § 28E.1 et. seq. O.A.G. Feb. 3, 1971.

6. Road and street improvements.

Section 309.68, Code 1966, relating to intercounty highways does not authorize the construction of a road entirely within one county, and there appears to be no other express provision for the joint cooperation of adjoining counties under § 28E.1 et. seq., Code 1966, in the construction and maintenance of such a road. O.A.G. May 6, 1969.

A city which controls its own bridge funds and a county may enter into an agreement under this chapter to construct a bridge and approaches under certain circumstances. O.A.G. Sept. 18, 1967.

This chapter authorizes city and county to improve a road which is on the boundary of the city and the county, and which is one-half in the city and one-half in the county. O.A.G. Sept. 22, 1966.

7. Parking.

Joint agreement may be entered into by city and county to provide off-street parking on courthouse grounds. O.A.G. June 15, 1970.

City and county may enter into joint venture to establish off-street parking. O.A.G. June 29, 1966.

8. Jails.

For annotations, see I.C.A.

9. Flood control.

No express powers of municipal corporations to cooperate with or defer to the natural resources council in flood control projects. O.A.G. Jan. 18, 1966.

10. Housing.

Agreement creating Southern Iowa Regional Housing Authority complies with the applicable statutory provisions. O.A.G. Oct. 14, 1974.

Two or more municipalities may join together or cooperate by agreement in a low-rent housing project. O.A.G. Oct. 17, 1972.

11. Police and fire protection.

Public agencies may create law enforcement communications commissions without approval of the Department of Public Safety. O.A.G. July 27, 1976.

Township trustees may divide the annual tax levee it receives for fire protection in order to pay the benefited fire districts and cities providing fire protection to the township under a section 28E.4 agreement. O.A.G. May 25, 1976.

Counties lack authority to contribute revenue sharing funds to local fire fighting agencies, but "public agencies" may enter contracts for the joint performance of governmental services of mutual benefit under Chapter 28E. O.A.G. Sept. 18, 1974.

Authority of police officers may extend beyond the limits of the municipalities by which they are employed when they are temporarily assigned to duty in another municipality. O.A.G. April 28, 1972.

12. Recreation and entertainment facilities.

Where a city enters into a 28E agreement with another public agency for the construction and administration of a theater, auditorium and the like, it may contribute funds for the facility. O.A.G. Feb. 9, 1976.

State Conservation Commission may contract with a county conservation board to pay from the conservation fund a portion of the cost of developing snowmobile trails. O.A.G. Nov. 19, 1974.

County conservation boards may participate with a town or other local unit of government in the establishment of a recreational area upon land in which either has sufficient interest to establish such a project. O.A.G. July 30, 1974.

County may agree to work jointly with a private agency or expend funds as authorized by section 332.3 to obtain services of such private agency in developing a plan for implementing recommendations for health, recreation and social needs and services. O.A.G. Nov. 14, 1973.

School board and city council had authority to enter into lease from school district to city for land to be used as playground or recreation center. O.A.G. Sept. 17, 1968 (No. 68-9-8).

13. Health and education.

School district may contract with county and state highway commission to pay a portion of the cost of installation and energy for light fixtures placed at the entrance to its school property. O.A.G. April 27, 1971.

For additional annotations, see I.C.A.

14. Hospitals.

For annotations, see I.C.A.

15. Private agencies.

Public funds may not be spent to support voluntary programs provided by nonprofit private agencies; however, the services provided by such agencies may be obtained under agreements where joint exercise of governmental power is warranted. O.A.G. Sept. 1, 1976.

County board of supervisors may enter into agreement with private agency for construction and maintenance of secondary road under jurisdiction of county board. O.A.G. June 4, 1971.

For additional annotations, see I.C.A.

16. Agreements with foreign states.

This chapter permits an Iowa Soil Conservation District to enter into an agreement with an agency of another state with like powers for the joint exercise of governmental powers granted to such agencies. O.A.G. April 3, 1970.

For additional annotations, see I.C.A.

17. Board members and employees.

Intergovernmental agreement creating solid waste agency was not contrary to public policy because of conflict of interests to extent that it permitted elected officials of member municipalities to serve on governing board of such agency. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

The position of mayor and executive director of an intergovernmental agency, of which the mayor's municipality is a member, may be incompatible and, if so, the prior position is ipso facto vacated. O.A.G. April 28, 1976.

For additional annotations, see I.C.A.

18. Administrative powers.

Administrative officials should be able to exercise their judgment free from objectionable pressure of conflicting interest. Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449 (Iowa 1970).

Public monies controlled by regional planning commissions do not have to be placed in public depositories. O.A.G. Nov. 18, 1974.

Political subdivisions having the power to purchase motor vehicles may arrange with the state car dispatcher for the latter to purchase vehicles on their behalf. O.A.G. July 29, 1971.

A joint planning commission, such as the Central Iowa Regional Planning Commission, may own and lease a public transit building, maintenance and equipment facilities to the Iowa Regional Transit Corporation. O.A.G. March 17, 1971.

Joint exercise of mutually possessed powers and exercise by one agency of the power of the other in accordance with contract. O.A.G. April 4, 1969.

19. Eminent domain.

Where implementing agreement between city and state highway commission concerning highway construction project within city specified that city should condemn property and take title in name of city and initial disbursement of funds for project was to come from city treasury, condemnation commission which assessed damages was properly constituted. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

Section 28F.11 is not the exclusive authority for the grant of power of eminent domain to a Chapter 28E public agency and in many cases is not applicable. O.A.G. Dec. 9, 1974.

20. Taxation and bonds.

This chapter provides authority for the state and local governments to enter into agreements with one or more public or private agencies for joint or cooperative actions pursuant to its provisions, and this includes authority to allocate tax funds for implementing such plans or purpose. O.A.G. Nov. 14, 1973.

For additional annotations, see I.C.A.

21. Federal funds.

Municipalities have authority to receive and distribute federal funds pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. O.A.G. Oct. 14, 1971.

Cities and towns may accept federal funds available under the Urban Mass Transportation Act of 1964. O.A.G. Feb. 18, 1966.

28E.2 Definitions

1. In general.

Cities and towns may accept federal funds available under the Urban Mass Transportation Act of 1964. O.A.G. Feb. 18, 1966.

2. Counties.

Chapter 520 does not permit counties to exchange reciprocal or interinsurance contracts; however, ch. 28E does authorize counties to form an indemnification pool from which claims against the counties entering the pool may be paid. O.A.G. August 12, 1977.

28E.3 Joint Exercise of Powers

1. In general.

The exercise of the official powers of a peace officer is limited to that geographical and political unit comprising his or her bailiwick, unless expressly expanded by statute. O.A.G. July 3, 1979.

Joint exercise of mutually possessed powers and exercise by one agency of the power of the other in accordance with contract. O.A.G. April 4, 1969.

For additional annotations, see I.C.A.

28E.4 Agreement with Other Agencies

1. In general.

A county attorney under agreement in chapter 28E, may handle child support recovery for another county, but this agreement may not commit full time of county attorney to recovery duties. O.A.G., April 2, 1980.

An entity created by this section may not create another entity under Chapters 28E or 403A. O.A.G. April 25, 1974.

2. Private agencies.

Public funds may not be spent to support voluntary programs provided by nonprofit private agencies; however, the services provided by such agencies may be obtained under agreements where joint exercise of governmental power is warranted. O.A.G. Sept. 1, 1976.

3. Law enforcement.

For annotations, see I.C.A.

28E.5 Specifications

1. In general.

Section 28F.11 is not the exclusive authority for the grant of power of eminent domain to a Chapter 28E public agency and in many cases is not applicable. O.A.G. Dec. 9, 1974.

Section 309.68, relating to intercounty highways, does not authorize the construction of a road entirely within one county, and there appears to be no other express provision for the joint cooperation of adjoining counties under § 28E.1 et. seq. in the construction and maintenance of such a road. O.A.G. May 6, 1969.

For additional annotations, see I.C.A.

28E.6 Additional Provisions

1. In general.

Joint exercise of mutually possessed powers and exercise by one agency of the power of the other in accordance with contract. O.A.G. April 4, 1969.

For additional annotations, see I.C.A.

28E.7 Obligations not Excused

1. In general.

Public monies controlled by regional planning commissions do not have to be placed in public depositories. O.A.G. Nov. 18, 1974.

For additional annotations, see I.C.A.

28E.8 Filing and Recording

For annotations, see I.C.A.

28E.9 Status of Interstate Agreement

1. In general.

This chapter permits an Iowa Soil Conservation District to enter into an agreement with an agency of another state with like powers for the joint exercise of governmental powers granted to such agency, including the furnishing of financial or other aid. O.A.G. April 3, 1970.

Regional Air Pollution Control Charter should be amended and approved by the State Air Pollution Control Commission before the local jurisdiction can sign such charter. O.A.G. Jan. 31, 1969 (No. 69-1-10).

For additional annotations, see I.C.A.

28E.10 Approval of Statutory Officer

1. In general.

Public agencies may create law enforcement communications commissions without the approval of the department of public safety. O.A.G. July 27, 1976.

Regional Air Pollution Control Charter should be amended and approved by the State Air Pollution Control Commission before the local jurisdiction can sign such charter. O.A.G. Jan. 31, 1969 (No. 69-1-10).

For additional annotations, see I.C.A.

28E.11 Agency to Furnish Aid

1. In general.

Where a city enters into a 28E agreement with another public agency for the construction and administration of a theater, auditorium and the like, it may contribute funds for the facility. O.A.G. Feb. 9, 1976.

Assistant county attorney prevented from being employed as legal counsel by a public solid waste agency created under Chapter 28E, since Chapter 28E contemplates that the participating governmental units will provide legal service. O.A.G. May 22, 1973.

Cities have authority to cooperate with community action councils and may spend funds available under section 404.10 (13), authorizing municipal enterprises, subject to certain conditions. O.A.G. April 26, 1966.

28E.12 Contract with Other Agencies

1. In general.

A judicial district department of correctional services may not act as its own administrative agent. After designating a county as administrative agent, the district department may enter into an agreement with the county pursuant to sections 905.4 and 905.5 under which the department performs the functions of administrative agent. O.A.G., December 12, 1980.

The county attorney under chapter 28E may handle child support recovery for another county but cannot commit full time support recovery duties. O.A.G., April 2, 1980.

State Conservation Commission may contract with a County Conservation Board to pay from the conservation fund a portion of the cost of developing snowmobile trails. O.A.G. November 19, 1974.

County conservation boards may participate with a town or other local unit of government in the establishment of a recreational area upon land in which either has sufficient to establish such a project. O.A.G. July 30, 1974.

Contracts between sanitary sewer districts are permissable under ch. 28E. O.A.G. July 25, 1974.

School district may contract with the county and the state highway commission to pay a portion of the cost of installation and energy for light fixtures placed at the entrance to its school property. O.A.G. April 27, 1971.

Joint excercise of mutually possessed powers authorized as well as exercise by one agency of the power of the other in accordance with contract. O.A.G. April 4, 1969.

This section provides sufficient authority for cities to contract with the state highway commission authorizing the latter to act as its agent under terms of proper agreement in order to acquire the right of way necessary to the relocation of streets and local service roads. Id.

City and county may enter into agreement to construct a bridge and approaches under certain conditions. O.A.G. September 18, 1967.

If this chapter authorizes city and county to improve a road which is on the boundary of the city and the county and which is one-half in the city and one-half in the county. O.A.G. September 22, 1966.

28E.13. Powers are Additional to Others

1. In general.

Joint planning commission, such as central Iowa regional planning commission, may own and lease a public transit building, maintenance and equipment facilities to the Iowa regional transit corporation. O.A.G. March 17, 1971.

Section 28E.12 provides sufficient authority for cities to contract with the state highway commission authorizing the latter to act as its agent under terms of proper agreement in order to acquire the right of way necessary to the relocation of streets and local service roads. O.A.G. April 4, 1969.

28E.14 No Limitation on Contract (No Annotations)

28E.15 District Agency

For annotations, see I.C.A.

28E.16 Election for Bonds (No Annotations)

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

1. In general.

Cities can share use of municipal transit system through chapter 28E. O.A.G. March 28, 1980.

28E.18 Shared Use of Facilities (No Annotations)

28E.19 Joint County Indigent Defense Fund (No Annotations)

UNIFIED LAW ENFORCEMENT

28E.21 Definition
For annotations, see I.C.A.

28E.22 Referendum for Tax (No Annotations)

28E.23 Budget (No Annotations)

28E.24 Revenue and Tax Levies (No Annotations)

28E.25 Expansion of District (No Annotations)

28E.26 City Civil Service and Retirement (No Annotations)

28E.27 Duration of Agreements for Law Enforcement Purposes (No Annotations)

28E.28 Public Safety Commission (No Annotations)

28E.29 Amana - Additional Law Enforcement (No Annotations)

CHAPTER 72

DUTIES RELATIVE TO PUBLIC CONTRACTS

72.1 Contracts for Excess Expenditures - Exception for Coal

1. Evasion of limitations.

Limitation on maximum amount may not be circumvented by splitting contracts. O.A.G. 1928, p. 163.

2. Securities.

Where public body has outstanding securities up to the legal limit, they may not be refunded by sale of refunding securities, but may be done by exchange of refunding securities for those outstanding where holders will surrender them for the refunding securities. O.A.G. 1936, p. 10.

3. No-damage provision.

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

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

72.2 Executive Council may Authorize Indebtedness

1. Construction and application.

Bills for demurrage charges should be sworn to endorsed by officer in charge of state institution, and passed on by board of control prior to payment. O.A.G. 1906, p. 70.

72.3 Divulging Contents of Sealed Bids (No Annotations)

72.4 Penalty (No Annotations)

CHAPTER 73

PREFERENCE FOR IOWA PRODUCTS AND LABOR

73.1 Preference Authorized - Conditions

1. Construction and application.

Compliance by municipalities with the preference for Iowa products, produce, coal and labor statutorily required by ch. 73 not prevented. O.A.G. April 17, 1979.

Preference to home over out-of-town concern not required. O.A.G. 1934, p. 371.

Statute mandatory only where goods equal and available in Iowa at no extra cost. O.A.G. 1934, p. 318.

Statute does not require purchase of inferior goods. O.A.G. 1928, p. 199.

2. Federal grants.

Use of federal grant must conform to its conditions. O.A.G. 1934, p. 357.

3. Contracts for public improvement.

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

73.2 Advertisements for Bids - Form

1. Construction and application.

No bids required where equipment not adapted to use of Iowa coal. O.A.G. 1938, p. 506.

Ordinance restricting bids to local contractor invalid. O.A.G. 1934, -. 371.

Strict construction of section not required. O.A.G. 1928, p. 199.

2. Specifications, sufficiency of.

Specifications calling for trade name product "or equal" proper. Keokuk Water Works Co. v. City of Keokuk, 224 Iowa 718, 277 N.W. 291 (1938).

73.3 Iowa Labor (No Annotations)

73.4 "Person" Defined (No Annotations)

73.5 Violations (No Annotations)

73.6 Iowa Coal

1. Construction and application.

The Iowa preference law was not applicable to the award of the 1982-83 University of Iowa coal contract because use of Iowa coal would have materially increased the cost of coal. O.A.G., August 10, 1982.

Purchasing board should consider efficiency in light of this chapter. O.A.G. 1940, p.330.

Purchase of other than Iowa coal authorized where equipment so adapted. O.A.G. 1938, p. 506.

Where annual need exceeds $300, this section must be complied with. O.A.G. 1938, p. 457.

73.7 Bids and Contracts

1. Construction and application.

Language of this section requires a "good and sufficient" performance bond to support bids for coal contracts. O.A.G. July 7, 1975.

Purchasing board should consider efficiency in light of this chapter. O.A.G. 1940, p. 330.

"Lowest responsible bidder" refers to bidder for Iowa coal. O.A.G. 1938 p. 499.

Transportation charges are part of cost in applying $300 test. O.A.G. 1938, p. 457.

73.8 Name of Producer and Mine (No Annotations)

73.9 Violations - Remedy (No Annotations)

73.10 Exceptions (No Annotations)

73.11 Inconsistency with Federal Law (No Annotations)

CHAPTER 111

CONSERVATION AND PUBLIC PARKS

111.3 Duties as to Parks

1/2. Validity

Vesting state conservation commission with power to select sites for and establish state parks does not constitute improper "delegation of legislative power." Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).

1. Construction and application.

Fact that state park project involved primarily construction of an artificial lake did not preclude condemnation of land for such project. Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).

2. Establishment.

Selection of proper sites for state parks within sound discretion of administrative bodies authorized by legislature. Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).

111.7 Eminent Domain

1/2. Validity.

Vesting state conservation commission with power to select sites for and establish state parks does not constitute improper "delegation of legislative power." Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).

1. Construction and application.

Selection of proper sites for state parks within sound discretion of administrative bodies authorized by legislature. Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).

Fact that state park project involved primarily construction of artificial lake did not proclude condemnation of land for such project. Id.

Board of park commissioners of Boone could condemn real estate for park purposes. Herman v. Board of Park Commissioners of Boone, 200 Iowa 1116, 206 N.W.2d 35 (1925).

Board of conservation could agree with park commission of city which was willing to issue bonds for acquisition of land for state to be repaid to city over a period of years. O.A.G. 1934, p. 340.

2. Approval of executive council.

Better practice is to obtain approval of executive council before expending funds for acquisition of real estate. O.A.G. 1936, p. 136.

111.8 Highways

1. Construction and application.

Prior to building highway through park, it is necessary to have approval of executive council. O.A.G. 1923-24, p. 171.

111.9 Condemnation Statutes

See § 471.1 et seq.

111.20 State Department of Transportation - Duties (No Annotations)

111.21 County Engineer - Duties (No Annotations)

111.22 Surveys and Plats (No Annotations)

111.23 Compensation (No Annotations)

111.27 Management by Municipalities

1. Construction and application.

Camping spaces on state-owned land maintained by county conservation board pursuant to agreement section 111.49 are subject to two week limit, may not be extended by board rule under section 111A.5. O.A.G., December 18, 1980.

Final authority for management of a state-owned area which a municipality has agreed to care for and maintain pursuant to this section remains vested in state conservation commission. O.A.G. February 7, 1973.

State may enter into management agreements with counties in regard to park lands, but not in regard to lands obtained through expenditure of fish and game funds and these management agreements are subject to the approval of the executive council. O.A.G. December 20, 1962.

111.32 Sale of Park Lands - Conveyances to Cities or Counties

1. Construction and application.

Chapters 111 and 568 in direct conflict as to procedure for sale of state-owned land in or along meandering streams. Chapter 111 governs the disposition of such lands. Repeal of chapter 568 does not affect title to privately owned islands in Iowa streams. O.A.G., April 3, 1975.

On recommendation of Conservation Commission and approval of executive council, sovereign lands of the Missouri River bed was transferred to Sioux City. O.A.G., 1938.

A person purchasing part of the bed of a lake was charged with knowledge that the lake was to be drained, not entitled to damages as owner of land so purchased because of subsequent drainage. Higgins v. Board of Supervisors of Dickinson County, 188 Iowa 448, 176 N.W. 268 (Iowa 1920).

The executive council cannot dispose or sell state property except as authorized by legislature. O.A.G., 1906.

2. Procedure.

If county has conservation board, county board of supervisors cannot sell county park lands without determination by county conservation board that lands for sale are no longer needed for park. O.A.G., May 9, 1974.

By majority of Conservation Commission, state lands not desirable for conservation purposes may be sold in name of state, signed by Governor, Secretary of State, and sealed by State of Iowa. O.A.G., 1940.

3. Easements.

State easements under jurisdiction of Fish and Game Commission and Board of Conservation can be granted to federal government but safest way to proceed in sale of land would be by legislative enactment. O.A.G., 1936.

111.34 Powers in Municipalities (No Annotations)

111.35 Prohibited Destructive Acts (No Annotations)

111.36 Speed Limit (No Annotations)

111.37 Excessive Loads (No Annotations)

111.38 Parking (No Annotations)

MAINTENANCE EQUIPMENT

111.58 Use by Cities, Counties and State Department of Transportation (No Annotations)

WATER RECREATIONAL AREAS [NEW]

111.59 Powers in Municipalities (No Annotations)

111.60 Application for Permit (No Annotations)

111.61 Petition (No Annotations)

111.62 Copy to Resources Council (No Annotations)

111.63 Hearing - Notice (No Annotations)

111.64 Time and Place (No Annotations)

111.65 Objections (No Annotations)

111.66 Filing (No Annotations)

111.67 Examination - Testimony

111.68 Final Order - Condition (No Annotations)

111.69 Costs and Fees (No Annotations)

111.70 Permit (No Annotations)

111.71 Public Access and Use (No Annotations)

111.72 Sale of Permit (No Annotations)

111.73 Records (No Annotations)

111.74 Extension of Permit (No Annotations)

111.75 Condemnation of Land (No Annotations)

111.76 Contracts with Local Authorities (No Annotations)

111.77 Prohibited near Borders of State (No Annotations)

111.78 Method not Exclusive (No Annotations)

111.79 Public Outdoor Recreation and Resources Fund (No Annotations)

111.80 Public Outdoor Recreation and Resources Advisory Council (No Annotations)

CHAPTER 305A

STATE ARCHAEOLOGIST [NEW]

305A.1 Appointment (No Annotations)

305A.2 Duties (No Annotations)

305A.3 Agreements with Federal Departments (No Annotations)

305A.4 Definitions

Title of act: an Act to authorize the state highway commission to enter into agreements for removal and preservation of historical archaeological and paleontological remains disturbed are to be disturbed by highway construction. Acts 1965 (61 G.A.) ch. 258.

305A.5 State Department of Transportation Contracts (No Annotations)

305A.6 Federal Funds (No Annotations)

305A.7 Reinterring Human Remains (No Annotations)

305A.8 Cemetery for Ancient Remains (No Annotations)

305A.9 Authority to Deny Permission to Disinter Human Remains (No Annotations)

CHAPTER 306

ESTABLISHMENT, ALTERATION AND VACATION OF HIGHWAYS

306.1 Roads and Streets

Index to Notes

1/2. Validity.

State statutes available for use in condemnation for secondary road purposes, providing for notice to condemnees and opportunity to be heard, do not violate state constitution. Cahill v. Cedar County, Iowa 367 F. Supp. 39 (N.D. Iowa 1973).

1. Construction and application.

Federal funds used for bridge over river for purposes of federal statute requiring condemnation procedure during course of project whereby federal funds are used did not mean that road project for which plaintiff's land was condemned involved use of federal funds where project was discrete from road building for which land was taken. Cahill v. Cedar County Iowa, 419 US 806 (N.D. Iowa 1973).

Where closing a portion of secondary highway not part of a construction program board of supervisors not required to consult trustees of township. Bricker v. Iowa County Bd. of Sup'rs, 240 N.W.2d 686 (Iowa 1976).

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

Status of local secondary road or highway a question of law for court; not fact question for jury. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

No person has vested right to keep highways open. Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

County has no duty to plow secondary road designated "snowmobile route" and could not be held liable for injuries. O.A.G. Oct. 14, 1974.

Designation by owner and acceptance by public sufficient to establish road as part of secondary road system. O.A.G. March 3, 1955.

State park roads are extensions of secondary roads and subject to concurrent jurisdiction of State Highway Commission and State Conservation Commission. O.A.G. Nov. 13, 1963.

2. Primary and interstate roads.

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

Safety rest areas part of the public highways of Iowa. O.A.G. Jan. 16, 1968.

Iowa State Highway Commission has exclusive authority to control access to those portions of National Interstate and Defense Highway System located within corporate limits of cities or towns. O.A.G. Oct. 27, 1965.

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

3. Secondary Roads.

State statutes available for use in condemnations for secondary road purposes do not violate constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

Highway retained status of local secondary road absent formal steps by board of supervisors. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Despite participation in maintenancy by county board of supervisors, city or town retains chief responsibility over street which is an extension of a secondary road. O.A.G. March 5, 1970.

County may not maintain a road as part of its secondary road system unless legally a "public road." O.A.G. April 21, 1969.

City and county may enter into agreement under chapter 28E to construct bridge and approaches. O.A.G. Sept. 18, 1967.

Strip of land used as access by public to cemetery part of secondary road system and must be maintained by board of supervisors. O.A.G. Jan. 25, 1966.

306.2 Definitions

306.3 Definitions of Terms

1. Construction and application.

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

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

Requirements of section 313.2 of Iowa Code for implementation of Iowa roads and streets (306.1-8) have not been met through enactment of chapters 36, 46, 61, 232, acts of 66 General Assembly, First Session. O.A.G., January 5, 1976.

The national guard of the state of Iowa is entitled to the services of the highway commission in the improvement of roads upon Camp Dodge reservation. O.A.G. May 19, 1971.

306.4 Jurisdiction of Systems

Index to Notes

1. Construction and application.

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

Rural subdivision road plans are to be approved by county engineer as well as board of supervisors. Spencer's Mountain, Inc. v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

D.O.T. has exclusive jurisdiction over primary road system including highway location and design. Curtis v. Board of Sup'rs of Clinton County, 270 N.W.2d 447 (Iowa 1978).

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

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

Counties can only close public roads under their jurisdiction and control. Dedication and acceptance is required for a street in an unincorporated village to be public. O.A.G. March 25, 1980.

Any portion of a secondary road not vacated or closed must be maintained continuously by county boards of supervisors. O.A.G. March 21, 1980.

Board of supervisors can close secondary road bridges over railroad crossings. O.A.G. April 5, 1974.

Iowa state highway commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. O.A.G. March 13, 1970.

Highway commission and board or commission concerned have concurrent jurisdiction of highways on or adjacent to state lands. O.A.G. 1953, p. 20.

Reimbursement of county road fund for money advances for farm-to-market construction limited to amount actually spent. O.A.G. 1952, p. 102.

2. Review.

Highway Commission has discretion in design and location of public highways, and courts may interfere only when there is an abuse of discretion. A & S, Inc. v. Iowa State Highway Commission, 253 Iowa 1258, 116 N.W.2d 496 (1962).

3. Unreasonable exercise of power.

Design of highway within the authority of the Highway Commission, to be interfered with only if so arbitrary and unreasonable as to be beyond police power of the state. A & S, Inc. v. Iowa State Highway Commission, 253, Iowa 1258, 116 N.W.2d 496 (1962).

4. State park roads.

Operating overloaded truck is illegal operation under section 321.475, damage to secondary bridge may be recovered by board of supervisors. O.A.G., March 13, 1970.

Subject to concurrent jurisdiction of State Highway Commission and State Conservation Commission. O.A.G. Nov. 13, 1963.

5. Rights-of-way.

State Conservation Commission may cause removal of privately owned cottages of railroad employees located on railroad rights of way, owned in fee by state, but on which railroad had easement for use, because presence of cottages constituted misuse of easement even though railroad had leased right of way to employees to keep weeds and brush under control, eliminate fire hazards, and prevent vandalism. O.A.G., December 7, 1965.

6. Dedication.

In view of dedication and acceptance by public, strip of land used as access by public to cemetery part of secondary road system and must be maintained by board of supervisors. O.A.G. Jan. 25, 1966.

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

7. Joint improvements.

Chapter 28E authorizes city and county to improve a road which is one-half in the city and one-half in the county. O.A.G. Sept. 22, 1966.

8. Contracts.

Failure of highway commission to have site prepared and construction company's loss of profits --- Damages. Hallet Constr. Co. v. Iowa State Highway Commission, 261 Iowa 290, 154 N.W.2d 71 (1967).

County board of supervisors may enter into agreement with private agency for construction and maintenance of secondary road. O.A.G. June 4, 1971.

9. Delegation of authority.

County held liable in tort where authority over secondary roads had been delegated to it. Symmonds v. Chicago, M., St. P. & P. R. Co., 242 N.W.2d 262 (Iowa 1976).

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

10. Effect of control.

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

306.5 Continuity of Systems in Municipalities, Parks and Institutions

2. Construction and application.

Authority in county board of supervisors to aid cities and towns in street repair. O.A.G. May 6, 1974.

306.6 Functional Classification Board

1. Construction and application.

State legislators serving on state classification review board may not receive compensation under this section for per diem and expenses occurred in performance of official duties as members of board. O.A.G., August 6, 1980.

Classification board must file notice of proposed classification in office of county engineer. O.A.G. June 7, 1971.

306.7 Functions Changed or New Roads Added

306.8 Transfer of Jurisdiction

1. In general.

Transfer of control between two jurisdictions despite absence of agreement - Money transferred need not be used for repair of transferred road. O.A.G. July 2, 1979.

306.9 Diagonal Roads

1. Construction and application.

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

306.10 Power to Establish, Alter or Vacate

Index to Notes
- Construction and Application 1
- Easements 2
- Municipalities 3

1. Construction and application.

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

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

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

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

Courts will not say what roads should or should not be built. Polk County v. Brown, 260 Iowa 301, 149 N.W.2d 314 (1967).

Fee title to streets in unincorporated villages remains with the abutting landowner, subject to an easement for the street. O.A.G. August 1, 1980.

Dedication and acceptance required for street or road in unincorporated village to be public. O.A.G. March 25, 1980.

Duty of county board of supervisors to maintain road extends to any portion of road not vacated and closed. O.A.G. March 21, 1980.

Vacation proceedings required when board of supervisors determines unsafe bridge will neither be repaired nor replaced. O.A.G. Feb. 4, 1976.

Vacation proceedings not required for unopened and unaccepted streets in an unincorporated village plat. O.A.G. May 29, 1975.

County vacating a road not required to return roadbed to "farmable condition". O.A.G. June 15, 1970.

2. Easements.

Abandonment. Polk County v. Brown, 260 Iowa 301, N.W.2d 314 (1967).

Vacating a secondary road also constitutes formal closing. O.A.G. July 25, 1963.

Roads and highways established by statute, by dedication, or by prescription. O.A.G. March 3, 1955.

3. Municipalities.

City not permitted to open street upon which it has allowed another to make valuable improvements. Sioux City v. Johnson, 165 N.W.2d 762 (Iowa 1969).

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

306.11 Hearing - Place - Date

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Construction and Application 1
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1. Construction and application.

Hearing must be genuine, not a sham. Bricker v. Iowa County Bd. of Sup'rs, 240 N.W.2d 686 (Iowa 1976).

County boards of supervisors authorized to grant permits for mining coal underlying a secondary road. O.A.G. Sept. 26, 1979.

Prerogative of closing secondary road bridges over railroad crossings rests with board of supervisors. O.A.G. April 5, 1974.

Vacation constitutes formal closing. O.A.G. July 25, 1963.

2. Time of appeal.

In condemnation of property for highway purposes, aggrieved party has 30 days within which to give notice and perfect his appeal. Ross v. Linn County Bd. of Sup'rs, 182 N.W.2d 121 (Iowa 1970).

3. Review.

Board did not fail to provide hearing of substance. Bricker v. Iowa County Bd. of Sup'rs, 240 N.W.2d 686 (Iowa 1976).

306.12 Notice - Service

1. Construction and application.

Failure to advise landowner of right to claim damages - order of board denying compensation invalid - necessity of filing claim for damages. Miller v. Warren County, 285 N.W.2d 190 (Iowa 1979).

Vacating of highways - notice of time and place of hearing - to whom sent. O.A.G. 1952, p. 99.

Interested parties entitled to notice include property owners who will sustain special damages. Hansell v. Massey, 244 Iowa 969, 59 N.W.2d 221 (1953).

306.13 Notice - Requirements

1. Construction and application.

Highway Commission and County Board of Supervisors not authorized to exchange land; subsequently adopted legislation is prospective in application, does not make prior agreement valid. O.A.G., October 16, 1972.

1970 admendment requires alternative access facility be provided where abutting property denied direct access through board or commission; expenditure of primary road funds for purpose is not violation of statute or Iowa Constitution; amendment does not change method of acquiring property but merely describes another area considered when highway construction is

undertaken; where proper, land may be acquired by easement. O.A.G., Nov. 20, 1970.

306.14 Objections - Claims for Damages

Index to Notes
Construction and Application 1
Evidence 2

1. Construction and application.

"Land abutting on road" - defined. Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

As to who are interested parties. Hansell v. Massey, 244 Iowa 969, 59 N.W.2nd 221 (1953).

Vacation terminates interest of county in land. O.A.G. August 1, 1980.

Vacation constitutes formal closing. O.A.G. July 25, 1963.

2. Evidence.

Evidence supported decision of county board of supervisors to close secondary highway after bridge collapsed. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Where two tracks of land were inaccessible to each other except by passage over secondary road and bridge, there was severance of the two portions of land and landowners could recover damages. Braden v. Board of Supervisors of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

Evidence sustained finding that trees materially obstructed highway. Carstensen v. Clinton County, 250 Iowa 487, 94 N.W.2d 734 (1959).

306.15 Purchase and Sale of Property

1. In general.

Owners of land which abutted secondary road failed to allege facts in admendment in petition establishing right to open secondary road or allow damages. Christensen v. Board of Supervisors of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (1962).

Statement in acts 1959 (58 G.A.N.) chapter 204 that section 306.5 to 306.11 on power to establish, alter or vacate highways, should be considered as amendment to section 3068.6, pertains exclusively to procedure, does not affect question of vacation of part of secondary road nor payment for such vacation. Id.

Vacation proceedings required when board of supervisors determines unsafe bridge will neither be repaired nor replaced. O.A.G. Feb. 4, 1976.

County board of supervisors and the Highway Commission are not authorized to trade land. O.A.G. August 7, 1969.

County board - methods to acquire land. Id.

Vacation of secondary road constitutes formal closing. O.A.G. July 25, 1963.

No authority to make conveyance for flowage easements over county-owned property. O.A.G. Dec. 26, 1962.

306.16 Final Order

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1. In general.

Land abutting road, as in section 306.8, providing that person owning land abutting road which is proposed to vacate and close has right to file claim for damages, means land adjoining, coming together with, meeting or touching roadway. Braden v. Board of Supervisors of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (Iowa 1968).

District court retains jurisdiction over appeal where board fails to notify property owners of its decision to deny damages. Christensen v. Bd. of Sup'rs of Woodbury County, 251 Iowa 1259, 105 N.W.2d 102 (1960).

County board of supervisors not legally required to replace or vacate road. O.A.G. August 10, 1978.

Vacation proceedings required where bridge determined unsafe. O.A.G. Feb. 4, 1976.

2. Damages.

Right to file claim. Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

Damages recoverable for "severance" of two portions of land. Id.

306.17 Appeal

Index to Notes

1. Construction and application.

Substantial evidence supports a decision of county board of supervisors to close highway after bridge collapsed. Bricker v. Iowa County Board of Supervisors, 240 N.W.2d 686 (Iowa 1976).

Statement in acts 1959 (58 G.A.) chapter 204 that sections 306.5 - 306.11, on power to establish, alter or vacate highway, should be considered as amendment to section 306A.6, pertaining to procedure and does not affect question of vacation of part of secondary road nor payment for such vacation. Christensen v. Board of Supervisors of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (Iowa 1962).

Appeal as a means of getting the matter of damages before the trial court as an original proceeding for an original judgement. Christensen v. Bd. of Sup'rs of Woodbury County, 251 Iowa 1259, 105 N.W.2d 102 (1960).

Appeal properly brought against board of supervisors of defendant county rather than against county itself. Id.

2. Time of appeal.

Appeal allowed where board failed to notify property owners of decision to deny damages. Christensen v. Bd. of Sup'rs of Woodbury County, 251 Iowa 1259, 105 N.W.2d 102 (1960).

3. Damages.

Right to file claim for "land abutting on road." Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

Failure to allege facts entitling allowance of damages. Christensen v. Bd. of Sup'rs of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (1962).

306.18 Establishment

1. Construction and application.

County may not maintain road unless legally a "public road." O.A.G. April 21, 1969.

Roads and highways established by statute, by dedication, or by prescription. O.A.G. March 3, 1955.

306.19 Purchase or Condemnation of Right of Way - Procedure - Closing Driveway - Alternative Access

Index to Notes

1/2. Validity.

Statutes available for use in condemnations for secondary road purposes, providing for notice to condemnees and opportunity to be heard, do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1. Construction and application.

Remittitur not appropriate in condemnation cases. Booras v. Iowa State Highway Commission for Use in Benefit of State, 207 N.W.2d 566 (Iowa 1973).

Changing natural course of stream to join river - relocation of the channel of the stream on private land - permit from the Natural Resources Council. Branderhorst v. Iowa State Highway Commission on Behalf of State, 202 N.W.2d 38 (Iowa 1972).

Authority to purchase rather than condemn land. Rhodes v. Iowa State Highway Commission, 250 Iowa 416, 94 N.W.2d 97 (1959).

Condemnation of private real estate for future highway uses proper absent bad faith, fraud, are manifest abuse of power. O.A.G. April 24, 1970.

Acquiring site for maintenance facility. O.A.G. Sept. 24, 1969.

Acquiring land for fairground purposes when "necessary". O.A.G. August 7, 1969.

County board of supervisors and Highway Commission not authorized to trade land. Id.

Necessity of right of way for improving or graveling secondary roads. O.A.G. Jan. 17, 1955.

2. Severance.

Severance - operatively inaccessible one to the other - damages recoverable. Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

3. Instructions.

Fair and just compensation - payment to make the owner whole. Booras v. Iowa State Highway Commission for Use in Benefit of State, 207 N.W.2d 566 (1973).

4. Evidence.

Land enhanced in value by contemplated improvement. Booras v. Iowa State Highway Commission for Use in Benefit of State, 207 N.W.2d 566 (Iowa 1973).

5. Damages. (No Annotations).

306.20 Cemeteries (No Annotations)

306.21 Plans, Plats and Field Notes Filed

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Construction and Application 1
Rejection of Plat 2

1. Construction and application.

Approval of rural subdivision road plans by county engineer mandatory. Spencer's Mountain, Inc. v. Pottawattamie County, 285 N.W.2d 166 (Iowa 1979).

No abuse of discretion by county engineer. Id.

Courts will not interfere in planning and construction of highways. Branderhorst v. Iowa State Highway Commission on Behalf of State, 202 N.W.2d 38 (Iowa 1972).

Plat request meeting all state, county and municipal subdivision regulations should be approved. O.A.G. Oct. 30, 1979.

City's authority to impose requirements on rural subdivisions. O.A.G. April 20, 1979.

Adoption of subdivision ordinances - notice and hearings. O.A.G. Nov. 15, 1978.

Final plat of rural subdivision bearing board approval and meeting requirements of county zoning ordinance may be recorded despite disapproval by county engineer. O.A.G. June 16, 1978.

Board of supervisors cannot compel county engineer to approve a subdivision plat. O.A.G. May 18, 1978.

Board of supervisors disapproves road in plat - dedication precluded. O.A.G. Oct. 23, 1969.

Board of supervisors may approve a plat and at the same time disapprove roads in the plat. O.A.G. Oct., 1964.

2. Rejection of plat.

Authority to reject. O.A.G. Oct. 29, 1964.

306.22 Sale of Unused Right of Way

1. In general.

Procedures for conducting sale. O.A.G. July 8, 1980.

Necessity to acquire land - procedure. O.A.G. August 7, 1969.

Board of supervisors and Highway Commission not authorized to trade land. Id.

Sale of unused right of way with restrictions. O.A.G. March 26, 1970.

Highway Commission's enlisting services of a real estate broker. O.A.G. March 5, 1970.

Executive council's lack of power to adjudicate claim of third party adverse to approval of the sale of land. O.A.G. March 8, 1965.

2. Notice.

Only "interested parties" are entitled to notice of final hearing in proceedings to vacate highways. Hansell v. Massey, 244 Iowa 969, 59 N.W.2d 221 (1953).

306.23 Notice - Preference of Sale

1. Construction and application.

The State Highway Commission exercised discretion in arbitrary and capricious manner. Charles Gabus Ford v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

306.24 Conditions

Index to Notes
- In General 1
- Evidence 4
- Objections 2
- Restrictions and Reservations 6
- Title Conveyed 5
- Use Interfering with Highway 3

1. In general.

State's restrictive authority not arbitrary and unreasonable. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 344, 131 N.W.2d 515 (1965).

Sale with restrictions of unused right of way. O.A.G. March 26, 1970.

2. Objections.

Signers of remonstrances objecting to vacation of highway. Hansell v. Massey, 244 Iowa 969, 59 N.W.2d 221 (1953).

3. Use interfering with highway.

Definite rules for future use of property could not be established through declaration of party's rights under deeds containing restrictions prohibiting use of property which interferes with public highway. Fort Dodge, D.M. and S. Ry. v. American Community Stores Corporation, 256 Iowa 1344, 131 N.W.2d 515 (1965).

No preexisting highway access rights in vendor where he consented to restriction in deed prohibiting his interference with public highway. Id.

4. Evidence.

Specific performance suit involving merchantability of title - interference with highway use by traveling public. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

5. Title conveyed.

Police power exercised in conveying title with restrictive provisions. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

6. Restrictions and reservations.

Conditions in deed rendered title unmerchantable. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

306.25 Execution of Conveyance

1. In general.

Highway Commissions in listing real estate broker. O.A.G. March 5, 1970.

Highway Commission's authority to convey property by patent, not warranty deed. O.A.G. Jan. 21, 1965.

306.26 Payment of Damages and Right of Way Cost - Proceeds of Sale

1. Construction and application.

Sale with restrictions of unused right of way - disposition of money received. O.A.G. March 26, 1970.

County not to maintain road unless legally a "public road." O.A.G. April 21, 1969.

Roads and highways established by statute, by dedication, or by prescription. O.A.G. March 3, 1955.

2. Severance.

Two portions of a given tract of land operatively inaccessible - damages recoverable. Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

306.27 Changes for Safety, Economy, and Utility

Index to Notes

1. Construction and application.

Change in "natural course" of stream - No power to acquire easement for relocation of stream's channel. Branderhorst v. Iowa State Highway Commission on Behalf of State, 202 N.W.2d 38 (Iowa 1972).

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

County board of supervisors - Powers. Mandicino v. Kelly, 158 N.W.2nd 754 (Iowa 1968).

Within board's discretion to change course if purpose to prevent encroachment on highways. O.A.G. July 12, 1956.

Presumption that notice was given of board of supervisors intent to vacate a road. Paul v. Mead, 234 Iowa 1, 11 N.W.2d 706 (1943).

No notice necessary if abutter appears and files claim for damages. Furgason v. Woodbury County, 212 Iowa 814, 237 N.W. 214 (1931).

Despite this statute a road cannot be constructed through an orchard or ornamental ground without consent of the owner. Hoover v. Highway Commission, 207 Iowa 56, 222 N.W. 438 (1928).

This statute does not require abandonment of any road, however, notice to abutter is required if it is to be abandoned. Polk v. Irwin, 190 Iowa 1340, 181 N.W. 689 (1921).

Application of power to abandon. O.A.G. 1938, p. 808.

This statute does not govern power of abandonment of roads. O.A.G. 1938, p. 677.

2. Diverting waters.

Evidence held to support injunction. Schwab v. Behrendt, 234 Iowa 1068, 15 N.W.2d 692 (1944).

County liable for damages resulting from cutting down banks of drainage ditch in improving highway. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Doctrine of estoppel by laches. Thomas v. Cedar Falls, 223 Iowa 229, 272 N.W. 79 (1937).

Where grader ditch along road was used for drainage for 10 years and supervisors desire to return water to natural course they could do so. Schwartz v. Wapello County, 208 Iowa 1229, 227 N.W. 91 (1929).

Where, without objection abutter permitted grade to be established for twelve years held to have consented. Geneser v. Healey, 124 Iowa 310, 120 N.W. 66, (1904).

When diverted channel may be held to be natural channel. Mier v. Kroft, 80 N.W. 521 (Iowa 1899).

Road supervisors liable for diversion of stream by negligent construction of crossing thereover. McCord v. High, 24 Iowa 336 (1868).

Where well dried up due to diversion of stream county not liable if change accomplished according to law. O.A.G. 1932, p. 140.

3. Changing course of highway.

What constitutes lawful change in course. Harding v. Board, 213 Iowa 560, 237 N.W. 625 (1931) and Jenkins v. Highway Commission, 205 Iowa 523, 218 N.W. 258 (1928).

Road changed to avoid bridging a stream need not be constructed on immediate bank of stream. Stahr v. Carter, 116 Iowa 380, 90 N.W. 64 (1902).

Board has no authority to summarily relocate road to location shown by plats where road has been open and used, even though it may not be on location originally ordered. O.A.G. 1932, p. 68.

4. Widening highway.

This section confers jurisdiction to widen roads. Carstons v. Keating, 210 Iowa 1326, 230 N.W. 432 (1930). O.A.G. 1919-20, p. 270. O.A.G. 1919-20, p. 261.

5. Proceedings for change.

Filing of a claim for land taken on relocation does not bar subsequent condemnation proceeding. Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363 (1923)

Petition for establishment or relocation need not follow statutory language as long as it follows statutory form in substance and discloses action desired. Polk v. Irvin, 190 Iowa 1340, 181 N.W. 689 (1921).

Final order of board of supervisors stating conditions suspends taking of effect of order till compliance. State v. Kinney, 39 Iowa 226 (1874).

6. Actions for damages.

Pleading. Valentine v. Board, 206 Iowa 840, 221 N.W. 517 (1928). Polk v. Fremont County, 197 Iowa 755, 197 N.W. 893 (1924).

Release of water trapped by road which was improperly discontinued. Martin v. Schwertley, 155 Iowa 347, 136 N.W. 218 (1912).

306.28 Appraisers

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1/2. Validity.

State statutes avaliable for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

Statutes for condemnation of secondary roads do not specify elements to be considered in determining compensation and does not constitute denial of due process. Id.

1. Construction and application.

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

Procedure under Chapters 471, 472, necessary to condemn land to provide material for improvement of highway. O.A.G. 1953, p. 84.

Count for mandamus to appraise damages for highway change properly stricken were cause of action for damages has not been abandoned. Valentine v. Board, 206 Iowa 840, 221 N.W. 517 (1928).

Statutory remedy of landowner for damages in relocation and alteration held adequate. Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363.

Board not authorized to fix damages at less than appraisal in absence of statute. Daniel v. Clarke County, 194 Iowa 601, 190 N.W. 25 (1922).

2. Appointment of appraisers.

Appraisers must be residents of county, but their property need not be located in county where the proceedings are had. O.A.G. 1928, p. 42.

Board of supervisors may appoint appraisers when for any reason those originally vested with such authority fail to appoint them. O.A.G. 1923-24, p. 204.

306.29 Notice

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1/2. Validity.

Statutes whereby board of supervisors condemns right of way for secondary roads without affording condemnees procedural advantages available under statute, do not violate constitutional requirement that all laws of general nature have uniform operation. Cahill v. Cedar County Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1. Construction and application.

Defendant not estopped claim board had jurisdiction, where defendant predicated motion to dismiss plaintiff's former appeal on lack of jurisdiction of ward. Witham v. Union Co., 202 Iowa 557, 210 N.W. 535 (1926).

Consideration by board of claim filed after required 10 day period waives failure to file timely notice. Witham v. Union County, 198 Iowa 359, 196 N.W. 605 (1924).

2. Failure to serve notice.

Owner, on whom no notice was served and who did not enter an appearance, held not bound by condemnation proceedings. Gibson v. Union Co., 208 Iowa 314, 223 N.W. 111 (1929).

Letter informing board of supervisors that owner claimed board had no authority to proceed not voluntary appearance since owner not served with notice. Id.

3. Sufficiency of notice.

Notice held insufficient. Witham v. Union Co., 198 Iowa 359, 196 N.W. 605 (1924).

4. Evidence of notice.

Presumption that notice was given. Paul v. Mead, 234 Iowa 1, 11 N.W.2d 706 (1943).

Extrinsic evidence admissible to show notice where sufficiency is challenged. Butterfield v. Pollick, 45 Iowa 257 (1876).

306.30 Service of Notice

1/2. Validity.

Statutes whereby board of supervisors may condemn secondary road right of way without affording condemnees procedural advantage under statute, do not violate constitutional requirement that all laws of general nature have uniform operation. Cahill v. Cedar County Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

306.31 Qualification and Assessment

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1/2. Validity.

The state statutes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1A. Construction and application.

Fact that road viewers were duly sworn can be shown by official certificate of the testimony of officer who administered the oath. Dollarhide v. Muscatine County, 1 Greene 158 (1848).

Agreement need only be reached by two of three appraisers. O.A.G. 1923-24, p. 200.

1B. In general.

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

306.32 Hearing Adjournment

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Validity 1/2

1/2. Validity.

State statutes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1A. Construction and application.

Board not authorized to fix damages at lesser sum than appraisal. Daniel v. Clarke County, 194 Iowa 601, 190 N.W. 25 (1922).

1B. In general.

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

306.33 Hearing on Objections

Index to Notes
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1/2. Validity.

State statututes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1A. Construction and application.

Filing of claims for land taken on relocation does not bar subsequent condemnation proceeding. Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363 (1923).

1B. In general.

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

306.34 Hearing on Claims for Damages

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Validity 1/2

1/2 Validity.

State statutes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1A. Construction and application.

Where relocation was on owner's same land, damage is not restricted to amount exceeding damage for old highway when the land reverts. Burgess v. Bremer County, 189 Iowa 168, 178 N.W. 389 (1920).

1B. In general.

Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

2. Modification of award of damages.

Reduction of appraisement in effect a rejection of Bd. of Sup'rs appraisement. Burrow v. Woodbury County, 200 Iowa 787, 205 N.W. 460 (1925).

There must be statutory authority for board to reduce appraisement. Daniel v. Clarke County, 194 Iowa 601, 190 N.W. 25 (1922).

306.35 Appeals

Index to Notes
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1/2. Validity.
State statutes available for use in condemnations for secondary road purposes do not violate the state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (N.D. Iowa 1973).

1A. Construction and application.
Where larger amount than that appraised was awarded on appeal, no attorneys' fees could be recovered. Nichol v. Neighbour, 202 Iowa 406, 210 N.W. 281 (1926).
Owner, from whom no land is taken, but who was an abutter on road vacated has no right of appeal from refusal of the Bd. of Sup'rs to allow his claim for damages. O.A.G. 1923-24, p. 211.

1B. In general.
Taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

2. Proceeding for review.
Where petition on appeal failed to designate action appealed from and plaintiff was not a party to original proceeding, his appeal properly dismissed. Gibson v. Union Co., 208 Iowa 314, 223 N.W. 111 (1929).
Procedure on appeal in a proceeding to relocate a road governed by this chapter. Nichol v. Neighbour, 202 Iowa 406, 210 N.W. 281 (1926).
Plaintiff need not file bond before he can appeal the award of damages. O.A.G. 1923-24, p. 180.

3. Decision on review.
Discretion of trial court. Polk v. Irwin, 190 Iowa 1340, 181 N.W. 689 (1921).

306.36 Damages on Appeal - Rescission of Order (No Annotations)

306.37 Tender of Damages

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Construction and Application 1
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1. Construction and application.
Count for mandamus to appraise damage due to road change properly stricken where count in damages was not abandoned. Valentine v. Board, 206 Iowa 840, 221 N.W. 517 (1928).
When auditor issues warrants in favor of claimants, board has right to order construction forces to enter and improve. O.A.G. 1923-24, p. 206.

2. Warrants.

Board of supervisors could order auditor to issue warrants to each claimant for amount of damages. O.A.G., 1918, p. 504.

306.38 Rental of Acquired Property Pending Use (No Annotations)

306.39 Flooding Highways - Federal Water Resources Projects (No Annotations)

306.40 Easements Conveyed (No Annotations)

306.41 Temporary Closing for Construction

1. Construction and application.

Gross negligence under this section is higher degree of negligence rather than different kind. Sechler v. State, 340 N.W.2d 759 (Iowa 1983).

Authority to grant permits for mining of coal underlying secondary road. O.A.G. Sept. 26, 1979.

Any number road is limited in interpretation to any "posted" number road. O.A.G. Jan. 20, 1976.

Board of supervisors has prerogative of closing secondary road bridges over railroad crossings. O.A.G. April 5, 1974.

306.42 Transfer of Rights of Way (No Annotations)

306.43 Jurisdictional Transfer Limits (No Annotations)

306.44 Study of Road Systems (No Annotations)

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS [NEW]

306A.1 Declaration of Policy.

1. In general.

Commerce commission retains jurisdiction to determine controversies between railroads and highway authorities dealing with railroad crossings. Chicago R.I. & P.R. Coe v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

This chapter controlling when in conflict with Chapter 489. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Landowner not deprived of right of access - no compensation allowed. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Regulation of means of access not a "taking". Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner holding underlying fee. O.A.G. March 13, 1970.

306A.2 Definition of a Controlled-Access Facility

1. In general.

Controlled-access highway through land did not deprive owner of right of access - no compensation allowed. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. O.A.G. March 13, 1970.

Iowa State Highway Commission has exclusive authority to control access to those portions of national interstate and defense highway system located within corporate limits of cities or towns. O.A.G. Oct. 27, 1965.

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

306A.3 Authority to Establish Controlled-Access Facilities

Index to Notes

1. In general.

Condemnation commission assessing damages was properly constituted. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

Only right of city to control access to primary highways within corporate limits is in cooperation with state highway commission. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Highway Commission's regulation of access to highway must be reasonable. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

Highway authority's right to regulate includes building and maintenance, traffic, and use restriction. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Erection of electric transmission lines over or across public highways outside of cities. Id.

Deprivation of reasonable or free and convenient access to highway by state highway commission. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Highway commission may relocate existing secondary road without consent of county board of supervisors when relocation is a realignment to eliminate grade crossings done in conjunction with construction of a controlled-access primary highway. O.A.G. August 6, 1971.

Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. O.A.G. March 13, 1970.

Iowa State Highway Commission has exclusive authority to control access to those portions of national interstate and defense highway system located within corporate limits of cities or towns. O.A.G. Oct. 27, 1965.

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

2. Utility facilities.

Utility facilities may not be constructed along controlled-access interstate highways without consent of the state highway commission. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

3. Police power.

It is within Iowa Department of Transportation's police power to construct uncut medians in front of gasoline service station. Ginn Iowa Oil Company v. Iowa Department of Transportation, 506 F. Supp. 967 (N.D. Iowa 1980).

Control of access to highway is necessary exercise of police power. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

4. Denial of access.

Department of Transportation may eliminate median in front of gas station despite station owner's testimony that people would jump the median, make illegal turns, or run out of gas causing hazardous road conditions. Ginn Iowa Oil Company v. Iowa Department of Transportation, 506 F. Supp. 967 (N.D. Iowa 1980).

It was within power of Department of Transportation to construct highway median without cut for service station despite service station owner's reliance on original plan. Id.

State highway commission exercised discretion in arbitrary and capricious manner in refusing to grant landowner access to frontage road. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Landowner not entitled to access to his land at all points between it and the highway. Means of ingress and egress. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Highway access not denied where inconvenience and circuity of travel for some customers. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

5. Eminent Domain.

City and commission's authority to take or damage homes for a purpose of widening public street. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

306A.4 Design of Controlled-Access Facility

1. Construction and application.

Deprivation of right of access to land. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Regulation of means of access not a "taking". Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Reasonable or free and convenient access to property cannot be denied without just compensation. Id.

Number and location of access connections with highway must be reasonable. Id.

Landowners not entitled to access to their properties from all points along highway. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Iowa State Highway Commission has exclusive authority to control access to those portions of national interstate and defense highway system located within corporate limits of cities or towns. O.A.G. Oct. 27, 1965.

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

306A.5 Acquisition of Property and Property Rights

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1. Construction and application.

City estopped from asserting right to public use of street - adverse possession. Sioux City v. Johnson, 165 N.W.2d 762 (Iowa 1969).

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

State highway commission's right to regulate means of access to abutting property from highway. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Absent bad faith, fraud, or manifest abuse of power, Iowa State Highway Commission may condemn private real estate for future highway uses. O.A.G. April 24, 1970.

Authority under 306A to expand the concept of primary extension to include relocations, or reconstructions or establishments of local service streets. O.A.G. April 4, 1969.

2. Authority of Highway Commission.

Authority of state highway commission to determine whether limitations placed upon number and location of access connections with highway are reasonable. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958). Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Deprivation of reasonable or free and convenient access to highway by State Highway Commission. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

3. Right of access.

Where controlled-access highway is put through land, the controlled-access character of the highway is relevant in condemnation proceedings on issue of damages resulting from severance. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

Reasonable access was afforded to owners of restaurant and service station. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Denial of reasonable or free and convenient access to highway a question of fact and not of law. Id.

Leasee of premise abutting highway has all the rights of access thereto of an owner. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

4. Property acquired.

Evidence as to loss of revenue from commercial property abutting on highway due to detour of traffic inadmissable. Wilson v. Iowa State Highway Commission, 249 Iowa 994, 90 N.W.2d 161 (1958).

Executive council may use power of eminent domain in acquiring site for maintenance facility. O.A.G. Sept. 24, 1969.

5. Instructions.

Highway commission entitled to instruction that establishment of highway did not deprive landowners of right of access. Lehman v. Iowa State Highway Commission, 251 Iowa 77, 99 N.W.2d 404 (1959).

6. Compensation.

Where a portion of railroad taken for highway crossing, compensation is diminution in value of property for railroad use. Chicago, R.I. & P.R. Coe v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

Taking of reasonable access to highway is compensable. Fort Dodge, D.M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515 (1965).

7. Severance.

Two portions of tract operatively inaccessible - damages recoverable. Braden v. Bd. of Sup'rs of Pottawattamie County, 261 Iowa 973, 157 N.W.2d 123 (1968).

306A.6 New and Existing Facilities - Grade-Crossing Eliminations

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1. In general.

Construction of bridges to span existing gulley and creek for controlled-access highway with grant of private interconnecting route to property owners under bridges did not constitute "grade separation". Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

Vacation became effective on date board of supervisors, after hearing, entered order. Christensen v. Bd. of Sup'rs of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (1962).

This section is procedural. It does not grant owners of land abutting on vacated secondary roads a new remedy. Id.

State highway commission may close off state and county roads at their intersections with controlled-access facilities under the authority granted by these special statutes. Warren v. Iowa State Highway Commission, 250 Iowa 473, 93 N.W.2d 60 (1959).

Prohibition of crossing of highway not a "taking" within the law of eminent domain. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Realignment to eliminate grade crossings done in conjunction with the construction of a controlled-access primary highway. O.A.G. August 6, 1971.

2. Damages.

Primary extension includes relocations, or reconstructions, or establishments of local service streets. O.A.G. April 4, 1969.

Failure to allege facts which established right to open secondary road or to allowance of damages. Christensen v. Bd. of Sup'rs of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (1962).

3. Closing Roads.

DOT has power to close county roads at right-of-way boundary line of a freeway. Curtis v. Board of Sup'rs of Clinton County, 270 N.W.2d 447 (Iowa 1978).

306A.7 Authority of Local Units to Consent

1. Construction and application.

Implementing agreement between city and State Highway Commission concerning highway construction. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

Highway Commission's agreement with United States that federal regulations would govern. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

This section permits, but does not coerce, agreeements concerning highway. Warren v. Iowa State Highway Commission, 250 Iowa 473, 93 N.W.2d 60 (1959).

Agreements between D.O.T. and cities to regulate parking. O.A.G. October 12, 1978.

Cities and State Highway Commission may enter into joint public improvement project. O.A.G. April 4, 1969.

Section 306A.8 Local Service Roads

Index to Notes

1. In general.

Occupants of dwelling deprived of free and convenient access to highway. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2d 755 (1957).

Primary extensions include relocations, or reconstructions, or establishments of local service streets. O.A.G. April 4, 1969.

2. Authority of highway commission.

Commission's discretion exercised in arbitrary and capricious manner. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Limitation upon number and location of access connections with highway. Iowa State Highway Commission v. Smith, 248 Iowa 869, 82 N.W.2nd 755 (1957).

306A.9 Repealed

Acts 1965 (61 G.A.) Ch. 259, Sec. 1.

306A.10 Notice to Relocate - Costs Paid by State

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Construction and Application 1
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1. Construction and application.

Utility poles and lines to be relocated at owner's cost. Iowa Elec. Light & Power Co. v. Iowa State Highway Commission, 231 N.W.2d 597 (Iowa 1975).

Injunction placed on condemnation proceedings. Chicago, R.I. & P.R. Co. v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

Commerce commission retains jurisdiction over a controversy dealing with railroad crossings. Id.

Highway authorities supervision over utility facilities. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Costs of relocating public utility facilities part of construction of highways. Edge v. Brice, 253 Iowa 710, 113 N.W.2d 755 (1962).

Costs for relocating a utility facility. O.A.G. September 13, 1972.

2. Costs.

Public utilities have right to use highway rights of way, and Legislature can regulate use and require relocation at utilities' costs. Edge v. Brice, 253 Iowa 710, 113 N.W.2d 755 (1962).

Reimbursement to utilities for nonbetterment costs of relocating facilities. O.A.G. September 13, 1972.

3. Reimbursement and compensation.

Iowa State Highway Commission's obligation to reimburse utility. O.A.G. June 25, 1965.

306A.11 What Costs Included

1. Construction and application.

Utility poles and lines to be relocated at owner's cost. Iowa Elec. Light & Power Co. v. Iowa State Highway Commission, 231 N.W.2d 597 (Iowa 1975).

Relocation of utility facility - credit to be given to state. O.A.G. September 13, 1972.

Reimbursement to utilities for the nonbetterment costs of relocating facilities. Id.

306A.12 Limitation on Reimbursement (No Annotations)

306A.13 Definition

1. In general.

Iowa State Highway Commission obligated to reimburse utility. O.A.G. June 25, 1965.

CHAPTER 306B

OUTDOOR ADVERTISING ALONG INTERSTATE HIGHWAYS [NEW]

306B.1 Definitions (No Annotations)

306B.2 Advertising Prohibited - Exceptions (No Annotations)

306B.3 Rules

1. In general.

Highway commission could promulgate rules more restrictive than those applicable in the general non-interstate highway systems of the state. O.A.G. June 28, 1968 (No. 68-6-2).

306B.4 Purchase of Existing Signs (No Annotations)

306B.5 Removal After Notice (No Annotations)

306B.6 Simple Misdemeanor

1. In general.

Advertising devices, including those mounted upon trailers, are prohibited from being placed upon right of way of any public highway. O.A.G. September 26, 1972.

306B.7 Federal Agreements (No Annotations)

306B.8 Funds Accepted (No Annotations)

CHAPTER 306C

IOWA JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL [NEW]

306C.1 Definitions

1. Construction and application.
Political campaign signs not exempted. O.A.G. July 21, 1972.

306C.2 Junkyards Prohibited - Exceptions (No Annotations)

306C.3 Junkyards Lawfully in Existence (No Annotations)

306C.4 Requirements as to Screening (No Annotations)

306C.5 Acquisition of Land for Screening or Removal (No Annotations)

306C.6 Nuisance-Injunction (No Annotations)

306C.7 Interpretation (No Annotations)

306C.8 Agreements with the United States Authorized (No Annotations)

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306C.10 Definitions

1. Construction and application.
Advertising devices prohibited from being placed upon right of way. O.A.G. September 26, 1972.
Political campaign signs not exempted. O.A.G. July 21, 1972.

306C.11 Advertising Prohibited (No Annotations)

306C.12 Nonvisible from Highway (No Annotations)

306C.13 Control by Department of Transportation (No Annotations)

306C.14 Existing Signs - Six-Year Limit (No Annotations)

306C.15 Acquisition of Signs

1. In general.
Nonconformities existing as of effective date of Act. Iowa Dept. of Transp. v. Nebraska - Iowa Supply Co., 272 N.W.2d 6 (Iowa 1978).

306C.16 Compensation (No Annotations)

306C.17 Condemnation (No Annotations)

306C.18 Permit Required

1. Construction and application.

Requisite forms filed untimely. Iowa Dept. of Transp. v. Nebraska - Iowa Supply Co., 272 N.W.2d 6 (Iowa 1978).

Erection of new advertising devices within industrial or commercial areas - permit required. O.A.G. July 26, 1972.

306C.19 Removal After Notice

1. In general.

Uncompensated removal of billboards for noncompliance with permit requirements. Iowa Dept. of Transp. v. Nebraska - Iowa Supply Co., 272 N.W.2d 6 (Iowa 1978).

306C.20 Bonus Funds Agreements (No Annotations)

306C.21 Information Centers (No Annotations)

306C.22 Political Signs (No Annotations)

306C.23 Special Event Signs (No Annotations)

CHAPTER 307

DEPARTMENT OF TRANSPORTATION [NEW]

307.1 Definitions (No Annotations)

307.2 Department of Transportation (No Annotations)

307.3 Transportation Commission

1. Authority of commission.

Absent fraud, bad faith, or arbitrary abuse of discretion conferred by statute, courts have no power to control highway commission. Harvey v. Iowa State Highway Commission, 256 Iowa 1229, 130 N.W.2d 725 (1965).

Contracts of commission should be signed by all members unless a resolution is passed by them authorizing chairman to sign on behalf of commission. O.A.G. 1950, p. 137.

2. Compatibility of offices.

Offices of Iowa State Highway Commissioner and Judicial District Nominating Commissioner are not incompatible. O.A.G. September 20, 1973.

307.4 Conflict of Interest (No Annotations)

307.5 Vacancies on Commission (No Annotations)

307.6 Compensation - Commission Members (No Annotations)

307.7 Commission Meetings (No Annotations)

307.8 Expenses (No Annotations)

307.9 Removal from Office (No Annotations)

307.10 Duties of Commission

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1. Validity.

Conditions attached to DOT rule establishing sixty-five foot length limitation for trucks outside of statutory grant of authority and thus ultra vires. Motor Club of Iowa v. Department of Transp., 251 N.W.2d 510 (Iowa 1977).

This section delegating to transportation commission power to adopt truck length rules is not unconstitutional. O.A.G. January 20, 1976.

2. Construction and application.

Highway Division of DOT to make initial recommendations regarding location of highway. Pundt Agriculture, Inc. v. Iowa Dept. of Transp., 291 N.W.2d 340 (Iowa 1980).

DOT commission empowered to make decision regarding which alternative to be adopted. Id.

Reorganization of divisions within DOT permitted. O.A.G. March 19, 1976.

Transportation commission's adopting proposed rule extending maximum length of double bottom trucks to sixty-five feet. O.A.G. January 16, 1976.

No passage or positive action concerning the comprehensive transportation plan is required of the general assembly. O.A.G. May 15, 1975.

Offices of city councilmen and county supervisor are incompatible with office of transportation commissioner. O.A.G. July 17, 1975.

3. Length of Vehicles.

Advisability of sixty-five foot truck length a legislative, not a judicial concern. Motor Club of Iowa v. Department of Transp., 251 N.W.2d 510 (Iowa 1977).

General assembly may approve, disapprove, or take no action with respect to DOT rules regulating truck lengths. It may not modify or amend such rules. O.A.G. February 23, 1977.

307.11 Director of Transportation - Qualifications - Salary (No Annotations)

307.12 Duties of the Director

1. Construction and application.

One is an employee of the officer or department which hires him. O.A.G. March 12, 1976.

307.13 Reassignment of Personnel (No Annotations)

307.14 Divisions of the Department

1. Construction and application.

Reorganization of divisions within the DOT permitted. O.A.G. March 19, 1976.

307.15 Transportation Regulation Board (No Annotations)

307.16 Vacancies on Board (No Annotations)

307.17 Compensation of Board Members (No Annotations)

307.18 Duties of Board Members (No Annotations)

307.19 Proceedings (No Annotations)

307.20 Enforcement (No Annotations)

307.21 Administration Division (No Annotations)

307.22 Planning Division (No Annotations)

307.23 General Counsel Division

1. In general.

This section not intended to reduce the department's control over its own affairs or litigation. Motor Club of Iowa v. Department of Transp., 251 N.W.2d 510 (Iowa 1977).

307.24 Highway Division (No Annotations)

307.25 Public Transportation Division

1. Construction and application.

Reorganization of divisions within the DOT permitted. O.A.G. March 19, 1976.

307.26 Railroad Transportaton Division

1. Construction and application.

General and special purposes of this section enumerating duties and responsibilities of railroad transportation division, are for a general plan of safety rather than determination of liability. Hines v. Illinois Central Gulf Railroad, 330 N.W.2d 284 (Iowa 1983).

This section was not intended to provide before the fact determinations of dangerous railroad crossings nor change common law priciples concerning liability. Id.

Provision of this section governing railroad transportation division duties and responsibilities that crossings shall not be found particularly hazardous for any purpose unless the department has determined it particularly hazardous does not lift railroad's responsibility to warrant by temporary or transitory situation. Plaintiff alledging that crossing was extra hazardous because second train blocked view, preventing motorists from seeing oncoming train, was entitled to prove extra hazardous nature of crossing. Sullivan v. Chicago North Western Transportation Co., 326 N.W.2d 320 (Iowa 1982).

DOT has no authority to enter into agreement resulting in State's acquiring ownership of all or a portion of a railroad branch line. O.A.G. July 19, 1976.

307.27 Transportation Regulation and Safety Division (No Annotations)

307.28 Prorating Departmental Costs (No Annotations)

307.29 Collection of Delinquent Railway Taxes - Compromise (No Annotations)

307.30 Federal Tax Compliance (No Annotations)

307.31 - 307.34 Reserved.

307.35 Inspectors to Perform Several Functions (No Annotations)

307.36 Project Needs - Retention of Property (No Annotations)

307.37 Odometer Law Enforcement (No Annotations)

307.38 Public Transit Loan (No Annotations)

CHAPTER 307A

TRANSPORTATION COMMISSION [NEW]

307A.1 Definitions (No Annotations)

307A.2 Duties

Index to Notes
- Actions by or Against Commission 8
- Assistants and Employees 7
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- Compensation 5
- Construction and Application 2
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- Employees 6
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1. Validity.

This section not unconstitutional as an attempt to confer legislative power on administrative body. McLeland v. Marshall County, 199 Iowa 1232, 201 N.W.2d 401 (1924).

2. Construction and application.

General Assembly empowered highway division of DOT to make recommendations regarding location of highway. Pundt Agriculture, Inc. v. Iowa Dept. of Transp., 291 N.W.2d 340 (Iowa 1980).

DOT is empowered to make decision regarding which alternative should be adopted. Id.

Highway commission cannot be interfered with in performing official duties for state except in case of some illegality. Hoover v. Highway Commission, 207 Iowa 56, 222 N.W 438 (1928).

Effect of new laws on prior decisions. Post v. Davis County, 196 Iowa 183, 191 N.W. 129 (1922), rehearing overruled, 196 Iowa 183, 194 N.W. 245 (1922).

Road use tax money may be used for bikeway construction. O.A.G. January 14, 1977.

Offices of city councilmen and county supervisor are incompatible with office of transportation commissioner. O.A.G. July 17, 1975.

Director of budget has no authority to relax, change or modify standard specifications of highway commission. O.A.G. 1925 - 26, p. 480.

Member of commission authorized by executive council to attend out-of-state meeting of American Association of Highway Officials entitled to per diem. O.A.G. 1925 - 26, p. 479.

3. Authority of commission.

Highway commission possesses only powers conferred by statute. Branderhorst v. Iowa State Highway Commission on behalf of State, 202 N.W.2d 38 (Iowa 1972).

Members of highway commission need not personally conduct every pre road-closing meeting. Hinrichs v. Iowa State Highway Commission, 260 Iowa 1115, 152 N.W.2d 248 (1967).

Absent fraud, bad faith, or arbitrary use of discretion, courts have no power to control highway commission's exercise of authority. Harvey v. Iowa State Highway Commission, 256 Iowa 1229, 130 N.W.2d 725 (1965).

Courts may not require highway commission to pay public funds without statutory authority. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30 (Iowa 1960).

Injunction lies to restrain commission from enforcing criminal laws which it has no authority to enforce. Merchants Motor Freight v. Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

Highway commission is an agency of state. State v. Fitch, 236 Iowa 208, 17 N.W.2d 380 (1945).

Authority to aid in construction of viaducts on highways in cities is not without liability for property taken or damaged. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

State highway commission is not a governing body in any county but merely an agency of state for certain purposes. Fuller, etc. v. Shannon, etc., 205 Iowa 104, 215 N.W. 611 (1927).

Highway commission's duty and authority to advise counties concerning snowmobile signs. County board of supervisors must limit snowmobile routes to roadways where operation is "without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic." O.A.G. November 7, 1974.

Iowa State Highway Commission has exclusive authority to control access to those portions of national interstate and defense highway system located within corporate limits of cities or towns. O.A.G. October 27, 1965.

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

Commission could construct building to house equipment and employees and may pay for such expenditures from maintenance fund. O.A.G. 1938, p. 814.

Commission could release interest in invention in exchange for license to use without royalty payments. O.A.G. 1950, p. 137.

4. Duties in general.

Commission had no authority to enforce laws relating to registration and license of vehicles. Merchants, etc., v. Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

Under this section commission has no power to issue warrants. Fuller, etc. v. Shannon, etc., 205 Iowa 104, 215 N.W. 611 (1927).

National Guard of Iowa entitled to services of highway commission. O.A.G. May 19, 1971.

Preservation and disposition of abstracts of title to highway lands is for commission to determine. O.A.G. 1938, p. 143.

Commission can reimburse county for gravel taken from county pit, which gravel was used on primary roads. O.A.G. 1925 - 26, p. 265.

5. Compensation.

Concerning retroactive overtime pay. O.A.G. September 25, 1968. (No. 68-9-23).

6. Contracts.

Approval by appropriate resolution of the highway commission. O.A.G. February 13, 1956.

Board of supervisors had no power to contract with commission for construction on secondary roads, with a view to procuring federal aid authorized for "farm to market roads." O.A.G. 1938, p. 624.

Commission must approve contract for bridge on secondary roads costing over $2000 before it becomes effective. O.A.G. 1925 - 26, p. 480.

7. Assistants and employees.

Employee of highway commission may also be member of board of engineering examiners. O.A.G. 1934, p. 1168.

8. Actions by or against commission.

Legal proceedings against highway commission performing its official duties. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30, (Iowa 1960).

An individual incurring personal liability cannot claim immunity merely because he is officer of state. Bachman v. Highway Commission, 236 Iowa 778, 20 N.W.2d 18 (1945).

Highway commission, except as authorized by statute, has no capacity to sue. State v. Fitch Co., 236 Iowa 208, 17 N.W.2d 380 (1945).

Action against commission is in effect an action against State. Long v. Highway Commission, 204 Iowa 376, 213 N.W. 532 (1927).

9. Bid proposals.

Unreasonable restriction to require bidders to submit certified check drawn on a solvent Iowa bank with bid proposals. O.A.G. May 27, 1965.

10. Excess motor vehicle size and weight regulations.

Regulation by Iowa State Highway Commission for issuance of permits. O.A.G. December 7, 1965.

307A.3 Federal Donations

1. Construction and application.

Commission has authority to lease or erect structures for care of government property. O.A.G. 1919 - 20, p. 271.

Commission may permit board of control to use highway equipment received from the U.S. in building and maintaining institutional roads. O.A.G. 1919 - 20, p. 267.

307A.4 Federal Appropriations

1. In general.

Under procedure proposed for viaduct no funds were available from U.S. to pay damages to abutting owners. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Contract for a town to pay a sum to county for street improvement in order to obtain federal aid was not ultra vires or void. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1924).

Billboards, signs and junkyards outside the right-of-way on lands adjacent to public highways are not part of the highways and the 1942 anti-diversion amendment prevents use of primary road funds for purchasing same. O.A.G. February 16, 1972.

307A.5 State-Owned Lands - Assessment

1. Construction and application.

The last paragraph of this section setting a monetary limit on assessments upon state property is ambiguous. O.A.G. May 3, 1976.

307A.6 Repealed by Acts 1976 (66 G.A.) Ch. 1176, Sec. 6

307A.7 Materials and Equipment Revolving Fund (No Annotations)

307A.8 Longevity Pay Prohibited

1. In general.

Entitlement to longevity pay earned as highway patrol officer not transferrable upon employment transfer to highway commission. O.A.G. October 31, 1973.

CHAPTER 307B

RAILWAY FINANCE AUTHORITY [NEW]

307B.1 Short Title

1. Validity.

Iowa Railway Finance Authority Act does not create local or special law or irrational classification of taxing character in violation of equal protection and uniform taxation clauses. Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 334 N.W.2d 290 (Iowa 1983).

Resident county tax payer had standing to challenge constitutionality of Iowa Railway Finance Authority Act. Id.

2. In General.

Iowa railway finance authority act does not have retrospective application and gives collection authority to Department of Transportation for delinquent property taxes owed by railroad after June 2, 1980 and were unpaid for 60 days. Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 334 N.W.2d 290 (Iowa 1983).

This chapter promotes a public purpose and is constitutional. O.A.G. November 28, 1980.

307B.2 Declaration of Necessity and Purpose (No Annotations)

307B.3 Legislative Findings (No Annotations)

307B.4 Definitions (No Annotations)

307B.5 Iowa Railway Finance Authority (No Annotations)

307B.6 Governing Board - Staff (No Annotations)

307B.7 Powers of the Authority (No Annotations)

307B.8 Duties of Governing Board (No Annotations)

307B.9 Bonds

1. Validity.

This chapter promotes a public purpose and is constitutional. O.A.G. November 28, 1980.

307B.10 Refunding of Bonds (No Annotations)

307B.11 Security for Bonds (No Annotations)

307B.12 Payment of Bonds - Non-Liability of State

1. Validity.

Issuance of railway finance bonds does not create a public debt and is not an extension of the state's credit. O.A.G. November 28, 1980.

307B.13 Remedies of Bondholders and Noteholders (No Annotations)

307B.14 Authority as Public Instrumentality (No Annotations)

307B.15 Powers not Restricted - Law Complete in Itself (No Annotations)

307B.16 Limitation of Liability (No Annotations)

307B.17 Exemption from Construction and Bidding Requirements for Public Buildings (No Annotations)

307B.18 Liberal Interpretation (No Annotations)

307B.19 Governmental Agencies (No Annotations)

307B.20 Bond Anticipation Notes (No Annotations)

307B.21 Investment and Obligations (No Annotations)

307B.22 Notice (No Annotations)

307B.23 Special Railroad Facility Fund (No Annotations)

307B.24 Acquisition of Abandoned Right of Way (No Annotations)

CHAPTER 308

MISSISSIPPI RIVER PARKWAY [NEW]

Title of Act:

This is an act to authorize the establishment of a Mississippi River Parkway Planning Commission to act for the State of Iowa in cooperation with the federal agencies and the Iowa State Highway Commission in the location, planning and construction of the Mississippi River parkway and to authorize the appointment of the Parkway Planning Commission.

308.1 Planning Commission (No Annotations)

308.2 Assent to Federal Act (No Annotations)

308.3 Definitions (No Annotations)

308.4 Transportation Commission Authority (No Annotations)

308.5 Jurisdiction and Control (No Annotations)

308.6 Transferring Jurisdiction (No Annotations)

308.7 Duties of the State Conservation Commission (No Annotations)

308.8 Agreements Authorized (No Annotations)

308.9 Establishing Locations for the Highway (No Annotations)

CHAPTER 308A

RECREATIONAL BIKEWAYS [NEW]

308A.1 Conservation and Transportation Commissions to Cooperate (No Annotations)

308A.2 Funds (No Annotations)

308A.3 Certain Elevated Structures Prohibited - Exception (No Annotations)

CHAPTER 309

SECONDARY ROADS

SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

309.1 Definitions (No Annotations)

309.2 Repealed. Acts 1951 54(G.A.) Ch. 103, Sec. 22

309.3 Secondary Bridge System

Index to Notes

1. Construction and application.

Counties may assist certain cities or towns with bridge problems. O.A.G. June 4, 1973.

Secondary bridge system includes both bridges and culverts. Under 343.11 washed out bridges and culverts can be repaired or reconstructed. O.A.G. 1936, p. 278.

Bridge or state road in state park is not part of county bridge system. O.A.G. 1934, p. 169.

2. Bridge as personalty.

On vacation of highway, title to bridge remains in county. O.A.G. 1930, p. 333.

3. Construction and maintenance of bridges and culverts.

Counties have statutory duty to maintain bridges and approaches forming part of secondary road system within their boundarys. Larsen v. Pottawattamie County, 173 N.W.2d 579 (Iowa 1970).

Board of supervisors prerogative to close secondary road bridges over railroad crossings. O.A.G. April 5, 1974.

County's primary responsibility over bridge within corporate limits of the municipality. O.A.G. March 30, 1973.

County's construction and payment for bridge located at right angle to corporate limits of town. O.A.G. March 10, 1966.

Resolution of necessity, publication and hearing may not extinguish easement. Bartels v. Woodbury, 174 Iowa 82, 156 N.W. 303 (1916).

County and its revenue subject to legislative control. Slutts v. Dana, 138 Iowa 244, 115 N.W. 1115 (1908).

Board of supervisors has no authority to construct and pay for culverts 36 inches or less in diameter in cities and towns not controlling their own bridge levees. O.A.G. 1930, p. 325.

Where city does not control it's own bridge fund, construction and maintenance is to be undertaken by county. O.A.G. 1925-26, p. 265.

Alleys in cities and towns. O.A.G. 1923-24, p. 192.

4. Construction and maintenance by cities.

Owner of property adjacent to street is justified in building with reference to established grade. Demour v. Lyons City, 44 Iowa 276 (1876).

City may be liable for negligent construction. Van Pelt v. Davenport, 42 Iowa 308 (1875).

5. Liability of cities.

Honest error in judgement by engineer may not create liability on part of city. Van Pelt v. Davenport, 42 Iowa 308 (1875).

Negligent work created liability by city. Wallace v. Muscatine, 4 Greene 373 (1854).

In absence of negligence, city may not be liable for damages. Creal v. Keokuk, 4 Greene 47 (1853).

6. Liability of counties.

County not liable for harm to crops from overflow of ditch along highway. Van de Walle v. Tama County, 198 Iowa 1330, 201 N.W. 44 (1924).

Decision under law prior to 1913 was held not controlling. Post v. Davis County, 196 Iowa 183, 191 N.W. 129 (1922), rehearing overruled, 196 Iowa 183, 194 N.W. 245 (1922).

County not liable for constructing too small a culvert. Packard v. Voltz, 94 Iowa 277, 62 N.W. 757 (1895).

7. Contractors, liability for injuries.

Contractor held independent contractor liable for negligent injury. Kehm v. Silts, 222 Iowa 826, 270 N.W. 388 (1937).

8. Ditches.

Adjoining owner has no right to have highway ditches enlarged. Pate v. Rogers, 193 Iowa 726, 187 N.W. 451 (1922).

Ten years maintenance of ditch by county gives no one prescriptive right to have it for ever maintained. Wilson v. Duncan, 74 Iowa 491, 38 N.W. 371 (1888).

9. Sidewalks.

Board of supervisors has duty to maintain and repair sidewalks which are part of bridges in cities of second class. O.A.G. 1919 - 20, p. 248.

10. Expense of construction and maintenacne period.

Cost of construction of approaches to bridges to be built on secondary road extension in city not controlling its own bridge levy should be borne by county. O.A.G. 1932, p. 134.

City should pay cost of culvert under access road in city. O.A.G. 1923 - 24, p. 200.

Entire cost of building fill borne by county. O.A.G. 1918, p. 519.

Expense of bridges and culverts should be borne by county. O.A.G. 1918, p. 320.

11. Funds.

County boards of supervisors may spend farm-to-market road funds for road and bridge construction without submitting their resolution to the voters. O.A.G. May 21, 1965.

Cost of replacing unsafe bridge on local county road. O.A.G. 1938, p. 445.

12. Taxes.

County had no right to levy tax for bridge within city limits. City of Keokuk v. Kennedy, 156 Iowa 680, 137 N.W. 914 (1912).

13. Mandamus.

Improper remedy to cause board of supervisors to build or improve road. O.A.G. 1936, p. 351.

14. Nuisance, abatement of.

Change of natural drainage abated by self help. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

15. Injunction.

Township not restrained from maintaining culvert in natural course of drainage. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Size of culvert in discretion of officers. Ehler v. Stier, 205 Iowa 678, 216 N.W. 637 (1927).

Grading of highway enjoined to prevent destruction of natural drainage. Estes v. Anderson, 204 Iowa 288, 213 N.W. 566 (1927).

Decree directing that road be maintained so as to not divert natural drainage. Pate v. Rogers, 193 Iowa 726, 187 N.W. 451 (1922).

Construction of inadequate culvert enjoined. Bartels v. Woodbury County, 174 Iowa 82, 156 N.W. 303 (1916).

Injunction and not warranted where extra small expenditure would be satisfactory. Wilson v. Duncan, 74 Iowa 491, 38 N.W. 371 (1888).

16. Actions.
Rights of parties determined by contract. Owens v. Butler County, 40 Iowa 190 (1875).

17. Pleadings.
Striking amendment to answer pleading ordinance as to improvements not error. Farley v. City of Des Moines, 199 Iowa 974, 203 N.W. 287 (1925).

18. Presumptions and burden of proof.
Burden of proof is on property owner in suit for flood of premises. Farley v. City of Des Moines, 199 Iowa 974, 203 N.W. 287 (1925).

19. Jury questions.
Matters involving reasonableness of length of time are for jury. Ross v. Clinton, 46 Iowa 606 (1877).

20. Instructions.
City not liable except for negligent construction. Walters v. Marshalltown, 145 Iowa 457, 120 N.W. 1046 (1909).

21. Damages.
Operating overloaded truck is illegal operation and damage to secondary bridge may be recovered. O.A.G. March 13, 1970.
Must not be too remote. Dubuque, etc. v. City and County of Dubuque, 30 Iowa 176 (1870).

22. Joint city-county bridges.
City and county may enter into agreement to construct a bridge. O.A.G. Sept. 18, 1967.

309.4 to 309.6 Repealed Acts 1957 (57 G.A.) ch. 139, § 1. Eff. July 4, 1957.

309.7 Repealed

Acts 1957 (57 G.A.) ch. 139, § 1; Act 1981 (69 G.A.) ch. 117, § 1097. See § 331.422 (12, 13).

1. Construction and application.
County boards of supervisors have only such powers as are conferred or implied by statute. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).
Levy by counties which control their own bridge levies. O.A.G. June 4, 1973.

309.8 - 309.9 Repealed Acts 1957 (57 G.A.) ch. 139, §1; Act 1981 (69 G.A.) ch. 117, §1097; see §331.425(7).

s1097; see § 331.425 (7).

309.10 Use of Farm-to-Market Road Fund (No Annotations)

309.11 System Abolished (No Annotations)

309.12 Construction of Terms (No Annotations)

309.13 to 309.15 Repealed Acts 1957 (57 G.A.) ch. 139, § 1. Eff. July 4, 1957.

309.16 Duty of Department (No Annotations)

309.17 Engineer - Term

Index to Notes

1. Validity.

Section held valid. McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940).

2. Construction and application.

All county officials must furnish individual bonds. Blanket bonds would have to be made by legislature. O.A.G. Oct. 8, 1968 (No. 68-10-15).

Engineer to supervise works and have responsibility for performance. O.A.G. 1948, p. 150.

Appointment of engineer in 1933 for 1934 held valid. Hahn v. Clayton County, 218 Iowa 543, 255 N.W. 695 (1934).

Supervisors must appoint registered civil engineer. O.A.G. 1934, p. 64.

3. Termination of tenure.

Action for breach of contract, defamation and deprivation of civil rights. Blessum v. Howard County Bd. of Sup'rs, 295 N.W.2d 836 (Iowa 1980).

Soldiers' Preference Law, Section 70.6, applicable to county engineers. Hahn v. Clayton County, 218 Iowa 543, 255 N.W. 695 (1934).

4. Workmen's compensation.

Engineer held to not be "employee" under workmen's compensation law. McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940).

County engineer could not, by delegating power to supervise, bar employee from workmen's compensation benefits. Schroyer v. Jasper County, 224 Iowa 1391, 279 N.W. 118 (1939).

5. Abolishment of office.

Supervisors have no authority to abolish this office. O.A.G. 1934, p. 58.

6. Salary.

Engineer and assistant to be paid from general fund. O.A.G. 1925-26, p.196.

7. Contracts.

Corporation in which county engineer is majority stockholder prohibited from bidding on contracts for highway construction, maintenance, etc. O.A.G. March 5, 1970.

Engineer may not take contracts for work in other counties. O.A.G. 1919-20, p. 257.

Circumstances where supervisors may temporarily supplant, by contract, the services of the engineer. O.A.G. 1953, p. 108.

8. Repeal.
Not repeal of Soldiers' Preference Law. Hahn v. Clayton County, 218 Iowa 543, 255 N.W. 695 (1934).

309.18 Compensation - Duties - Bonds

Index to Notes

1. Construction and application.
Final authority for secondary road maintenance rests with the county board of supervisors, which establishes policy for and accepts the recommendations of the county engineer. O.A.G. Sept. 27, 1979.
Engineer's salary set by board of supervisors. O.A.G. April 17, 1979.
Board of supervisors cannot compel county engineer to approve a subdivision plat; authority relative to such rule conferred upon him by § 306.21 is discretionary. O.A.G. May 18, 1978.
Workers' compensation for employees of county engineer's office paid from secondary road fund. O.A.G. August 30, 1976.
Salary paid from general fund. O.A.G. 1925-26, p. 196.
Supervision and responsibility for good faith performance of road work and engineer. O.A.G. 1948, p. 150.
Liability on accident policy, risks not incident to occupation. Rommel v. National etc. Ass'n., 183 Iowa 776, 166 N.W. 455 (1918).

2. Contracts.
Engineer may not contract for road work in other counties. O.A.G. 1919-20, p. 257.

3. Drainage engineer.
Employment of county engineer as, improper. O.A.G. 1919-20, p. 635.

4. Costs of engineering.
Could be paid from proceeds of bonds. O.A.G. 1930, p. 52, 53.

5. Liability.
County officials and agents have the same immunity as county. Swartzwelker v. Iowa So. Utilities Corp., 216 Iowa 1060, 250 N.W. 121 (1933).

6. Workmen's compensation.
Engineer held not "employee" under workmen's compensation law. McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940).

7. Extra compensation.
No extra compensation for locating transmission lines. O.A.G. 1940, p. 236.

8. Warrants.

Not to be issued against general fund where there are no funds therein unless purpose is within exceptions of § 343.11. O.A.G. 1930, p. 253.

309.19 Adjacent Counties Joining in Employment

1. Construction and application.

Board of supervisors does not have power to hire or discharge county road employees without the engineer's approval; however, the supervisory responsibility of the county engineer should not be undercut. O.A.G. March 5, 1969.

309.20 Engineers - Itemized Account

1. Construction and application.

County engineer could only be allowed seven cents per mile. O.A.G. 1932, p. 70.

Engineer should keep accounting showing maintenance and construction work done in each township. O.A.G. 1930, p. 324.

309.21 Supervision of Construction and Maintenance Work

1. In general.

Final authority for secondary road maintenance rests with county board of supervisors, which establishes policy for and accepts the recommendations of the county engineer. O.A.G. Sept. 27, 1979.

Supervision and responsibility for good faith performance of road work in engineer. O.A.G. 1948, p. 150.

Contracts by Highway Commission and by supervisors for secondary road construction contemplating federal farm-to-market aid prohibited. O.A.G. 1938, p. 624.

2. Workmen's compensation.

Engineer not "employee." McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940).

County engineer could not, by delegating power to supervise, bar employee from workmen's compensation benefits. Schroyer v. Jasper County, 224 Iowa 1391, 279 N.W. 118 (1938).

3. Liability.

County officials and agents have same immunities as county. Swartzwelker v. Utilities Corp., 216 Iowa 1060, 250 N.W. 121 (1933).

CONSTRUCTION PROGRAM

309.22 Construction Project - Progress Report by Engineer

Index to Notes

1. Construction and application.

Board of supervisors decision to close portion of secondary highway not part of construction program - board not required to consult trustees of township. Bricker v. Iowa County Bd. of Sup'rs, 240 N.W.2d 686 (Iowa 1976).

County authorized to place traffic control devices on road not relieved of liability on theory that word "authorized" ends statute governing erection of stop signs at dangerous grade crossings was merely discretionary. Id.

Factors to be considered by Highway Commission in withholding approval of county farm-to-market road project. O.A.G. March 28, 1962.

Procedure in adopting program. O.A.G. 1940, p. 454.

2. Program.

Binding only as to period fixed in the program. O.A.G. 1936, p. 529.

Disapproval of program by Highway Commission renders entire program subject to review by board. O.A.G. 1936, p. 465.

Unused funds at end of three year program revert to general secondary road fund for redistribution. O.A.G. 1934, p. 337.

3. Board of approval.

Each member equal. O.A.G. 1938, p. 141.

Program cannot be changed by supervisors. O.A.G. 1938, p. 42.

Board must reconvene when property owners refuse to donate right of way. O.A.G. 1932, p. 79.

4. Approval by Highway Commission.

No authority in Highway Commission to recall a review of county's secondary road construction program with respect to the priority of construction of farm-to-market road. O.A.G. March 26, 1958.

Priority of improvements of secondary roads within sound discretion of board of supervisors - not to be interfered with unless power abused. Id.

Highway Commission's authority to approve county's secondary road program's conformance to standard plans and specifications. Id.

Plans for construction on street or road which is continuation of trunk system must be approved by commission. O.A.G. 1940, p. 163.

Board must secure approval of Highway Commission prior to expenditure of 65% of construction fund on local roads. O.A.G. 1938, p. 793.

Board of supervisors may readopt uncompleted three year program without approval by Board of Approval. O.A.G. 1938, p. 759.

5. Expenses.

Cost of replacing unsafe bridge on local county road from 35% fund unless over drainage ditch under 309.10. O.A.G. 1938, p. 445.

6. Machinery, compensation for use of.

In absence of agreement township cannot receive compensation from county for use of township machinery. O.A.G. 1919-20, p. 661.

7. Anticipatory certificates.

Issuance of. O.A.G. 1938, p. 838.

8. Liability of counties.

County not held liable for injuries caused by negligent construction. Snethen v. Harrison County, 172 Iowa 81, 152 N.W. 12 (1915).

9. Mandamus.
Will lie to compel supervisors to build bridge over drainage ditch crossing highway. Robinson v. Bd., 222 Iowa 663, 269 N.W. 921 (1936).

10. Funds.
Secondary road fund's existence begins July 4, 1957. O.A.G. June 17, 1957.

309.23 Review by Department in Operation of Program (No Annotations)

309.24 Uniform and Unified Plan Required (No Annotations)

309.25 Material Considerations for Farm-to-Market Roads

1. Construction and application.
Factors considered by Highway Commission in approval of county farm-to-market road project. O.A.G. March 28, 1962.
Purpose of this section and following sections to provide local self government with a plan of checks and balances, the board to confer with the township trustees, adopt a sound program, with the final check and approval of the program by the Highway Commission. O.A.G. March 26, 1958.
Priority of improvement of secondary roads lies in discretion of supervisors. O.A.G. 1951, p. 11.
Determination of road location - board's discretion. Id.
Judgement of court not to be substituted for judgement of board unless board failed to consider certain factors. Id.

309.26 Provisional Selection of Roads (No Annotations)

309.27 Report of Engineer

1. Construction and application.
Each member of Board of Approval has equal voice. O.A.G. 1938, p. 141.

309.28 Recommendations (No Annotations)

309.29 Map Required (No Annotations)

309.30 Additional Estimates (No Annotations)

309.31 to 309.33 Repealed Acts 1957 (57 G.A.) ch. 139 § 1. Eff. July 4, 1957.

309.34 Record Required

1. Construction and application.
Recording requirements of this section and section 309.43 are not satisfied by enrolling the road information in the minutes of the county board of supervisors. O.A.G. Nov. 17, 1977.
Highway Commission approval of plans, specifications, surveys and reports for improvement of county roads required. O.A.G. 1925-26, p. 311.

309.35 Surveys Required

1. Construction and application.
Survey must be made where cost estimate exceeds $1,000.00 per mile. O.A.G. 1938, p. 768.
Plan of construction and surveys to justify it are necessary. O.A.G. 1938, p. 711.

2. Public letting.
A public letting required. O.A.G. 1938, p. 711.

309.36 Nature of Survey

1. Construction and application.
Standard of grading and drainage prescribed. O.A.G. 1950, p. 145.
This section should be read with section 309.35 and section 309.37. O.A.G. 1938, p. 768.

309.37 Details of Survey

1. Construction and application.
Standard of grading and drainage prescribed. O.A.G. 1950, p. 145.
Sections 309.35, 309.36, 309.37 must be considered together. O.A.G. 1938, p. 768.
Plan of construction and surveys to justify it are necessary. O.A.G. 1938, p. 711.

2. Public letting.
A public letting required. O.A.G. 1938, p. 711.

309.38 Existing Surveys (No Annotations)

309.39 Contracts and Specifications

Index to Notes

1. Construction and application.

Certain requirements in discretion of board of supervisors. O.A.G. 1940, p. 465.

Financial statement need not be filed prior to opening of bids, but must be filed prior to award. O.A.G. 1938, p. 761.

Depth of ditches for authorities to decide. O.A.G. 1938, p. 184.

2. Bids.

Work in two counties on same road may be awarded to different contractor in each county. O.A.G. 1932, p. 53.

3. Rejection of bids.

Where right to reject exists, motive, in absence of fraud or conspiracy, is immaterial. Mortland v. Poweshiek County, 156 Iowa 720, 137 N.W. 1009 (1912).

4. Contracts.

Contractor held not employee. Grennell v. Cass County, 193 Iowa 697, 187 N.W. 504 (1922).

Board not personally liable for failing to let to lowest bidder. Mortland v. Poweshiek County, 156 Iowa 720, 137 N.W. 1009 (1912).

Fraudulent contract. Van Buren County v. Amer. Surety Co., 137 Iowa 490, 115 N.W. 24 (1908).

5. Assignments.

Assignee acquires no greater right than assignor. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

6. Plans and specifications.

Advertisements should be definite and explicit. Gjellefald v. Hunt, 202 Iowa 212, 210 N.W. 122 (1926).

Bridge built on defective plan. Holland v. Union County, 68 Iowa 56, 25 N.W. 927 (1885).

7. Change in contract or specifications.

Engineer, hired by board to superintend construction, has no authority to change specifications. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

Consent to change by board in individual capacity does not ratify change in contract. Mallory v. Montgomery County, 48 Iowa 681 (1878).

8. Performance or breach of contract.

Material alteration may be fraud. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

9. Estoppel or waiver.

Public use of bridge does not waive breach of contract for its construction. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

10. Acceptance of work.

Limitation on recovery by contractor. Mallory v. Montgomery County, 48 Iowa 681 (1878).

11. Subcontractors' rights.
Charged with notice of provisions of the contract. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

12. Payment.
Installment payments for road machinery held improper and warrants void. Harrison County v. Ogden, 133 Iowa 9, 110 N.W. 32 (1906).
Improper payment is no waiver by county. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).
Issuance of warrants for work done in prior years. O.A.G. 1925-26, p. 66.

13. Prior laws, construction of.
Theulen v. Viola Tp., 139 Iowa 61, 117 N.W. 26 (1908).
Long v. Boone County, 36 Iowa 60 (1872).

14. Actions.
Rights of parties determined by the contract. Owens v. Butler County, 40 Iowa 190 (1875).

15. Damages.
Violation of the contract. Modern etc. Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

309.40 Advertisement and Letting

Index to Notes

1. Construction and application.
County has authority to acquire materials which will be furnished for individual road projects, in lieu of including same as contract bid items when advertising a letting. O.A.G. Sept 15, 1976.
"Contracts" and "projects" have same meaning. O.A.G. 1940, p. 47.
This section only contemplates construction. O.A.G. 1938, p. 188.
"Materials therefor" defined. O.A.G. 1938, p. 115.
"Local" pits and quarries defined. O.A.G. 1938, p. 29.
Gasoline may be purchased as needed on bid basis. O.A.G. 1934, p. 81.
County may construct bridge if at lower cost than low bid. O.A.G. 1919-20, p. 278.
Cost-plus percentage basis improper. O.A.G. 1918, p. 508.

2. Purchase in large quantities.
County can maintain supply depot for jobs estimated at less than $1,500.00. O.A.G. 1930, p. 276.
Statutory amount may not be exceeded. O.A.G. 1918, p. 506.

3. Waiver of requirements.
Emergency created by flood, no basis for waiver. O.A.G. 1936, p. 216.

4. Advertisement for bids.
Supervisors subject to removal for failure to advertise. State v. Garretson, 207 Iowa 627, 223 N.W. 390 (1929).
No statutory duty of supervisors to advertise prior to purchase of road machinery and equipment. O.A.G. 1940, p. 47.
Kind of advertising in discretion of board of supervisors in absence of statute. O.A.G. 1938, p. 731.
Requirement for advertising cannot be avoided by omitting engineer's estimate. O.A.G. 1938, p. 711.
This section does not require supervisors to purchase materials for secondary road maintenance by advertising for bids. O.A.G. 1936, p. 45.
Bids could be rejected if county could do the work at less cost by day labor. O.A.G. 1932, p. 206.
Cannot separate stages of work to avoid advertising. O.A.G. 1932, p. 98.
Cannot purchase in small amounts to avoid advertising. O.A.G. 1932, p. 67.
Where advocate expenses will be excessive, advertising should be required. O.A.G. 1932, p. 11.
No advertising necessary in case of road machinery. O.A.G. 1930, p. 237.
Rejection of unsatisfactory bids permitted. O.A.G. 1918, p. 511.

5. Splitting up projects or purchases.
May not split up project to avoid advertising for bids. O.A.G. 1940, p. 157. O.A.G. 1940, p. 118. O.A.G. 1940, p. 47. O.A.G. 1938, p. 711. O.A.G. 1938, p. 179. O.A.G. 1932, p. 98. O.A.G. 1930, p. 285. O.A.G. 1928, p. 163.

6. Public letting of contracts.
Construction and material contracts for secondary roads and bridges within purview of this section must be advertised. O.A.G. August 29, 1972.
No personal liability on part of board of supervisors for failure to accept low bid. Mortland v. Poweshiek County, 156 Iowa 720, 137 N.W. 1009 (1912).
Public letting required. O.A.G. 1938, p. 711.
Where estimate exceeded statutory sum, advertising and public letting required. O.A.G. 1938, p. 115. O.A.G. 1938, p. 29.
Projects should not be split up to avoid advertising. O.A.G. 1932, p. 206.
Responsibility of bidder is essential. O.A.G. 1928, p. 296.

7. Completion of contract.
New contract requires readvertising. O.A.G. 1918, p. 527.

8. Prior laws, construction of.
Theulen v. Viola Tp., 139 Iowa 61, 117 N.W. 26 (1908).

309.41 Optional Advertisement and Letting

1. Construction and application.
"Materials therefor" means material for road and bridge construction generally. O.A.G. 1938, p. 115.
Public letting required where statutory sum is exceeded. O.A.G. 1938, p. 29.

Bids could be rejected if county could do the work at less cost by day labor. O.A.G. 1932, p. 206.

Where aggregate expenses will exceed statutory sum, advertising should be required. O.A.G. 1932, p. 11.

2. Cost-plus basis.

Improper. O.A.G. 1918, p. 508.

309.42 Approval of Road Contracts

1. Construction and application.

Cannot purchase in small lots to avoid public letting and approval of commission. O.A.G. 1930, p. 285.

2. Joint city-county contracts.

City's and county's joint exercise of governmental powers to construct bridge and approaches. O.A.G. Sept. 18, 1967.

309.43 Record of Bids

1. Construction and application.

Recording requirements satisfied. O.A.G. Nov. 17, 1977.

309.44 Repealed Acts 1949 (53 G.A.) ch. 125, § 8. Eff. July 4, 1949.

Subject matter of repealed section 309.44 is now covered by section 314.7.

309.45 Repealed Acts 1949 (53 G.A.) ch. 125, § 6. Eff. July 4, 1949.

Subject matter of repealed section 309.45 is now covered by section 314.5.

ANTICIPATION OF FUNDS

309.46 Construction Fund Anticipated

1. Construction and application.

Certificates mentioned in section 309.46 et. seq. are not included in those mentioned in section 312.9. O.A.G. 1940, p. 112.

The 35% construction fund that may be taken from funds anticipated. O.A.G. 1930, p. 189.

2. Issuance of certificates.

Board of supervisors authorized to pass on issuance of anticipatory certificates. O.A.G. 1938, p. 838.

Anticipatory certificates for secondary road construction purposes authorized under certain conditions. O.A.G. 1932, p. 252.

3. Anticipatory warrants.

Expenditure of entire proceeds of anticipatory warrants on trunk system authorized. O.A.G. 1930, p. 189.

4. Bonds.

Secondary road construction fund cannot be pledged to pay secondary road bonds. O.A.G. 1930, p. 155.

309.47 Anticipatory Resolution

1. Construction and application.

Anticipatory certificates for secondary road construction purposes authorized under certain conditions. O.A.G. 1932, p. 252.

309.48 Recitals

1. Construction and application.

Supervisors may determine whether anticipatory certificates should be issued. O.A.G. 1938, p. 838.

Amount of anticipatory certificates that can be issued limited. O.A.G. 1932, p. 252.

309.49 Consecutive Numbering and Payment (No Annotations)

309.50 Execution (No Annotations)

309.51 Taxation (No Annotations)

309.52 Duty of Treasurer (No Annotations)

309.53 Registration of Certificate Holders (No Annotations)

309.54 Registration of New Holder (No Annotations)

309.55 Terminating Interest (No Annotations)

MISCELLANEOUS PROVISIONS

309.56 Project Plans

1. Construction and application.

Submission of plans and specifications, surveys and reports to Highway Commission required. O.A.G. 1925-26, p. 311.

309.57 Repealed Acts 1949 (53 G.A.) ch. 125, § 2.

Subject matter of repealed section is now covered by section 314.1.

309.58 Action on Bond - Limitation (No Annotations)

309.59 to 309.60 Repealed Acts 1949 (53 G.A.) ch. 125, §§ 4, 5.

Subject matter of repealed section 309.59 is now covered by section 314.3.
Subject matter of repealed section 309.60 is now covered by section 314.4.

309.61 Advance Payment of Payrolls (No Annotations)

309.62 Repealed Acts 1949 (53 G.A.) ch. 125, § 9.

Subject matter of repealed section 309.62 is now covered by section 314.8.

309.63 Gravel Beds

1. Validity.

Merritt v. Peet, 237 Iowa 1200, 24 N.W.2d 757 (1946).

2. Construction and application.

Board of supervisors has this power solely. O.A.G. 1936, p. 214.

County has power to purchase or condemn for borrow pit. O.A.G. 1930, p. 340.

Cannot condemn lands outside county or in cities and towns. O.A.G. 1925-26, p. 420.

Township has right to gravel from county pit without payment therefore. O.A.G. 1925-26, p. 394.

Purchase from county road fund of gravel for township roads not authorized. Id.

3. Condemnation proceedings.

Within discretion of the board of supervisors. O.A.G. 1936, p. 214.

Immaterial that land condemned is not gravel pit. O.A.G. 1928, p. 370.

Condemnation procedure, limit of cost $10,000 without submitting to voters. O.A.G. 1919-20, p. 289.

4. Contracts.

Construction and damage to remaining land. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

5. Purchase of gravel or gravel beds.

Board of supervisors may purchase gravel secured or in its natural state. O.A.G. 1925-26, p. 420.

Cannot purchase gravel beds in cities or towns. O.A.G. 1925-26, p. 199.

Five acres and cost of $10,000 is maximum purchase. O.A.G. 1919-20, p. 266.

6. Liability on implied contract.

Implied promise to pay value of sand and gravel used and not for restoration of land. Harrison v. Palo Alto County, 104 Iowa 383, 73 N.W. 872 (1898).

7. Roadway.

Use of roadway to pit did not establish a public highway. Merritt v. Peet, 237 Iowa 1200, 24 N.W.2d 757 (1946).

8. Mortgagor, recovery by.

Measure of damages for removal of gravel. Bates v. Humboldt County, 224 Iowa 841, 227 N.W. 715 (1938).

309.64 Repealed Acts 1951 (54 G.A.) ch. 103, § 22.

For new provisions relating to highways, enacted coincident with this repeal, see section 306.1 et. seq.

309.65 Repealed Acts 1949 (53 G.A.) ch. 125, § 10.

Subject matter of repealed section is now covered by section 314.9.

309.66 Use of Gravel Beds

1. Construction and application.

Supervisors could not grade private road despite offer to pay. O.A.G. 1938, p. 837.

Supervisors may permit persons, cities and towns to take gravel, without charge, for road or street improvement. O.A.G. 1938, p. 189.

Improper to use county gravel for private roads. O.A.G. 1932, p. 53.

309.63, 309.66 do not authorize supervisors to buy gravel for township road use out of county road fund. O.A.G. 1925-26, p. 394.

2. Township's rights.

Township has right to gravel from county pit. O.A.G. 1925-26, p. 394.

Township need not pay county for gravel used on township roads. O.A.G. 1923-24, p. 123.

3. Disposal of surplus.

Supervisors could dispose of surplus sand for commercial purposes. O.A.G. 1923-24, p. 259.

Material in gravel pit not practicable for roads and streets may be sold. O.A.G. 1923-24, p. 197.

309.67 Duties of County Board of Supervisors and the County Engineer

Index to Notes

1. Construction and application.

Duty runs to all those rightfully using roads - breach by either negligent commission or omission. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977).

This section inapplicable for alleged pollution of artificial farm pond. Conrad v. Board of Sup'rs of Lee County, 199 N.W.2d 139 (Iowa 1972).

County boards of supervisors have only power conferred are implied by statute. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Where grade interupted natural flow, county required to open grade and allow escape of water. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

Supervisors duty to maintain continuously in best condition practicable and remove obstruction, including snow, from secondary roads extends to any portion of a road not vacated and closed. O.A.G. March 21 1980.

Final authority for secondary road maintenance and board of supervisors, which establishes policy for and accepts the recommendations of the county engineer. O.A.G. September 27, 1979.

Workers' compensation for employees of county engineer's office may be paid from secondary road fund. O.A.G. August 30, 1976.

County has no duty to plow secondary road designated snow mobile route. No liability for injuries. O.A.G. October 14, 1974.

County may not maintain a road as part of secondary road system unless such road is legally a "public road." O.A.G. April 21, 1969.

Board of supervisors does have power to hire or discharge county road employees without the engineer's approval; however, the supervisory responsibility of the county engineer should not be undercut. O.A.G. March 5, 1969.

Supervision and responsibility for good faith performance of work in engineer. O.A.G. 1948, p. 150.

Contracts may be ratified if supervisors would have had authority to enter into such contract. O.A.G. 1932, p. 2.

In removal of gravel, consideration must be given to lateral support of land of adjacent owner. O.A.G. 1913-14, p. 141.

2. Duty to inspect.

Duty to discover defects caused by elements. Brooks v. Van Buren County, 155 Iowa 282, 135 N.W. 1110 (1912).

3. Duty to repair.

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

Prerogative of closing secondary road bridges over railroad crossings rests with board of supervisors. O.A.G. April 5, 1974.

A strip of land used as access by public to cemetery part of secondary road system and must be maintained by board of supervisors. O.A.G. January 25, 1966.

County under no obligation to repair drainage tile installed by private party across farm-to-market road. O.A.G. March 17, 1961.

Conditions for board to be charged by this section with duty of repair and maintenance of road. O.A.G. March 3, 1955.

County required to repair bridge if road supervisor failed to do so. Roby v. Appanoose County, 63 Iowa 113, 18 N.W. 711 (1884).

County bridges which county is required to repair. Chandler v. Fremont County, 42 Iowa 58 (1875).

Soundness of fund for construction of bridge not material to duty to repair. Moreland v. Mitchell County, 40 Iowa 394 (1875).

4. Increased distance, compensation.

No provision for payment to rural mail carriers or extra mileage during construction. O.A.G. 1919-20, p. 242.

5. Judicial supervision.

That there may be an abuse of discretion is insufficient grounds to restrain board of supervisors. Denison v. Watts, 97 Iowa 633, 66 N.W. 886 (1896).

6. Care required of county.

County's duty to keep county roads open, in repair and free from nuisance did not extend beyond persons using road to persons outside road and owning property adjoining. Conrad v. Board of Sup'rs of Lee County, 199 N.W.2d 139 (Iowa 1972).

7. Warning of danger.

Duty owed to the traveling public is to warn of danger. Owens v. Iowa County, 186 Iowa 408, 169 N.W. 388 (1918).

8. Liability of county.

Cause of action against county engineer and members of board of supervisors for injuries - breach of duty to maintain county road in proper condition. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977).

Violation of duty to maintain roads in safe condition results in liability to users of road. Conrad v. Board of Sup'rs. of Lee County, 199 N.W.2d 139 (Iowa 1972).

Costs of restoring polluted pond to original condition assessed. Id.

Prior decision held not controlling. Post v. Davis County, 196 Iowa 183, 191 N.W. 129 (1922), rehearing overruled, 196 Iowa 183, 194 N.W. 245 (1922).

County not liable for harm caused by obstruction left by contractor. Grennell v. Cass County, 193 Iowa 697, 187 N.W. 504 (1922).

9. District supervisor - liability.

Not liable for damages resulting from defects where repairs involve extraordinary expenditures. Wilson & Gustin v. Jefferson County, 13 Iowa 181 (1862).

10. Injunction.

Where grade interrupted natural flow, county required to open grade and allow escape of water. County entitled to injunction against maintenance of dike by land owner. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

Road supervisor could enjoin construction of dike which would cause water to flow on road. Myers v. Priest, 145 Iowa 81, 123 N.W. 943 (1909).

309.68 Intercounty Highways

Index to Notes

1. Construction and application.

Greene County secondary road funds may be used to assist in the opening of a connecting road in Guthrie County. O.A.G. June 15, 1970.

This section does not authorize the construction of a road entirely within one county. O.A.G. May 6, 1969.

Public highway on corporate line, duty to maintain on city and county. O.A.G. 1938, p. 346.

Improvement of inter-county highway. O.A.G. 1928, p 375.

2. Withdrawal from undertaking.

Agreement by adjoining counties to construct bridge binding on both, and neither could withdraw without the other county's consent. Bremer County v. Walstead, 130 Iowa 164, 106 N.W. 352 (1906).

3. Joint city-county bridges.

City and county may enter into agreement to construct bridge and approaches under certain circumstances. O.A.G. September 18, 1967.

309.69 Enforcement of Duty

1. Construction and application.

Highway commission could not advance primary road funds in a city for city project with agreement to reimburse by city. O.A.G. 1938, p. 769.

Highway commission has no authority to contract for construction of secondary road projects with view to procuring federal farm-to-market aid. O.A.G. 1938, p. 624.

Highway commission empowered to determine all matters relating to improvement of county bridge or culvert on a township road. O.A.G. 1925-26, p. 106.

2. Contracts.

When widening of primary road extension in city authorized, two contracts may be required. O.A.G. 1938, p. 769.

309.70 - 309.71 Repealed Acts 1982 (69 G.A.) ch. 1110, § 12.

309.72 Repealed Acts 1949 (53 G.A.) ch. 125, § 11.

Subject matter of repealed section is now covered by section 314.10.

309.73 Repealed Acts 1981 (69 G.A.) ch. 117, § 1097; see § 331.441 (2"B")(2).

309.74 Width of Bridges and Culverts

Index to Notes

1. Construction and application.

No negligence in the fact that a bridge was constructed with a central truss. Shannon v. Council Bluffs, 194 Iowa 1294, 190 N.W. 951 (1922).

Bridge maintained by city is within definition of streets and sidewalks. Sachs v. Sioux City, 109 Iowa 224, 80 N.W. 336 (1899).

Minimum width of bridges must be complied with. Gould v. Schermer, 101 Iowa 582, 70 N.W. 697 (1897).

Supervisors had no authority to construct bridge over navigable lake owned by state. Snyder v. Foster, 77 Iowa 638, 42 N.W. 506 (1889).

Width prescribed is mandatory. O.A.G. 1938, p. 115.

2. Width of bridges in general.

Should be wide enough to permit passage of all vehicles and farm machinery drawn on the highways. Quinton v. Burton, 61 Iowa 471, 16 N.W. 569 (1883).

Contract by supervisors for bridge only 14 feet wide did not render the action void. Mallory v. Montgomery County, 48 Iowa 681 (1878).

3. Wider Bridges.
No prohibition against bridges wider than minimum specified. Rusch v. City of Davenport, 6 Iowa 443, 6 Clarke 443 (1858).

4. Repairs.
Whole width of bridge must be kept in repair. Rusch v. City of Davenport, 6 Iowa 443, 6 Clarke 443 (1858).

5. Contracts.
Contractor's right of action not avoided because contract was for bridge less than 16 feet wide. Mallory v. Montgomery County, 48 Iowa 681 (1878).

6. Duties of travelers.
To avoid collissions with trusses and guard rails of bridges. Shannon v. Council Bluffs, 194 Iowa 1294, 190 N.W. 951 (1922).

7. Notice to county.
Notice may be amended to change insufficient width. Magee v. Jones County, 161 Iowa 296, 142 N.W. 957 (1913).

309.75 Definitions

1. Construction and application.
Agreement by adjoining counties to construct a bridge binds both counties. Bremer County v. Walstead, 130 Iowa 164, 106 N.W. 352 (1906).
Statutory limitations on expenditures do not apply to bridge expenditures from farm-to-market road. O.A.G. 1944, p. 123. O.A.G. 1954, p. 157.

2. Authorization from Voters.
Voters can authorize construction of a bridge in excess of some fixed by statute. O.A.G. 1919-20, p. 640.
Construction in excess of statutory amount may be authorized by board of electors of county. O.A.G. 1918, p. 305.

3. Resolutions.
Agreements by adjoining counties to construct a bridge binding on each. Bremer County v. Walstead, 130 Iowa 164, 160 N.W. 352 (1906).
No statutory authority for supervisors to pay for construction of a bridge in another county. O.A.G. 1922, p. 228.

309.76 - 309.78 Repealed Acts 1963 (60 G.A.) ch. 186, § § 1-3.

309.79 Bridge Specifications

1. Construction and application.
The prerogative of closing secondary road bridges over railroad crossings rests with board of supervisors. O.A.G. April 5, 1974.
Engineer and budget director required to keep within standard plans and specifications. O.A.G. 1925-26, p. 480.
309.79, 309.80 give highway commission supervision over plans for county bridges and culverts. O.A.G. 1925-26, p. 311.

2. Approval of highway commissioner.
Prior to effectiveness of contract for bridge on secondary road. O.A.G. 1925-26, p. 480.

3. Contracts.
Changes must be consistent with plans and specifications adopted. O.A.G. 1925-26, p. 480.

309.80 Repealed Acts 82, ch.1110, § 12; see § 309.42.

309.81 Record of Plans

1. In general.
Public letting necessary. O.A.G. 1938, p. 711.

309.82 Record of Final Cost

1. In general.
Public letting necessary. O.A.G. 1938, p. 711.

309.83 Repealed Acts. 1978 (67 G.A.) ch. 1108, § 24.

309.84 Repealed by Act 82, ch.1104, §61.

309.85 - 309.88 Repealed by Act 81, ch. 117, § 1097.

309.89 Repealed by Act 81, ch. 117, § 1097; see § 331.441(2"c")(3).

309.90 Repealed. Acts 1949 (53 G.A.) ch. 125, § 12.

Subject matter of repealed section is now covered by section 314.11.

309.91 Repealed. Act 81, ch. 117, § 1097.

309.92 Repealed Acts 1949 (53 G.A.) ch. 125, § 3.

For provisions similar to those repealed, see section 314.2.

COUNTY SECONDARY ROAD BUDGETS [NEW]

309.93 Itemized Statement. Former section 309.93, Acts 1947 (52 G.A.) ch. 163, § 5, was repealed by Acts 1949 (53 G.A.) ch. 129, § 1.

Subject matter of repealed section is now covered by section 311.7.

309.94 Review by Department (No Annotations)

309.95 Amendments

1. In general.
Workers' compensation for employees of the county engineer's office may be paid from secondary road fund. O.A.G. August 30, 1976.

309.96 Operation of Budgeted Program (No Annotations)

309.97 Construction of Law (No Annotations)

CHAPTER 310

FARM-TO-MARKET ROADS

310.1 Definitions (No Annotations)

310.2 Supervisors Agreement

1. Construction and application.

Highway commission lacked authority to contract for construction of secondary road projects with view towards federal aid authorized for farm-to-market roads. O.A.G. 1938, p. 624.

2. Contracts.

County may legally enter into agreement with the state of Iowa to construct a local farm-to-market road to primary standards. O.A.G. April 30, 1971.

Counties may enter into agreements and arrangements with state or federal authorities assigning a portion of their share of the farm-to-market road fund to used to match federal funds for highway planning. O.A.G. July 16, 1963.

Where a town agreed to pay certain sum to county for street improvements, to obtain federal aid agreement was not ultravires or void. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1924).

3. Actions.

County was real party in interest in an action to compel levy of tax for highway improvements. Humboldt County v. Dakota City, 197 Iowa 457, 196 N.W. 53 (1924).

310.3 Funds

1. Construction and application.

Judgment against county cannot be paid from fund provided for by this section and section 310.4. O.A.G., November 3, 1980.

Neither the secondary road research fund nor any other road use tax fund may be used to pay for a research project insurance survey to determine the risks and the insurance needs of the several counties. O.A.G. March 6, 1972.

Use of funds for secondary road research authorized. O.A.G. May 26, 1955.

Refunds should be credited to fund from which payments were made. O.A.G. 1928, p. 44.

310.4 Use of Fund

1. Construction and application.

Judgment against county cannot be paid from fund provided for by § 310.3 and this section. O.A.G., November 3, 1980.

A county may legally enter into an agreement with the state of Iowa to construct a local farm-to-market road to primary standards. O.A.G. April 30, 1971.

A county board of supervisors may lawfully establish, construct and/or maintain extensions of secondary roads in cities and towns, using county road funds to finance the work. O.A.G. March 5, 1970.

City or town retains chief responsibility for maintenance of street which is an extension of a secondary road. Id.

Counties may enter into agreements and arrangements with state or federal authorities assigning a portion of their share of the farm-to-market road fund to be used to match federal funds for highway planning such as traffic counts and research. O.A.G. July 16, 1963.

Farm-to-market funds may not be used for re-rocking or re-graveling a farm-to-market road. O.A.G. May 9, 1956.

Advancement of county road funds for farm-to-market construction - reimbursement required. O.A.G. 1952, p. 102.

Approval and concurrence of highway commission required. Id.

310.5 Repealed Acts 1949 (53 G.A.) ch. 122, § 11.

310.6 Accounts by Department (No Annotations)

310.7 Treasurer's Monthly Statement (No Annotations)

310.8 Quarterly Statement to County Engineer (No Annotations)

310.9 Projects Approved by Department

1. Construction and application.

Approval of claims is subject to discretion of highway commission. O.A.G. 1948, p. 160.

310.10 Farm-to-Market Road System Defined

1. Construction and application.

County board of supervisors may lawfully establish, construct and/or maintain extensions of secondary roads in cities and towns. O.A.G. March 5, 1970.

City or town retains chief responsibility for maintenance of street which is an extension of secondary road. Id.

Highway commission's withholding approval of county farm-to-market road project resolutions - factors to be considered. O.A.G. March 28, 1962.

There is contemplated a separate program for farm-to-market roads. O.A.G. 1940, p. 403.

310.11 Participating County - Funds Reserved

1. Construction and application.

State highway commission's withholding approval of county farm-to-market road project resolutions - factors to be considered. O.A.G. March 28, 1962.

Approval of claims is subject to discretion of highway commission. O.A.G. 1948, p. 160.

310.12 Repealed Acts 1949 (53 G.A.) ch. 127, § 5.

310.13 Surveys, Plans and Estimates

1. In general.

State highway commission's withholding approval of county farm-to-market road project resolutions - factors to be considered. O.A.G. March 28, 1962.

310.14 Bids - Department or County Supervisors

1. Construction and application.

Approval of claims is subject to discretion of highway commission. O.A.G. 1948, p. 160.

310.15 Repealed Acts 1949 (53 G.A.) ch. 125, § 2.

Subject matter of repealed section is now covered by section 314.1.

310.16 Claims Charged to County Allotment (No Annotations)

310.17 Repealed Acts 1949 (53 G.A.) ch. 125, § 4.

Subject matter of repealed section is now covered by section 314.3.

310.18 Partial Payments During Construction (No Annotations)

310.19 Supervision and Inspection of Work (No Annotations)

310.20 Supervisors Resolution to State Treasurer

Index to Notes
Construction and Application 1
Transfer of Funds 2

1. Construction and application.
Funds in a county farm-to-market road fund may be accumulated. O.A.G. May 21, 1965.
County local road tax funds may be accumulated. Id.
Augmenting farm-to-market funds from future share of road use tax funds authorized. O.A.G. 1954, p. 157.

2. Transfer of funds.
Local funds (local road tax funds) may be transferred into the farm-to-market road fund for accumulation. O.A.G. May 21, 1965.

310.21 Repealed Acts 1949 (53 G.A.) ch. 125, § 6.

Subject matter of repealed section is now covered by section 314.5.

310.22 Right of Way - How Acquired

1. Construction and application.
Payment for right of way acquired by county out of secondary road fund does not bar reimbursement by highway commission following prompt submission of claim. O.A.G. 1951, p. 66.
County can acquire right of way or request highway commission to do so. O.A.G. 1940, p. 323.

310.23, 310.24 Repealed Acts 1951 (54 G.A.) ch. 103, § 22.

For new provisions relating to highways, enacted coincident with this repeal, see section 306.1 et. seq.

310.25 Repealed Acts 1949 (53 G.A.) ch. 125, § 7.

Subject matter of repealed section is now covered by section 314.5.

310.26. Repealed Acts 1949 (53 G.A.) ch. 127, § 5.

1. Construction and application.

County may or may not surface secondary road with concrete pavement when petitioned under this section. O.A.G. Oct. 14, 1976.

Selection of roads - petition. O.A.G. 1950, p. 131.

Use of farm-to-market funds for one-half cost authorized subject to approval of Highway Commission and Bureau of Public Roads. O.A.G. 1950, p. 120.

Change in construction program from three year to one year program not required but existing program must be modified to include new work under this section. O.A.G. 1950, p. 105.

2. Preference.

Deposits to secure priority must be made in cash. O.A.G. 1952, p. 48.

Preference applied to that 35% of construction fund supervised by board of approval concerning selection of roads. O.A.G. 1950, p. 131.

Petition for surfacing filed under section 311, Code 1950, which road includes bridges not in service at time of filing entitled to no preference. O.A.G. 1950, p. 152.

No limit to number of petitions that may be granted preference so long as funds for doing work are available. O.A.G. 1950, p. 105.

3. Donations.

Deposit of required donation bars establishment of assessment district. O.A.G. 1950, p. 131.

4. Road construction.

Surfacing requirement made by board could be modified by it. O.A.G. 1950, p. 152.

Permanent grade required before surfacing. O.A.G. 1950, p. 145.

5. Payment for road.

Use of farm-to-market funds to grade and pay for one-half of surfacing authorized when road part of farm-to-market system. O.A.G. 1950, p. 120.

6. Subscriptions and assessments.

All abutting landowners must subscribe and pay proportionate share of 50% of cost where petition signed by 70-5% of abutting and adjacent landowners. See opinion. O.A.G. 1950, p. 131.

7. Petition.

Signer of petition cannot withdraw after filing even though not acted on. O.A.G. 1950, p. 131.

8. Percentage of owners.

Percentage of owners determined by area owned - not lineal frontage. O.A.G. 1954, p. 46.

9. Refunds.

Funds in hands of county treasurer for payment of cost of improvement are not subject to payment of proportionate refunds following completion of project and determination of final cost, which is lower than engineer's estimated cost. O.A.G. June 16, 1955.

311.8 County Engineer's Report

1. Construction and application.
Engineer must advise board on permanent grade and drainage upon filing of petition. O.A.G. 1950, p. 145.

311.9 Publicly Owned Real Estate (No Annotations)

311.10 Estimate and Apportionment - Presumption

1. Construction and application.
Funds in hands of county treasurer for payment of improvement not subject to payment of proportionate refunds following completion of project at cost lower than engineer's estimate cost. O.A.G. June 16, 1955.

311.11 Hearing - Notice (No Annotations)

311.12 Publication of Notice (No Annotations)

311.13 Errors in Notice or Apportionment Record (No Annotations)

311.14 Appearance (No Annotations)

311.15 Hearing - Adjournment - Order (No Annotations)

311.16 Final Hearing - Assessment Levied

1. Interest.
Interest commences 20 days following adoption of resolution. O.A.G. 1950, p. 152.

311.17 Assessments over $10.00 - Waiver (No Annotations)

311.18 Assessment Delinquent - Penalties (No Annotations)

311.19 Assessment $10.00 or Less (No Annotations)

311.20 Variation Between Estimated and Actual Cost (No Annotations)

311.21 Procedures (No Annotations)

311.22 Road Graded and Drained (No Annotations)

311.23 Payment of Construction Costs (No Annotations)

311.24 Appeal from Assessment

1. Construction and application.
Payment of cost of improvement not subject to payment of proportionate refund following completion of project at cost lower than engineer's estimated cost. O.A.G. June 16, 1955.

311.25 Appeal Docketed (No Annotations)

311.26 Assessments Certified to County Treasurer (No Annotations)

311.27 Each District Separate Unit (No Annotations)

311.28 Certificates Anticipating Assessments (No Annotations)

311.29 Sale of Certificates (No Annotations)

311.30 Certificates Registered - Payment (No Annotations)

311.31 Previous Assessments not Invalidated (No Annotations)

CHAPTER 312

ROAD USE TAX FUND

312.1 Fund Created

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Construction and Application 1
Use of Fund 2

1. Construction and application.

A judgment against a county cannot be paid from the fund provided for by this section and section 312.2. O.A.G., November 3, 1980.

Pledge of state's general credit not improper. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

Billboards, signs and junkyards outside the right-of-way on lands adjacent to public highways not part of highways - primary road funds may not be used for purchasing same. O.A.G. Feb. 16, 1972.

2. Use of fund.

Bikeways properly constructed using road use tax money. O.A.G. Jan. 14, 1977.

Neither secondary road research fund nor any other road use tax fund may be used to pay for a research project insurance survey to determine the risks and insurance needs of the several counties. O.A.G. March 6, 1972.

Safety rest areas part of public highways - no prohibition against use of primary road fund for construction. O.A.G. Jan. 16, 1968.

312.2 Allocations from Fund

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Alleys 2
Construction and Application 1
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Validity 1/2

1/2 Validity.

Subdivision nine authorizing expenditure of road use tax funds is constitutional. O.A.G. April 26, 1979.

1. Construction and application.

A judgment against a county cannot be paid from the fund provided for by section 312.1 and this section. O.A.G., November 3, 1980.

Pledge of state's general credit not improper. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

Functional classification and jurisdiction of highways bill does not require a change in distribution of the road use tax fund. O.A.G. May 17, 1973.

Refunds made in error from the general fund may be corrected. O.A.G. May 26, 1972.

Neither secondary road research fund nor any other road use tax fund may be used to pay for a research project insurance survey to determine the risks and insurance needs of the several counties. O.A.G. March 6, 1972.

Billboards, signs and junkyards outside the right-of-way on lands adjacent to public highways not a part of highways - primary road funds not to be used for purchasing same. O.A.G. Feb. 16, 1972.

Road use tax funds allocated to cities and towns cannot be used for sidewalk construction which is not part of a street construction project. O.A.G. March 13, 1970.

Sums credited to primary road fund for expenses incurred by secondary and urban road departments cannot be used for secondary road research expenses. O.A.G. May 15, 1963.

Primary road fund available for development of roads surfaced with gravel or crushed rock. O.A.G. 1953, p. 72.

2. Alleys.

Not the same as highway. O.A.G. June 4, 1973.

Road use tax funds may not be used by cities and towns for construction or maintenance of alleys. O.A.G. Dec. 13, 1961.

3. Safety rest areas.

Part of public highways - no prohibition against use of primary road fund for construction. O.A.G. Jan 16., 1968.

312.3 Apportionment to Counties and Cities

Index to Notes
Census 2
Construction and Application 1
Use of Funds 3

1. Construction and application.

Apportionment based on federal census. Harp v. Abrahamson, 248 Iowa 222, 80 N.W.2d 505 (1957).

2. Census.

Effect of correction of U.S. Census Bureau mistake. O.A.G. May 8, 1970.

Cities and towns may have one federal census taken each decade to be used in apportionment of road use tax fund and liquor control fund. O.A.G. Jan. 19, 1967.

3. Use of funds.

Safety rest areas part of public highways - no prohibition against use of primary road fund for construction. O.A.G. Jan. 16, 1968.

312.4 Treasurer's Report to the Department of Transportation (No Annotations)

312.5 Division of Farm-to-Market Road Funds

1. Construction and application.

County boards of supervisors may spend farm-to-market road funds for road and bridge construction without submitting their resolution to the voters. O.A.G. May 21, 1965.

In distributing equalization farm-to-market funds under this section it is not necessary to take into consideration the additional mileage added by counties to farm-to-market system in 1956. O.A.G. July 17, 1958.

Use of the equalization farm-to-market fund referred to in this section is not limited to the original farm-to-market system referred to in section 310.10, but may be expended on additions to the farm-to-market system since the enactment of that law. O.A.G. May 9, 1956.

Highway Commission is authorized under section 310.34 to set aside out of the receipts in the farm-to-market funds enumerated in section 310.3, the one and one-half percent for secondary road research prior to allocation of the funds to the counties as provided in this section. O.A.G. May 26, 1955.

Advancement of county road funds for farm-to-market roads authorized providing approval and concurrence obtained from Highway Commission. O.A.G. 1952, p. 102.

312.6 Limitation on Use of Funds

Index to Notes
- Alleys 3
- Construction and Application 1
- Engineering Expenses 2
- Parking 4
- Sidewalks 6
- Traffic Control Signals 5

1. Construction and application.

State authorized to use road use tax fund in payment of preliminary engineering services. Slapnicka v. City of Cedar Rapids, 139 N.W.2d 179 (Iowa 1965).

A municipality may use street funds to erect a garage and house to maintain road construction and maintenance machinery and equipment. O.A.G. June 2, 1969.

Road use tax funds may be used for maintenance of roads and streets. O.A.G. Dec. 13, 1961.

Road use tax funds may be used for payment of street bonds. Id.

Narrow uses to which road use tax money may be put. Id.

2. Engineering expenses.

Necessary to and part of construction. O.A.G. Dec. 13, 1961.

3. Alleys.

Road use tax funds not to be used by cities and towns for construction of. O.A.G. Dec. 13, 1961.

4. Parking.

Permissible expenditure of road use tax funds for repair, surfacing, maintenance, etc. Douglass v. Iowa City, 218 N.W.2d 908 ((Iowa 1974).

Road use tax funds not to be used for acquisition or improvement of real estate for parking purposes. Id.

Road use tax funds not available for on or off-street parking. O.A.G. Dec. 13, 1961.

5. Traffic control signals.

Road use tax funds not available therefor. O.A.G. Dec. 13, 1961.

6. Sidewalks.

Road use tax funds not to be used where sidewalk not part of a street construction project. O.A.G. March 13, 1970.

Road use tax funds not available for sidewalk purposes. O.A.G. Dec. 13, 1961.

312.7 Balance Maintained in Fund (No Annotations)

312.8 Amana Colonies (No Annotations)

312.9 Repealed Acts 1978 (67 G.A.) ch. 1108, § 24.

312.10 Repealed Acts 1978 (67 G.A.) ch. 1108, § 24.

312.11 Accounts of Expenditures (No Annotations)

312.12 Program Submitted (No Annotations)

312.13 Repealed. Acts 1973 (65 G.A.) ch. 205, § 2; Acts 1974 (65 G.A.) ch. 1096, § 53. Eff. June 13, 1974.

312.14 Cities to Submit Report (No Annotations)

312.15 When Funds not Allocated (No Annotations)

312.16 Definition (No Annotations)

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

313.1 Federal and State Cooperation

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Construction and Application 2
Validity of Fuel Tax Law 1
Wage Scale 3
Widening Projects 4

1. Validity of fuel tax law.
Valid.

2. Construction and application.
Authority of Highway Commission is plenary and court will interfere only in case of manifest abuse of such power and authority. Porter v. Highway Commission, 241 Iowa 1208, 44 N.W.2d 682 (1950).
Cost of manpower and equipment to assist in flood prevention should be reimbursed to primary road fund. O.A.G. May 12, 1969.
No authority in Highway Commission to require payment of prescribed minimum wage scale on non-federal participation highway construction projects. O.A.G. July 26, 1968 (No. S68-7-5).
Highway Commission has no authority except by statute. Merchants Motor Freight v. Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1949).
State may delegate power over highways to Highway Commission. Iowa Ry & Light Corp. v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed State v. Central States Electric Co., 231 N.W. 467 (Iowa 1930), and Central States Electric Co. v. Pocahontas County, 231 N.W. 468 (Iowa 1930).
Use of part of primary road fund for statewide highway planning proper. O.A.G. 1940, p. 235.

2. Wage scale.
Highway Commission authorized to fix minimum wage scale where federal funds used. O.A.G. 1936, p. 548.

3. Widening projects.
Use of primary road fund for widening authorized. O.A.G. 1938, p. 518.

313.2 "Road Systems" Defined - Roadside Parks

Index to Notes
Construction and Application 1
Rights-of-Way 2

1. Construction and application.
Regarding functional classification system. O.A.G. Jan 5, 1976.
Highway Commission and county board of supervisors not authorized to exchange land. O.A.G. Oct. 16, 1972.
County board of supervisors agreement with Highway Commission to accept road into county secondary road system - excessive traffic count. O.A.G. June 24, 1965.

Primary road funds usable to widen approach to city viaduct. O.A.G. 1938, p. 518.

Cost of bridge on primary road in town could be paid from primary road fund. O.A.G. 1922, p. 214.

3. Bonds, use of proceeds of.

City may pledge its credit for taking or damaging of homes for purposes of widening public street and relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1956).

4. Salvage.

Sections 391.6 and 391.7 apply where highway commission is permitted to extend primary road system through a city or town. O.A.G. 1938, p. 199.

5. Billboards and Advertising Signs.

Jurisdiction of highway commission not extended to cover primary road extensions. O.A.G. 1940, p. 180.

6. Liability of cities.

City has duty of street maintenance. Smith v. Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

7. Reconstruction and improvement.

Action to restrain allegedly illegal diversion of surface water onto land owners land. Johnson v. Iowa State Highway Commission, 250 Iowa 521, 94 N.W.2d 773 (1959).

City or town retains chief responsibility for maintenance of a street which is an extension of a secondary road. O.A.G. March 5, 1970.

County board of supervisors may lawfully establish, construct and/or maintain extensions of secondary roads in cities and towns. Id.

8. Widening streets.

City and commission authorized to damage homes for purposes of widening public street and relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

9. Review.

City and commission authorized to take or damage homes for purpose of widening public street and relocating primary highway - owners not entitled to judicial review. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

10. Pleading.

Mere conclusions that proposed acts of city were unreasonable, unnecessary, arbitrary, and unjust. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

313.22 Paving of Whole Street by Department

Index to Notes
Construction and Application 1/2
Eminent Domain 1

1/2. Construction and application.

Condemnation commission was properly constituted pursuant to section 472.4. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

Chapter 306A authorizes the state highway commission to expand the concept of primary extension to include relocations, or reconstructions or establishments of local service streets. O.A.G. April 4, 1969.

1. Eminent domain.

City and commission authorized to take or damage homes for purpose of widening public street and relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

313.23 Reimbursement by City

1. Construction and application.

Chapter 306A authorizes the state highway commission to expand the concept of primary extension to include relocations, or reconstructions or establishments of local service streets. O.A.G. April 4, 1969.

Highway commission could not expend primary road fund in city for city project. O.A.G. 1938, p. 769.

313.24 Separated Cities (No Annotations)

313.25 Repealed. Acts 1951 (54 G.A.) ch. 103, § 22.

313.26 Repealed. Acts 1951 (54 G.A.) ch. 103, § 22.

313.27 Bridges, Viaducts, Etc., on Municipal Primary Extensions

1. Construction and application.

City could be assessed for benefits derived from construction of culvert by drainage district within city limits. Drainage Dist. No. 119, Clay County v. Incorporated City of Spencer, 268 N.W. 2d 493 (Iowa 1978).

"Bridges" do not include "culverts." Id.

Highway commission has authority to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. O.A.G. March 30, 1973.

313.28 Temporary Primary Road Detours (No Annotations)

313.29 Detours Located in City (No Annotations)

313.30 to 313.34, inc., Code 1946, transferred to sections 313.59 to 313.65, inclusive.

313.35 Repealed Acts 1949 (53 G.A.) ch. 225, § 7.

313.36 Maintenance - Limitation in Cities

Index to Notes

1. Construction and application.

State's statutory duty to make highways safe must be judicially reviewed on tort requirement to act as reasonable and prudent Department of Transportation would act, reasonableness requires fact finder to balance danger of outmoded device, increase in new device safety or design, cost, available resources, and other hazards which pose danger to motorists. Butler v. State, 336 N.W.2d 416 (Iowa 1983).

Statutory duty requires highways be maintained in a safe condition and the traveling public be warned of conditions endangering travel, whether caused by a force of nature or by act of third persons. Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

State has duty to place proper barriers, railings, guards and danger signals at obstructions in dangerous places on a highway when necessary for travelers' safety and performance of that duty is measured by a reasonableness standard in light of totality of circumstances. Id.

2. Maintenance.

Duty of reasonable care with respect to proper maintenance of extensions of primary road system in city. Smith v. City of Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

3. Patrolmen.

As to recovery of workmen's compensation. Schroyer v. Jasper County, 224 Iowa 1391, 279 N.W. 118 (1938).

4. Duty of care.

States required to exercise ordinary care to maintain highways in safe condition and to warn traveling public of conditions endangering travel, whether cause by a force of nature or by the act of third persons. Hunt v. State, 252 N.W.2d 715 (Iowa 1977).

Rule that possessor of property is not obligated to eliminate known and obvious dangers does not apply to city's mandatory duty to keep its thoroughfares and public places safe. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Evidence supported trial court's finding that state was negligent in failing to eliminate hazard after notice thereof. Id.

5. Weather information.

Those who have the duty to maintain highways are required to make reasonable use of weather information to anticipate adverse road conditions. Hunt v. State, 252 N.W.2d 715 (Iowa 1977).

6. Snow and ice removal.

No negligence in failing to remove snow drift from public highway. Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

Reasonable length of time within which state must remove large quantities of snow and ice from public highways depends on facts and circumstances of each case and is generally a question for jury. Id.

313.37 Road Equipment

Authority and responsibility for purchase, assignment, control and sale of all state owned motor vehicles. O.A.G. December 15, 1969.

Release of interest in paving machine patents - procedure. O.A.G. 1950, p. 137.

Contracts with foreign corporations for purchase of road material or equipment subject to restrictions in section 494.9. O.A.G. 1934, p. 390.

2. Use of equipment.

Highway commission may permit use of machinery acquired from the U.S. at state institutions. O.A.G. 1919-20, p. 267.

313.38 to 313.40 Repealed Acts 1951 (54 G.A.) ch. 107, § 9.

For provisions relating to primary roads, enacted coincident with this repeal, see § § 313.4, 313.6, 313.8, 313.14, 313.18, 313.20, 313.27, and 313.36.

313.41 Repealed Acts 1951 (54 G.A.) ch. 165, § 26.

313.42 Definition (No Annotations)

MARKINGS FOR MUNICIPALITIES

313.43 Lateral or Detour Routes in Cities and Towns (No Annotations)

313.44 Standard Markings Required (No Annotations)

313.45 Cost (No Annotations)

313.46 to 313.57 Repealed Acts 1951 (54 G.A.) ch. 103, § 22.

For new provisions relating to highways, inacted coincident with this repeal, see section 306.1 et. seq.

313.58 Repealed Acts 1978 (67 G.A.) ch. 1108, § 24.

INTERSTATE BRIDGES - GIFT OR PURCHASE

313.59 Gift of Bridge to State - Acceptance (No Annotations)

313.60 Indebtedness Payed (No Annotations)

313.61 Taxes Forgiven (No Annotations)

313.62 Highway Commission Authority (No Annotations)

313.63 Action by Adjoining State (No Annotations)

313.64 Financial Statement Annually (No Annotations)

313.65 Approval of Taxing Bodies (No Annotations)

313.66 Mississippi Bridges Purchased (No Annotations)

313.67 Scenic and Improvement Fund (No Annotations)

313A.36 Purposes of Power Granted

1. Construction and application.

Revenue bonds issued by highway commission to finance interstate toll bridge acquisitions not subject to taxation by or within state. O.A.G. April 26, 1972.

313A.37 Failure to Pay Toll - Penalty (No Annotations)

313A.38 Independent of Any Other Law (No Annotations)

313A.39 Construction

1. Construction and application.

Invalidity of certain sections of this chapter would not destroy the entire act. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

CHAPTER 314

GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.1 Bidders' Statements of Qualifications - Basis for Awarding Contracts

1. Construction and application.

Construction and material contracts for secondary roads and bridges withing purview of section 309.40 must be advertised and let at a public letting. O.A.G. August 29, 1972.

Supervisors may reject bids and proceed to construction in accordance with this section. Id.

Construction of a sewage disposal lagoon is an improvement requiring a contract to be let after bidding. O.A.G. October 28 1965.

Advancement of county road funds for farm-to-market construction limited in reimbursement to funds actually expended. O.A.G. 1952, p. 102.

314.2 Interest in Contract Prohibited

1. Construction and application.

Contracts entered into between highway commission and legislators may be invalidated by the commission. O.A.G. May 31, 1972.

A corporation in which the county engineer is a majority stockholder is prohibited from bidding on contracts for highway construction, maintenance, etc. in his own county as well as in other counties. O.A.G. March 5, 1970.

Contract involving a direct or indirect interest to the contracting supervisor would be prohibited by this section. O.A.G. June 22, 1965.

Direct interest prohibited, indirect interest depends on facts in each case. O.A.G. June 16, 1955.

314.3 Claims - Approval and Payment

1/2. In general.

Notarization requirement. O.A.G. March 25, 1968.

314.4 Partial Payments (No Annotations)

314.5 Extensions in Certain Cities

Index to Notes

1. Construction and application.

Authority to relocate extension of primary highway in city without obligation of placing abandoned route in any specified condition of repair. O.A.G. March 30, 1973.

County board of supervisors may improve secondary road extension lying entirely in a city, but the boards act cannot bind future boards to appropriate for the same project. O.A.G. July 27, 1962.

A town is not authorized to let a contract for town and county work within town to be reimbursed by county. O.A.G. May 31, 1962.

Duty to repair and maintain secondary road extensions discretionary in board of supervisors. O.A.G. 1950, p. 176.

2. Street improvements.

County board of supervisors have authority to aid cities and towns in street repair if streets are secondary road extensions. O.A.G. May 6, 1974.

City or town retains chief responsibility for maintenance of a street which is an extension of a secondary road. O.A.G. March 5, 1970.

Agreement between town and its county whereby town may have advantages of county facilitites and services regarding street improvements. O.A.G. May 31, 1962.

314.6 Highways along City Limits (No Annotations)

314.7 Trees - Ingress or Egress - Drainage

Index to Notes

1. Construction and application.

Courts are not denied right to grant landowners mandatory injunctive relief against state highway commission for flooding. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

Test of whether reasonable ingress and egress has been destroyed based on length of time used. Perkins v. Palo Alto County, 245 Iowa 310, 60 N.W.2d 562 (1953).

2. Drainage.

Property owner relief for highway construction causing excess water draining over plaintiff's land. Rosendahl Levy v. Iowa State Highway Commission, 171 N.W.2d 530 (Iowa 1969).

Highway construction causing substantial change in contour of land, loss of top soil, taking away absorption of drainage water by percolation, and causing water on landowner's property violated this section, landowner's entitled to relief. Id.

Landowner's anticipation of drainage problems did not preclude action in equity for injunction against state highway commission for highway construction causing surface water to drain over landowner's property in excessive and accelerated quantities. Id.

Landowners entitled to injunctive relief where construction of highway on hill caused substantial drainage problems. Illegal diversion of surface water onto landowners' land. Johnson v. Iowa State Highway Commission, 250 Iowa 521, 94 N.W.2d 773 (1959).

Digging of extension ditch along roadside authorized when volume of water not increased. Morrow v. Harrison County, 250 Iowa 725, 64 N.W.2d 52 (1954).

Acquiescence of landowner to existence of roadside ditch converts it into natural water course. Perkins v. Palo Alto County, 245 Iowa 310, 60 N.W.2d 562 (1953).

Drainage by landowners authorized where connections with highway ditch are made in accordance with specifications furnished by highway authorities. O.A.G. January 3, 1974.

3. Trees.

Material obstruction to highway and interference with improvement and maintenance. Carstensen v. Clinton County, 250 Iowa 487, 94 N.W.2d 734 (1959).

4. Ingress and egress.

Street closing preventing access to restaurant owners' property not a "taking" of property as contemplated by the constitution. Blank v. Iowa State Highway Commission, 252 Iowa 1128, 109 N.W.2d 713 (1961).

314.8 Government Markers Preserved (No Annotations)

314.9 Entering Private Land

1. In general.

Argument that highway commission should have same right of entry as that given condemnors for electric transmission lines under section 489.15 is matter for legislature and not court. Iowa State Highway Commission v. Hipp, 259 Iowa 1082, 147 N.W.2d 195 (1966).

Highway commission did not have right to enter upon or explore land before proceedings to acquire it. Id.

314.10 State Line Highways (No Annotations)

314.11 Use of Bridges by Utility Companies (No Annotations)

314.12 Borrow Pits - Top Soil Preserved (No Annotations)

314.13 Definitions (No Annotations)

315.15 Flight Strips. Repealed by Acts 1970 (63 G.A.) ch. 1030, § 5.

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS (NEW)

316.1 Definitions (No Annotations)

316.2 Effect upon Property Acquisition (No Annotations)

316.3 Declaration of Policy (No Annotations)

316.4 Moving and Related Expenses (No Annotations)

316.5 Replacement Housing for Homeowner (No Annotations)

316.6 Replacement Housing for Tenants and Certain Others (No Annotations)

316.7 Relocation Assistance Advisory Services (No Annotations)

316.8 Housing Replacement by Department as Last Resort (No Annotations)

316.9 Rules Adopted

1. Construction and application.

The Iowa relocation assistance act provides for payments separate from and in addition to just compensation payable in condemnation proceedings. O.A.G. November 20, 1970.

Adjustments in such relocation assistance payments are required to prevent unjust enrichment when a property has been condemned, and departmental rules may be formulated as provided in this section. Id.

316.10 Applicable to Other than Federal-Aid Highways (No Annotations)

316.11 Acquistions by Other State Agencies and Political Subdivisions

1. Construction and application.

The Iowa traveling library may do all things to comply with section 316.1 et. seq. O.A.G. August 31, 1972.

316.12 Payments not to be Considered as Income (No Annotations)

316.13 Administration (No Annotations)

316.14 Funding (No Annotations)

316.15 Federal Grants (No Annotations)

CHAPTER 317

WEEDS

317.1 Noxious Weeds

1/2. In general.

Section 319.14 relating to changes in right-of-way does not prevent the burning or spraying of right-of-way, nor does chapter 317 prevent such actions although they may be restrained by the board of supervisors. O.A.G. April 9, 1980.

1. Cities and towns, duties of.

Destruction of noxious weeds in corporate limits by city mandatory. O.A.G. 1938, p. 802.

Weed law does not apply to extermination of ordinary types of weeds. O.A.G. 1938, p. 408.

2. Streets and alleys.

Board of supervisors have authority to cut ordinary weeds in streets and alleys. O.A.G. 1938, p. 408.

3. Vacant lots.

Supervisors have no authority to mow other than noxious weeds. O.A.G. 1938, p. 408.

317.2 State Botanist

1. Construction and application.

County weed commissioner may not also be employed as solid waste disposal program head. O.A.G. April 2, 1975.

317.3 Weed Commissioner

1. Construction and application.

County boards of supervisors have only such powers as are expressly conferred by statute or impliedly conferred. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

County weed commissioner and deputy not entitled to receive reimbursement for mileage expense incurred commuting from residence to county courthouse. O.A.G. September 12, 1980.

Duty of board of supervisors to prescribe weed eradication program. O.A.G. 1938, p. 766.

Weed law does not apply to extermination of ordinary types of weeds. O.A.G. 1938, p. 408.

2. Township weed commissioners under prior law.

O.A.G. 1940, p. 161. O.A.G. 1938, p. 766. O.A.G. 1930, p. 161.

3. Cities or towns, weed commissioners.

Whether or not city should appoint weed commissioner was in discretion of counsel. O.A.G. 1938, p. 766.

Weed commissioner paid from general fund. Township commissioner paid from county treasury. O.A.G. 1930, p. 139.

4. Duties of weed commissioners.

In case of failure of property owner to act. O.A.G. 1938, p. 762.

5. Expense of destroying weeds.
Payable from general fund of highway commission or county. O.A.G. 1938, p. 497.

6. Liability for commissioners' acts.
County not liable to landlord or tenant for loss due to sraying. O.A.G. 1940, p. 398.

317.4 Direction and Control

1/2. In general.
Statute providing that weed commissioner has authority to enter any land in his county to perform duties circumscribed by specific authority for purpose of destroying weeds. Lingle v. Crawford County, 315 N.W.2d 814 (Iowa 1982).

1. Program.
Duty of board of supervisors to prescribe weed eradication program. O.A.G. 1938, p. 766.

2. Expense.
Payable from general fund of highway commission or county. O.A.G. 1938, p. 497.

317.5 Weeds in Abandoned Cemeteries (No Annotations)

317.6 Entering Land to Destroy Weeds - Notice

1. Construction and application.
Weed eradicating equipment may not be used on private lands except as prescribed in this chapter. O.A.G. 1948, p. 206.
Notice required is that under section 317.14. O.A.G. 1938, p. 762.

317.7 Report to Board

1. Construction and application.
Mandatory duty imposed to make annual report to board of supervisors. O.A.G. 1938, p. 766.
"Tract" means any contiguous quantity of land owned by a person or company. O.A.G. 1930, p. 179.

317.8 Duty of Secretary of Agriculture (No Annotations)

317.9 Duty of Board to Enforce

1. Construction and application.
Duty of board of supervisors to prescribe weed eradication program. O.A.G. 1938, p. 766.

317.10 Duty of Owner or Tenant

1. Construction and application.
Duty of owner of fee title to land occupied by waste banks of drainage ditch to eradicate weeds thereon. O.A.G. 1948, p. 191.
Weed law does not apply to destruction of other types of weeds within cities and towns. O.A.G. 1938, p. 408.

2. Cities and towns, weeds in.
Destruction of weeds mandatory. O.A.G. 1938, p. 802.
Authority of township trustees and city council to compel destruction. O.A.G. 1919-20, p. 295.

3. Railroad right of way.
Privately owned land intervening between highway and railroad right of way must be kept weed free by private owner. O.A.G. 1925-26, p. 148.
Where railroad right of way parallels highway with no intervening privately owned land duty is on railroad. O.A.G. 1916, p. 34.

4. Highways, weeds on, duty of landowner, default by landowner.
O.A.G. 1932, p. 56. O.A.G. 1930, p. 179. O.A.G. 1913-14, p. 217.

5. Ditches, weeds in.
Duty of landowner extends to ditches. O.A.G. 1930, p. 152.

6. Expense.
Payable from general fund of highway commission or county. O.A.G. 1938, p. 497.

7. Actions for damages.
Against adjoining landowners for letting noxious weeds grow on his land. Harndon v. Stulz, 124 Iowa 734, 100 N.W. 851 (1904).

8. Injuncton.
Against permitting continuance of growth of weeds on private property. Harndon v. Stulz, 124 Iowa 734, 100 N.W. 851 (1904).

317.11 Weeds on Roads or Highways

1. Construction and application.
Destruction of weeds is governmental function of county. O.A.G. 1948, p. 242.
Landowners duty to keep highways free from weed growth. O.A.G. 1932, p. 56.
Authority in township trustees and city council to compel destruction of weeds. O.A.G. 1919-20, p. 295.

317.12 Weeds on Railroad or Public Lands and Gravel Pits

1. Construction and application.
Authority in township trustees and city council to compel destruction of weeds. O.A.G. 1919-20, p. 295.
Where railroad parallels highway with no privately owned land between duty is on railroad. O.A.G. 1916, p. 34.

317.13 Program of Control

1. Construction and application.
Duty of board of supervisors to prescribe weed eradication program. O.A.G. 1938, p. 766.
Authority in township trustees and city council to compel destruction of weeds. O.A.G. 1919-20, p. 295.

317.14 Notice of Program

1. Construction and application.
Notice required by section 317.6 is notice under this section. O.A.G. 1938, p. 762.

317.15 Loss or Damage to Crops

1. Construction and application.
Weed commissioner has authority to destroy weeds despite the fact that damage to crops may result. O.A.G. 1940, p. 202.

317.16 Failure to Comply

1. Construction and application.
Weed eradicating equipment may not be used on private lands except as prescribed in this chapter. O.A.G. 1948, p. 206.
"Forthwith" means within a reasonable time. O.A.G. 1938, p. 762.

2. Cities and towns.
Destruction of weeds in cities and towns required. O.A.G. 1938, p. 802.

3. Damage to crops.
Weed commissioner has authority to destroy weeds despite the fact that damage to crops may result. O.A.G. 1940, p. 202.

4. Assessments for destroying weeds.
Addition of an amount equal to 25 per cent of actual cost of destruction. O.A.G. 1948, p. 242.

317.17 Additional Noxious Weeds

1. Construction and application.
Cost assessed to defaulting landowner. O.A.G. 1938, p. 766.

317.18 Order for Destruction on Roads

1. Construction and application.
Weed law not applicable to destruction of other types of weeds in cities and town. O.A.G. 1938, p. 408.

2. Liability of counties.
Destruction of weeds a governmental function of county. O.A.G. 1948, p. 242.

317.19 Road Clearing Fund

1. Construction and application.
Destruction of weeds a governmental function of county. O.A.G. 1948, p. 242.

317.20 Levy for Equipment and Materials - Use on Private Property

1. Construction and application.
Weed eradicating equipment may not be used on private lands except as prescribed in this chapter. O.A.G. 1948, p. 206.

Expense of weed eradication payable from general fund of highway commission or county. O.A.G. 1938, p. 497.

2. Cities and towns.

Destruction of weeds in cities and towns required. O.A.G. 1938, p. 802.

Weed law not applicable to destruction of other types of weeds in cities and towns. O.A.G. 1938, p. 408.

3. Assessment of cost of destruction.

Addition to assessment of an amount equal to 25 per cent of actual cost of destruction. O.A.G. 1948, p. 242.

Assessment to be against each lot, tract or partial in accordance with the platting. O.A.G. 1940, p. 191.

Cost assessed against defaulting landowner where new weeds are declared noxious. O.A.G. 1938, p. 766.

Cost of destruction of weeds not assessed to abutting owner but payable from secondary road maintenance fund. O.A.G. 1932, p. 93.

Adjoining in case of primary road must cut weeds. O.A.G. 1930, p. 179.

317.21 Cost of Such Destruction

1. Construction and application.

Where board of supervisors did not comply with certain requirements, county treasurer could not assess the property under section 443.12 to realize the cost of the destruction of weeds. O.A.G. July 18 1963.

Weed law not applicable to ordinary weeds within cities and towns. O.A.G. 1938, p. 408.

317.22 Duty of Highway Maintenance Personnel

1. Construction and application.

Weed law not applicable to ordinary weeds within cities and towns. O.A.G. 1938, p. 408.

317.23 Duty of County Attorney (No Annotations)

317.24 Punishment of Officer

1. Construction and application.

Destruction of weeds a governmental function of county. O.A.G. 1948, p. 242.

317.25 Teasel Prohibited (No Annotations)

CHAPTER 318

HEDGES ALONG HIGHWAYS

318.1 to 318.5 **Repealed** Acts 1978 (67 G.A.) ch. 1108, § 24.

CHAPTER 319

OBSTRUCTIONS IN HIGHWAYS

319.1 Removal

Index to Notes

1. Construction and application.

Violation of duty to maintain roads in safe condition results in liability to users of the road. Conrad v. Bd. of Sup'rs of Lee County, 199 N.W.2d 139 (Iowa 1972).

Board of supervisors has authority to remove obstructions. O.A.G. 1919-20, p. 291.

Not duty of county attorney to remove obstructions. O.A.G. 1911-12, p. 500.

Jurisdiction of road supervisor is over roads in his district. O.A.G. 1909, p. 239.

2. Repeal.

This statute did not repeal Code section now 657.2. State v. Berry, 12 Iowa 58 (1861).

3. Obstructions generally.

Obstruction defined. Koehler v. State, 263 N.W.2d 760 (Iowa 1978).

Excavation in highway an obstruction. Patterson v. Vale, 43 Iowa 142 (1876).

4. Right to obstruct highway.

Fences on right-of-way give owner no right to encroach. Dickson v. Davis County, 201 Iowa 741, 205 N.W. 456 (1925).

Cannot obstruct highway because it is less than statutory width. State v. Robinson, 28 Iowa 514 (1870).

5. Motives in removing obstructions.

Notice of county authorities immaterial. Rabiner v. Humboldt County, 244 Iowa 1190, 278 N.W. 612 (1938).

6. Snow.

Duty of township trustees to remove snow. O.A.G. 1928, p. 297.

7. Water.

Owner could not compel change to divert water collected by her. Brightman v. Hetzel, 183 Iowa 385, 167 N.W. 89 (1918).

8. Poles on highways.

Highway authorities have right to determine whether utility facilities shall be placed upon and along rights-of-way of such roads. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Authority of railroad commissioners to grant franchise and designate routes. Iowa Ry. & Light Corp. v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed State v. Central States Electric Co., 231 N.W. 467 (Iowa 1930), and Central States Electric Co. v. Pocahontas County, 231 N.W. 468 (Iowa 1930).

Relocation of poles by highway officials authorized. O.A.G. 1928, p. 184.

9. Fences.

Authority and duty of highway officials to remove fences in right-of-way. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939). Quinn v. Baage, 138 Iowa 426, 114 N.W. 205 (1907).

Notice to owner required. Cook v. Gaylord, 91 Iowa 219, 59 N.W. 30 (1894).

Owner may move fence up to right-of-way line. State v. Schieb, 47 Iowa 611 (1878).

Owner may not fence travelled road even though it is obstructed by natural means. State v. McGee, 40 Iowa 595 (1875).

Direct obstruction of highway prohibited. Mosher v. Vincent, 39 Iowa 607 (1874).

10. Dikes.

May be a public nuisance. Meyers v. Priest, 145 Iowa 81 (1909).

1. Expense of removal.

Borne by owner. O.A.G. 1938, p. 318.

12. Acquiescence.

Doctrine has no application to obstructions. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939).

13. Estoppel.

County not estopped by continued use of right-of-way of adjoining owner. Knight v. Acton, 187 Iowa 597, 173 N.W. 30 (1919). Brightman v. Hetzel, 183 Iowa 385, 167 N.W. 89 (1918). Quinn v. Monona County, 140 Iowa 105, 117 N.W. 1100 (1908). Bigelow v. Ritter, 131 Iowa 213, 108 N.W. 218

(1906). Jenks v. Lansing Lumber Co., 97 Iowa 342, 62 N.W. 231 (1896). Miller v. Schenk, 78 Iowa 372, 43 N.W. 225 (1889).

14. Mandamus.

Within board's discretion as to how to remove dust as obstruction on highway. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

Appropriate remedy to compel authorities to remove obstructions. Cook v. Gaylord, 91 Iowa 219, 59 N.W. 30 (1894). Patterson v. Vale, 43 Iowa 142 (1876). Larkin v. Harris, 36 Iowa 93 (1872).

15. Injunction.

Interest in abating must be special. Rider v. Narigon, 204 Iowa 530, 215 N.W. 497 (1927). Livingston v. Cunningham, 188 Iowa 254, 175 N.W. 980 (1920). Bryan v. Petty, 162 Iowa 62, 143 N.W. 987 (1913). Bradford v. Fultz, 167 Iowa 686, 149 N.W. 925 (1914).

By county. Webster County v. Wasem Plaster Co., 188 Iowa 1158, 174 N.W. 583 (1919).

To prevent closing of a highway. Long v. Wilson, 186 Iowa 834, 173 N.W. 76 (1919).

Against an individual. Ford v. Doolittle, 157 Iowa 210, 138 N.W. 397 (1912).

By district road superintendent. Myers v. Priest, 145 Iowa 81, 123 N.W. 943 (1909).

One who obstructs a highway cannot have injunction against another party. Brutche v. Bowers, 122 Iowa 226, 97 N.W. 1076 (1904).

Availability in case of special injury. Houghan v. Harvey, 33 Iowa 203 (1872). Ewell v. Greenwood, 26 Iowa 377 (1869).

16. Abatement of obstruction.

By persons suffering therefrom. Arbaugh v. Alexander, 151 Iowa 552, 132 N.W. 179 (1911).

17. Actions for removal of obstructions.

By road supervision of township. Ford v. Doolittle, 157 Iowa 210, 138 N.W. 397 (1912).

Obstruction of access to abutter's premises. Miller v. Schenck, 78 Iowa 372, 43 N.W. 225 (1889).

Special injury necessary. Brant v. Plumer, 64 Iowa 33, 19 N.W. 842 (1884).

18. Limitations of actions.

Statute of limitations does not run against city or county with respect to encroachments. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939). Quinn v. Baage, 138 Iowa 426, 114 N.W. 205 (1907).

19. Pleadings.

Petition must describe location of obstruction. Sloan v. Rebman, 66 Iowa 81, 23 N.W. 274 (1885).

20. Evidence.

Dedication. City v. McCurnin, 180 Iowa 510, 163 N.W. 345 (1917).

Encroachment of fence on highway. Meyers v. Wonick, 180 Iowa 286, 163 N.W. 203 (1917).

21. Jury questions.
Reasonable time to remove obstructions a jury question. Mosher v. Vincent, 39 Iowa 607 (1874).

22. Instructions. (No Annotations)

23. Proximate cause. (No Annotations)

24. Damages.
Duty of board of supervisors and engineer of county to maintain county roads in proper condition runs to all those rightfully using the roads and a breach of that duty can occur either by negligent commission or omission. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977).

25. Judgment or decree. (No Annotations)

26. Review. (No Annotations)

319.2 Fences and Electric Transmission Poles

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1. Construction and application.
Iowa State Highway Commission may authorize telephone company to place underground cable along untraveled portion of highway without consent of abutting landowner who holds underlying fee. O.A.G. March 13, 1970.
Removal of transmission line poles during road improvement authorized. O.A.G. 1923-24, p. 182.
Authority of county and township officials to remove signs affirmed. O.A.G. 1919-20, p. 291.

2. Obstructions.
What constitutes a direct obstruction (fence). Mosher v. Vincent, 39 Iowa 607 (1874).

3. Notice.
Statutory notice must be given. Harbacheck v. Moorland Telephone Co., 208 Iowa 552, 226 N.W. 171 (1929).
Fences not part of boundary fences may be removed without notice. Davis v. Pickerell, 139 Iowa 186, 117 N.W. 276 (1908).
Notice not required where obstruction is not direct. Blackburn v. Powers, 40 Iowa 681 (1875).
Fence may not be taken out without notice even if it is in right-of-way line if not a direct obstruction. Mosher v. Vincent, 34 Iowa 478 (1874).

4. Relocation of poles.

Authority and Highway Commission to determine whether utility facilities shall be placed upon and along rights-of-way of controlled-access highways. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

Highway officers authorized to relocate poles despite federal regulation of company. O.A.G. 1928, p. 184.

No authority in county or township to pay for relocation of poles. O.A.G. 1923-24, p. 182.

5. Mandamus.

Reasonable notice to remove obstruction from highway a question of fact. Cook v. Gaylord, 91 Iowa 291, 59 N.W. 30 (1894).

6. Injunction.

Showing of establishment of highway by county road records. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

7. Actions for removal of obstructions.

Officials having duty to remove obstructions may show unlawful obstruction due to void vacation of road. Heery v. Roberts, 186 Iowa 61, 170 N.W. 405 (1919), rehearing denied, 186 Iowa 61, 172 N.W. 161 (1919).

8. Evidence.

Board of supervisors in action to remove a fence as an obstruction must show that it had jurisdiction to establish the highway. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

9. Jury questions.

Reasonable time to remove fence question for jury. Mosher v. Vincent, 39 Iowa 607 (1874).

10. Review.

New matter on appeal not considered. Davelaar v. Marion County 224 Iowa 669, 277 N.W. 744 (1938).

319.3 Notice

1. Construction and application.

By registered mail - ineffective. Harbacheck v. Moorland Telephone Co., 208 Iowa 552, 226 N.W. 171 (1929).

Reconstruction of highway - removal of poles and lines. O.A.G. June 29, 1950.

Authority of county and township officials to remove signs. O.A.G. 1919-20, p. 291.

319.4 Refusal to Remove

1. Construction and application.

Reconstruction of highway - removal of poles and lines. O.A.G. June 29, 1950.

County engineer not an employee of county for workmen's compensation purposes. McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (1940). O.A.G. 1950, p. 176.

2. Injunction.

Based on adverse possession against highway officials will not lie. Richardson v. Derry, 226 Iowa 178, 284 N.W. 82 (1939).

Board of supervisors must show it had jurisdiction to establish road in an action to enjoin the board from removing a fence. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

Injunction may issue to prevent improper removal of fence. Bolton v. McShane, 67 Iowa 207, 25 N.W. 135 (1885).

319.5 New Lines

1. Construction and application.

Legislature did not intend for county to make expensive surveys. O.A.G. 1940, p. 374.

Duty of engineer is to designate location of lines in highway. O.A.G. 1938, p. 318.

2. County engineer's powers.

Fixing of location lines on the highway - extent of power. Iowa Ry. & Light Corp. v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed in State v. Central States Electric Co., 231 N.W. 467 (Iowa 1930).

3. Application for local line.

Statute directory can be waived. Swartzwelter v. Iowa So. Utilities Corp., 216 Iowa 1060, 250 N.W. 121 (1933).

On primary highways application must be made to Highway Commission. O.A.G. 1936, p. 525.

4. Location of poles.

Must not overhang adjoining private land. Iowa Ry & Light Corp. v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed in State v. Central States Electric Co., 231 N.W. 467 (Iowa 1930) and Central State Electric Co. v. Pocahontas County, 231 N.W. 468 (Iowa 1930).

If poles overhang on private land, company is not trespasser if it obeyed orders of engineer. Brammer v. Iowa Telephone Co., 182 Iowa 865, 165 N.W. 117 (1917).

Engineer does not merit extra compensation for locating lines. O.A.G. 1940, p. 236.

Written memo of designation of location should be filed with auditor. O.A.G 1938, p. 318.

5. Survey by engineer.

At expense of applicant. O.A.G. 1938, p. 318.

Survey need not be made by engineer - alternative method of relocation. O.A.G. 1930, p. 224.

6. Expenses.

Expenses incident to locating line cannot be charged to owner of line. O.A.G. 1940, p. 236. O.A.G. 1940, p. 364.

7. Presumptions and burden of proof.

Presumption that written application was filed for relocation of lines. Swartzwelter v. Iowa etc. Corp., 216 Iowa 1060, 259 N.W. 121 (1933).

8. Evidence.
Danger of electric wires stretched across street judicially noticed. Incorporated Town of Ackley v. Central States Electric Co., 204 Iowa 1246, 214 N.W. 879 (1927).

319.6 Cost of Removal - Liability

1. Construction and application.
Generally, utility poles and lines must be relocated at owner's cost. Iowa Electric Light & Power Co. v. Iowa State Highway Commission, 31 N.W.2d 597 (Iowa 1975).
Notice to remove does not imply a promise to pay for removal. Hall v. Union Co., 206 Iowa 512, 219 N.W. 929 (1928).
Owner of obstruction must pay cost of removal. O.A.G. 1938, p. 318.

2. Injunction.
Showing legal establishment of road by county road records. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

3. Presumptions and burden of proof.
An action to enjoin removal of fence must show jurisdiction in it to establish the highway. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

4. Evidence.
Testimony and plat of surveyor. Davelaar v. Marion County, 224 Iowa 669, 277 N.W. 744 (1938).

319.7 Duty of Road Officers

1. Construction and application.
Improvement should not conflict with natural drainage. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

2. Liability of officer.
Duty of board of supervisors and engineer of county to maintain county roads in proper condition runs to all those rightfully using the roads and a breach of that duty can occur either by negligent commission or omission. Harryman v. Hayles, 257 N.W.2d 631 (Iowa 1977).

3. Mandamus.
Order requiring board to perform its duty and remove an obstruction could not direct manner of removal. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).
This statute mandatory. Ruffcorn v. Chatburn, 166 Iowa 611, 147 N.W. 1110 (1914).

4. Injunction.
Decision of road supervisor to remove trees may be reviewed. Bills v. Belknap, 36 Iowa 583 (1873).

319.8 Nuisance

1. Construction and application.
No liability for negligent performance of duties of construction and maintenance under this section. Swartzwelter v. Iowa etc. Corp., 216 Iowa 1060, 250 N.W. 121 (1933).

Meaning of term "nuisance". Stokes v. Sac City, 151 Iowa 10, 130 N.W. 786 (1911).

Owner of the obstruction must pay for its removal. O.A.G. 1938, p. 318.

2. Ordinances.

Imposing penalty for obstructing streets does not contravene state law. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

3. Pipelines, crossing roads or along roads.

Ultimate authority in legislature. O.A.G. 1930, p. 346.

4. Private persons, remedy of.

Remedy only when suffering and injury distinct from that of the public. Ingram v. Chicago etc. R. Co., 38 Iowa 669 (1874).

5. Election between acts of obstruction.

If no motion to elect is made, prosecutor not limited to one specific act. State v. Chicago etc. R. Co., 77 Iowa 442, 42 N.W. 365 (1889).

6. Mandamus.

Order requiring board to perform its duty and remove dust as an obstruction could not direct how removal should be accomplished. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

Section 319.7 is mandatory. Ruffcorn v. Chatburn, 166 Iowa 611, 147 N.W. 1110 (1914).

7. Evidence.

When petition for a road need not be produced or offered in evidence. State v. Lane, 26 Iowa 223 (1868).

319.9 Injunction to Restrain Obstructions

1. Construction and application.

Officers having duty to prevent obstruction could enjoin obstruction. Phillips v. Crawford, 199 Iowa 443, 179 N.W. 937 (1920), modified in other respects, 191 Iowa 443, 182 N.W. 604 (1920).

County could maintain suit to enjoin interference with removal of obstruction. Webster Co. v. Wasem Plaster Co., 188 Iowa 1158, 174 N.W. 583 (1919).

2. Parties.

In suit by township trustees to enjoin an obstruction, defendant could not adjudicate legal boundaries of the highway without impleading all parties in interest. Phillips v. Crawford, 191 Iowa 443, 179 N.W. 937 (1920), modified in other respects, 191 Iowa 443, 182 N.W. 604 (1920).

3. Decree.

Township trustees could not recover attorney fees. Phillips v. Crawford, 191 Iowa 443, 182 N.W. 604 (1920).

319.10 Billboards and Signs

Only expressed power given to city to abate billboards is found in section 657.2, subs. 7, and when construed with this section, relates only to the abatement of nuisances. Stoner McCray v. City of Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956).

Jurisdiction of Highway Commission in respect to signs does not extend into cities and towns. O.A.G. 1940, p. 180.

319.11 Enforcement (No Annotations)

319.12 Billboards, Reflectors and Signs Prohibited

1. Construction and application.

Advertising devices, including those mounted upon trailers, are prohibited from being placed upon right-of-way of any public highway. O.A.G. Sept. 26, 1972.

Definition of billboard or advertising signs. O.A.G. 1940, p. 180.

319.13 Right and Duty to Remove

1. Construction and application.

Jurisdiction of Highway Commission in respect to signs does not extend into cities and towns. O.A.G. 1940, p. 180.

319.14 Permit Required

1. In general.

This section does not prevent the burning or spraying of right-of-way, nor does Chapter 317 prevent such actions although they may be restrained by the board of supervisors. O.A.G. April 9, 1980.

319.15 Definition (No Annotations)

CHAPTER 320

USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

320.1 Construction of Sidewalks in Certain School Districts

1. Construction and application.

County board of supervisors is without authority to install a sidewalk within a city or town leading to a schoolhouse located within the boundaries of the city or town. O.A.G. Dec. 30, 1963.

320.2 Assessment of Costs

1. Construction and application.

Expense of improving streets and sidewalks can be imposed on abutting property. Gatch v. City of Des Moines, 63 Iowa 718, 18 N.W. 310 (1884).

2. Effect of assessment by council.

Ratification of construction by council. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1879).

3. City charter provisions, levy of special assessments against lots for improvement of sidewalks. City of Fairfield v. Ratcliff, 20 Iowa 396 (1866).

4. Injunction against collection.

When city has no power to impose sidewalk assessments. I.O.O.F. v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).

320.3 Repairs (No Annotations)

320.4 Water and Gas Mains, Sidewalks, and Cattleways

1. In general.

After the Court of Appeals decided that county was without authority to grant local water association easements, the legislature granted the county authority to grant such easements, Schwarzkopf v. Sac County Board of Supervisors, 341 N.W.2d 1 (Iowa 1983).

Neither county or landowner who used bridge could be required to remove debris lodged against the bridge. Adams County v. Rider, 205 Iowa 137, 218 N.W. 60 (1928).

2. Pipe lines.

Crossing or along roads. Ultimate authority in legislature. O.A.G. 1930, p. 364.

3. Cattleways.

Presumption that county officials would repair cattleways to make road safe. Licht v. Ehlers, 234 Iowa 1331, 13 N.W. 688 (1944).

Bridge used as cattleway gives no prescriptive right to have opening maintained. Roberts v. Madison County, 183 Iowa 915, 167 N.W. 644 (1918).

Permission by supervisors for construction of cattleway must be complied with in all respects. Davis v. Pickerell, 139 Iowa 186, 117 N.W. 276 (1908).

Owner of land may be required to keep cattleway in repair. O.A.G. 1911-12, p. 380.

4. Injunction.
Against closing a cattleway. Bartels v. Woodbury, 174 Iowa 82, 156 N.W. 303 (1916).

320.5 Term of Grant (No Annotations)

320.6 Conditions - Damages

1. In general.
Neither county nor landowner using bridge as a causeway could be required to remove debris lodged against bridge. Adams County v. Rider, 205 Iowa 137, 218 N.W. 60 (1928).

2. Cattleways.
Subsequent owner may be required to keep in repair. O.A.G. 1911-12, p. 380.

320.7 Failure to Maintain (No Annotations)

320.8 Penalty (No Annotations)

CHAPTER 321

MOTOR VEHICLES AND LAW OF ROAD

FUNDS

321.145 Disposition

1. In general.

Statutory provisions authorizing expenditure of motor vehicle fees and fuel taxes for removal of abandoned vehicles from areas other than public highways is unconstitutional. O.A.G. August 23, 1974.

Assignment of restricted deposits of county treasurer in bank of automotible registration fees to state treasurer will not be accepted as it is duty of county treasurer to collect such funds. O.A.G. 1934, p. 369.

Duty of county treasurer to collect fees at time of registration and to honor drafts drawn by treasurer of state. O.A.G. 1934, p. 108.

2. Road use tax fund.

Motor vehicle certificate of title fee and lien are encumberance notation fee to be placed in the general fund rather than the road use tax fund. O.A.G. April 13, 1971.

Acts 1919 (38 G.A.) ch. 237, § 4, providing ultimate distribution of proceeds of motor vehicle license fees to counties, without returning to each county exact sum collected therein was not taking of property without due process of law. McLeland v. Marshall County, 199 Iowa 1232, 201 N.W. 401 (1924), modified on other grounds, 199 Iowa 1232, 203 N.W. 1 (1924).

321.146 Unexpended Balances Repealed by Acts 1977 (67 G.A.) ch. 60, § 25. Eff. August 15, 1977

1. Construction and application.

Where primary road fund was to be used on primary road system including bridges and where interstate bridge was part of public highway and was to become part of primary road system and would be taken over by Highway Commission, section 313A.7 of Interstate Bridge Act permitting Commission to advance funds from primary highway fund to pay for part of construction cost not met by revenue bonds and to spend moneys from annual primary fund receipts did not improperly create an indebtedness on part of state by pledging its general credit. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

POWERS OF LOCAL AUTHORITIES

321.236 Powers of Local Authorities

1. In general.

Official action of local authorities must be in legal session - as body where records of action may be duly preserved. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Cities and towns have authority to regulate driving of vehicles within their corporate limits if such regulation is consistent with state statute. O.A.G. Feb. 3, 1971.

2. Conflict with state law.

Ordinance imposing penalty for obstructing street did not contravene state law. Pugh v. City of Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

Ordinance held to contravene state law. O.A.G. 1938, p. 309.

Ordinance requiring traffic to make inside left turn, would conflict with section 321.311. O.A.G. 1930, p. 355.

3. Closing streets.

City could not block street for coasting so as to make presence of truck delivering groceries thereon unlawful. Dennier v. Johnson, 214 Iowa 770, 240 N.W. 745 (1932).

4. Parking.

Government official may not park contrary to state and local laws regulating parking while looking for a prospective law violator. O.A.G. Jan. 5, 1968.

Legality of parking meters. Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940), modified and rehearing denied, 229 Iowa 1291, 296 N.W. 352 (1940).

Ordinance prescribing method of parking. Trailer v. Schelm, 227 Iowa 780, 288 N.W. 865 (1940).

Council may prescribe by ordinance places of parking. O.A.G. 1916, p. 222.

5. Regulation of taxi cabs.

Ordinance requiring application for license to operate in or about hotel or depot to have approval of owner, manager, or lessee endorsed thereon not unreasonable. Richart v. Barton, 193 Iowa 271, 186 N.W. 851 (1922).

6. Buses.

City has no implied power to grant interurban bus company the right to use street fronting mother's property for a stop to load passengers, baggage and freight. Gates v. City Council of Bloomfield, 243 Iowa 1, 50 N.W.2d 578 (1952).

7. Traffic regulations in general.

Public welfare offenses - burden of going forward with evidence. Iowa City v. Nolan, 239 N.W.2d 102 (Iowa 1976).

Presumption that supervisors performed duty as to erection and maintenance of signs. Arends v. De Bruyn, 217 Iowa 529, 252 N.W. 249 (1934).

Reasonableness of ordinance. Switzer v. Baker, 178 Iowa 1063, 160 N.W. 372 (1916).

Signs should not be erected so as to obstruct street. O.A.G. 1916, p. 222.

8. Speed regulations.

Prerequisites for validity of speed ordinance. State v. Clark, 196 Iowa 1134, 196 N.W. 82 (1923).

Presumption on appeal as to regularity of speed limit ordinances. Remington v. Machamer, 192 Iowa 1098, 186 N.W. 32 (1922).

9. Use of highways.

Designation of highway as "through highway" must be by ordinance or regulation duly adopted by local authorities. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

With the exception of single trip permits issued by the highway commission for moves on primary highway extensions, permits may be issued by the commission, counties and cities and towns but only for moves on that system of roads for which they are by law responsible to maintain. O.A.G. June 28, 1968 (No. 68-6-3).

Regulation by city of public use of highways under legislative investment of general regulatory power. Gates v. City Council of Bloomfield, 243 Iowa 1, 50 N.W.2d 578 (1952).

10. Traffic control devices.

Power to regulate erection of traffic control devices on primary roads and extensions. O.A.G. August 23, 1955.

11. Ordinances in General

City may promulgate ordinances in addition to, and consistent with section 321G.1 et. seq. O.A.G. March 7, 1972.

Cities may enact ordinances not in conflict with statutes. City of Vinton v. Engledow, 140 N.W.2d 857 (Iowa 1966).

Section of city ordinance varying penalty under statute invalid. O.A.G. July 5, 1962.

12. Enforcement powers.

Same authority as with other laws. O.A.G. 1916, p. 69.

13. Careless driving.

A city ordinance including negligence as basis for criminal prosecution for careless driving is invalid under section 321.235 and this section. O.A.G., May 3, 1967.

14. Authorized emergency vehicles.

Duty of driver of authorized emergency vehicle. O.A.G. January 5, 1968.

15. Power not exercised.

Determination of status of local secondary road or highway question of law for court, not one of fact for jury. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969)

321.237 Posting Signs

1. In general.

Designation of highway as "through highway" must be by ordinance or regulation duly adopted by local authorities. Lemke v. Mueller, 166 N.W.2d 860 (Iowa 1969).

Driver of motor vehicle has right to assume that traffic sign was placed by legal authority, and to act accordingly. Geisking v. Sheimo, 252 Iowa 37, 105 N.W.2d 599 (1960).

Failure to erect sign boards of speed limit. Pilgrim v. Brown, 168 Iowa 177, 150 N.W. 1 (1914).

Signs and traffic signals properly paid for out of the public safety fund, not road use tax funds. O.A.G. December 13, 1961.

2. Location and sufficiency of sign.

Speed ordinance held invalid for failure to comply with statute. Incorporated Town of Decatur v. Gould, 185 Iowa 203, 170 N.W. 449 (1919).

Purpose of provisions to warn motorists and protect public. Pilgrim v. Brown, 168 Iowa 177, 150 N.W. 1 (1914).

321.238 Repealed Acts 84, ch. 1305, § 73.

321.239 Counties may Restrict Parking of Vehicles

1. In general.

Defendent automobile sellers failure to comply with motor vehicle inspection law prevented him from escaping responsibility under owner's responsibility law, when a buyer was involved in accident while driving the car. Barnett v. Bowers, 284 N.W.2d 231 (Iowa 1979).

321.249 School Zones

1. In general.

Permission of state highway commission required for certain acts. O.A.G. October 2, 1959.

321.250 Discriminations (No Annotations)

321.251 Rights of Owners of Real Property (No Annotations)

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

321.252 Department to Adopt Sign Manual

1. Validity.

Giving highway commission authority to carry out purposes of statute does not render statute unconstitutional. State v. Rivera, 260 Iowa 320, 149 N.W.2d 127 (1967).

2. In general.

Tort liability can arise outside the confines of statute-mandated conduct. Wittrup v. Chicago & Northwestern Ry. Co., 226 N.W.2d 822 (Iowa 1975).

Under this section authorizing highway commission to place and maintain traffic control devices, legislature, not the commission, made it a crime to cross a yellow line while passing. State v. Rivera, 260 Iowa 320 149 N.W.2d 127 (1967).

County could fulfill responsibility with reference to limited load capacity bridges if motorists are advised of potential hazard by posted warning signs. O.A.G. October 4, 1977.

Highway commission's duty to advise counties concerning snowmobile signs. Routes limited to roadways where operation will not interfere unduly with or constitute an undue hazard to conventional motor vehicle traffic. O.A.G. November 7, 1974.

Any sign not a traffic sign, signal or marker is a billboard or advertising sign. O.A.G. 1940, p. 180.

City has implied power to designate a "through street" as a special speed district. O.A.G. 1938, p. 596.

3. Local powers.

City council can neither enact nor enforce ordinance providing for yield signs rather than stop signs. O.A.G. September 25, 1957.

State highway commission's power to regulate the erection of traffic control devices on primary roads and extensions. O.A.G. August 23, 1955.

321.253 Department to Erect Signs

Highway commission authorized by legislature to determine what signs are necessary to carry out provisions of this chapter. O.A.G. June, 1961.

Highway commission has authority to control erection of traffic signals on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.

Railroad not absolved from liability for failure to warn truck driver of low clearance under railroad bridge. Wittrup v. Chicago & Northwestern Ry. Co., 226 N.W.2d 822 (Iowa 1975).

Cities have authority to place stop signs upon city streets and railroad crossings. O.A.G. September 30, 1974.

321.254 Local Authorities Restricted

Pemission required for placing certain signs upon highway. O.A.G. October 2, 1959.

Highway commission has authority to control erection of traffic signals on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.

321.255 Local Traffic - Control Devices

1. In general.

Duty of "ordinary care under the circumstances" was owed by county to motorist with respect to placement of adequate warning signs on dangerous curb; signing duty of the county was not to be evaluated according to "reasonable" professional engineering judgement standard. Schmitt v. Clayton County, 284 N.W.2d 186 (Iowa 1979).

Failure to place warning sign on hill indicating that road ended in a "T" intersection. Householder v. Town of Clayton, 221 N.W.2d 488 (Iowa 1974).

Cities have authority to place stop signs upon city streets and railroad crossings. O.A.G. September 30, 1974.

Proper signing for purpose of limiting traffic. O.A.G. August 23, 1971.

Public intersections segment a road into portions and signs should be posted accordingly. Id.

Word "highway" as used in section 321.326 was applicable to a through highway in Des Moines. Reynolds v. Aller, 226 Iowa 642, 284 N.W. 825 (1939).

Movable stop signs must conform to the manual of uniform traffic control devices adopted by the state highway commission. O.A.G. October 2, 1959.

City council can neither enact nor enforce an ordinance providing for yield signs rather than stop signs. O.A.G. September 25, 1957.

Highway commission has authority to control erection of traffic signs on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.

2. Defective devices.

Even if dangerous and ineffective in its operation, device would not constitute a nuisance. Gorman v. Adams, 143 N.W.2d 648 (Iowa 1966).

3. Warning devices, generally.

Liability of railroad for failure to install warning device at particularly dangerous crossing. Symmonds v. Chicago, M., ST.P. & P.R. CO., 242 N.W.2d 262 (Iowa 1976).

County held liable in tort for authority over secondary road had been delegated to it. Id.

County could fulfill its responsibility with reference to limited load capacity bridges if motorists were advised or warned of existing and potential hazards by posted warning signs. O.A.G. October 4, 1977.

321.256 Obedience to Official - Control Devices

1. In general.

Regarding city ordinance exempting emergency vehicle from ordinary rules of road. Rush v. Sioux City, 240 N.W.2d 431 (Iowa 1976).

Collission of bicyclist and motorist. Davis v. Gatewood, 228 N.W.2d 84 (Iowa 1975).

Motorist's collision in intersection with ambulance. Wetz v. Thorpe, 215 N.W.2d 350 (Iowa 1974).

Evidence of condition of road or street, presence and location of directional or warning signs, signals, markings, or devices, and other physical conditions existing at scene of accident or collission is admissible. Hartwig v. Olson, 261 Iowa 1265, 158 N.W.2d 81 (1968).

321.257 Official Traffic Control Signal

1. In general.

Right turn against red light. O.A.G. April 21, 1971.

"Pedestrian" defined. State v. Paul, 242 Iowa 853, 48 N.W.2d 309 (1951).

2. Right of way.

Pedestrian's right of way within interesection. State v. Jennings, 261 Iowa 192, 153 N.W.2d 485 (1967).

Contributory negligence of pedestrian did not excuse automobile driver of offense of failing to yield right of way to pedestrian lawfully within intersection. State v. Paul, 242 Iowa 853, 48 N.W.2d 309 (1951).

3. Negligence.

Railroad's negligence in failing to warn of low clearance. Wittrup v. Chicago & Northwestern Ry. Co., 226 N.W.2d 822 (Iowa 1975).

Driver's failure to keep proper look out and failure to yield right of way. Coulthard v. Keenan, 129 N.W.2d 597 (Iowa 1964).

Neither pedestrian nor motorist required to anticipate negligence on part of other. Tobin v. Van Orsdol, 241 Iowa 1331, 45 N.W.2d 239 (1951).

Lawful users of highway entitled to rely on obedience to traffic signals. Id.

Pedestrian and curbliner entering intersection traveling in same direction. Gearhart v. Des Moines Ry. Co., 237 Iowa 213, 21 N.W.2d 569 (1946).

4. Questions for jury.

Collision of motorist with ambulance - emergency vehicle conduct. Wetz v. Thorpe, 215 N.W.2d 350 (Iowa 1974).

321.258 Arrangement of Lights on Official Traffic Control Signals (No Annotations)

321.259 Unauthorized Signs, Signals or Markings

1. In general.

Motorists may assume highway signs are placed by proper authority. King v. Gold, 224 Iowa 890, 276 N.W. 774 (1938).

2. Disregard of unauthorized signs.

Unauthorized traffic signals not meaningless. Geisking v. Sheimo, 252 Iowa 37, 105 N.W.2d 599 (1960).

3. Railroad signs or signals.

Railroad not precluded from placing clearance warnings on low railroad bridges - railroad not excused from failure to warn motorists of traffic hazard presented by low overhead bridge. Wittrup v. Chicago & Northwestern Ry. Co., 226 N.W.2d 882 (Iowa 1975).

Railroads failure to erect barricade or warning sign near an apparent crossing. Jasper v. Chicago Great Western Ry. Co., 248 Iowa 1286, 84 N.W.2d 21 (1957).

Placement of railroad traffic signal. Van Gordon v. City of Fort Dodge, 216 Iowa 209, 245 N.W. 736 (1933).

321.260 Interference with Devices, Signs, or Signals - Unlawful Possession
(No Annotations)

ACCIDENTS

For case citation, see I.C.A.

SPEED RESTRICTIONS

321.285 Speed Restrictions

1. Validity.

Speed limit generally set by this section need not be posted to be enforceable. Exceptions to general speed limit must be posted to be in effect and enforceable. O.A.G., July 10, 1980.

This section not unconstitutional. State v. Coppes, 247 Iowa 1057, 78 N.W.2d 10 (1956).

Necessity of posting speed limit for enforceability. O.A.G. July 10, 1980.

2. In general.

Term "object" in this section in effect requiring that motorists at all times be able to stop vehicle within distance so that objects may be seen ahead can be a pedestrian. Nolte v. Case, 221 N.W.2d 741 (Iowa 1974).

State highway commission has authority and jurisdiction to set speed limits on primary road extensions. O.A.G. July 30, 1973.

In order to provide reasonable notice of the effective speed limit, highway commission must post speed signs at sufficient intervals along the affected primary highways. O.A.G. November 6, 1963.

3. Construction and application.

"Assured clear distance." State v. Mullenix, 299 N.W.2d 482 (Iowa 1980). Nolte v. Case, 221 N.W.2d 741 (Iowa 1974).

Award of $72,731.95 to six year old plaintiff who suffered permanent injuries was not excessive. Schaben v. Kohles, 186 N.W.2d 598 (Iowa 1971).

Legislative authority of state vested in general assembly - and county board of supervisors have only such powers as are expressly conferred or implied by statute. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

This section is essentially a speed regulation. Bonnett v. Oertwig, 234 Iowa 864, 14 N.W.2d 739 (1944).

Highway commission has authority to determine, after an engineering and traffic investigation, speed limits other than those set out in subsection 5 of this section, upon any part of the primary road system. O.A.G. November 6, 1963.

For other citations, see I.C.A.

4. Standard of care.

Ordinary prudent person under circumstances. Demers v. Currie, 139 N.W.2d 464 (Iowa 1966).

Minimum rather than maximum. Christensen v. Kelley, 135 N.W.2d 510 (Iowa 1965).

Maintenance of proper lookout. Lauman v. Dearmin, 246 Iowa 697, 69 N.W.2d 49 (1955).
For other citations, see I.C.A.

5. Control of vehicle.
Motorist on a favored highway only required to proceed with such care and with his vehicle under such control as existing conditions which are known or which should be known to him, may require. Pitz v. Cedar Val. Egg & Poultry Co., 203 N.W.2d 548 (Iowa 1973).
Defined. Tillotson v. Schwarck, 143 N.W.2d 284 (Iowa 1966).
For other citations, see I.C.A.

6. Speed - in general.
Speed may be proven by circumstantial evidence. Schaben v. Kohles, 186 N.W.2d 598 (Iowa 1971).
Showing the posted limit is sufficient to establish the speed limit element of a prima facie case of violation of this section. O.A.G. December 3, 1976.
Enactment of law to suspend and reduce maximum motor vehicle speed limits on state highways. O.A.G. January 30, 1974.
Intention of legislature to confer on highway commission exclusive authority to alter speed limits. O.A.G. 1940, p. 306.

7. Circumstances as controlling.
"Assured clear distance" changes as a motorist proceeds. Ruan Transport Corp. v. Jacobs, 216 N.W.2d 182 (Iowa 1974).
Excessive or negligent speed depends entirely on surrounding circumstances. Campbell v. Martin, 136 N.W.2d 508 (Iowa 1965).

7.5. Intersections, speed.
Statutory duty to reduce speed at intersections. Wilson v. Jefferson Transp. Co., 163 N.W.2d 367 (Iowa 1968).

7.6 Curves, speed.
Speed in approaching and traversing curve constituted, if established, negligence per se. Schmitt v. Clayton County, 284 N.W.2d 186 (Iowa 1979).

8. Secondary roads.
Board of county supervisors have power to reduce speed limits on secondary roads upon basis of an engineering and traffic investigation. O.A.G. March 27, 1970.
Speed limit on secondary roads. O.A.G. July 20, 1964.
For other citations, see I.C.A.

9. Violation of speed restrictions.
For case citations, see I.C.A.

10. Assured clear distance ahead - in general.
"Assured clear distance" rule is not applicable where there are extraordinary or disconcerting circumstances affecting operator's judgment. Vanderheiden v. Clearfield Truck Rentals, Inc., 210 N.W.2d 527 (Iowa 19730).
For other citations, see I.C.A.

11. Duty imposed.
Weather affects on "assured clear distance ahead." Ruan Transport Corp. v. Jacobs, 216 N.W.2d 182 (Iowa 1974). Coppola v. Jameson, 200 N.W.2d 877 (Iowa 1972).
For other citations, see I.C.A.

12. Visibility impaired.
For case citation, see I.C.A.

13. Reliance on conduct of others.
For case citation, see I.C.A.

14. Speed districts.
Sparsely settled district 100 feet inside city limits held "suburban district." Howk v. Anderson, 218 Iowa 358, 253 N.W. 32 (1934).
Speed to be observed in speed districts fixed by ordinance not dependent on placing of signs required by section 321.289. Waldman v. Sanders Motor Co., 214 Iowa 1139, 243 N.W. 555 (1932).
For other citations, see I.C.A.

15. Excuse for violation of statute.
For case citation, see I.C.A.

16. Local speed restrictions.
Municipal speed restriction ordinances are not incorporated by reference into this section. Bergeson v. Pesch, 254 Iowa 223, 117 N.W.2d 431 (1962).
Cities and towns may establish speed limits in "through" streets. O.A.G. 1938, p. 596.

17. Sudden emergency.
For case citation, see I.C.A.

18. War emergency.
For case citation, see I.C.A.

19. Negligence.
For case citation, see I.C.A.

20. Contributory negligence.
For case citation, see I.C.A.

21. Proximate cause.
For case citation, see I.C.A.

22. Trial in general.
For case citation, see I.C.A.

23. Pleading.
For case citation, see I.C.A.

24. Judicial notice.
For case citation, see I.C.A.

25. Presumptions and burden of proof.
For case citation, see I.C.A.

26. Admissibility of evidence - in general.
For case citation, see I.C.A.

27. Statements, reports and records.
For case citation, see I.C.A.

28. Weight and sufficiency of evidence - in general.
For case citation, see I.C.A.

29. Physical evidence.
For case citation, see I.C.A.

30. Assured clear distance ahead, weight and sufficiency of evidence.
For case citation, see I.C.A.

31. Questions for jury - in general.
For case citation, see I.C.A.

32. Speed in general.
For case citation, see I.C.A.

33. Fact as to speed.
For case citation, see I.C.A.

34. Speed limits violated.
For case citation, see I.C.A.

35. Circumstances, speed affected by.
For case citation, see I.C.A.

36. Assured clear distance ahead, questions for jury.
For case citation, see I.C.A.

37. Credibility of witnesses.
For case citation, see I.C.A.

38. Contributory negligence in general.
For case citation, see I.C.A.

39. Obstructions, contributory negligence in striking.
For case citation, see I.C.A.

40. Stopped or stalled automobiles, contributory negligence of operator.
For case citation, see I.C.A.

41. Control of vehicle.
For case citation, see I.C.A.

42. Instructions - in general.
For case citation, see I.C.A.

43. Speed in general.
For case citation, see I.C.A.

44. Contributory negligence, speed.
For case citation, see I.C.A.

45. Harmless or prejudicial error, instructions as to speed.
For case citation, see I.C.A.

46. Assured clear distance ahead, instructions.
For case citation, see I.C.A.

47. Assumption of risk.
For case citation, see I.C.A.

48. Necessity for request.
For case citation, see I.C.A.

49. Applicability to pleadings and evidence.
For case citation, see I.C.A.

50. Review.
For case citation, see I.C.A.

51. Offenses and criminal prosecutions.
For case citation, see I.C.A.

52. Interstate highways.
In light of the legislative history of prohibiting oversized vehicles from use of interstate highway system, highway commission could promulgate rules more restrictive than those applicable in the general non interstate highway systems. O.A.G. June 28, 1968 (No. 68-6-2).

53. Removal to federal court.
For case citation, see I.C.A.

321.286 Truck Speed Limits

1. In general.
Enactment of a law to suspend and reduce maximum motor vehicle speed limits on state highways to 55 miles per hour. O.A.G. January 30, 1974.
In light of the legislative history of prohibiting oversized vehicles from use of interstate highway system, highway commission could promulgate rules more restrictive than those applicable in the general non interstate highway systems of the state. O.A.G. June 28, 1968 (No. 68-6-2).
For other citations, see I.C.A.

2. Following vehicles. (No Annotations)

3. Evidence.
For case citations, see I.C.A.

4. Questions for jury.
For case citations, see I.C.A.

5. Instructions.
For case citations, see I.C.A.

321.287 Bus Speed Limits (No Annotations)

321.288 Control of vehicle

For annotations, see I.C.A., section 321.288.

321.289 Speed Signs - Duty to Install

1. In general.
The court will presume town officers properly performed duty to erect signs showing points at which rate of speed of automobiles changes and of maximum rate in district. Doherty v. Edwards, 227 Iowa 1264, 290 N.W 672 (1940).

2. Failure to install signs regarding speed limits required by this section does not render the speed limit unenforceable. O.A.G. July 10, 1980.

Speed to be observed in different speed districts fixed by ordinance is not dependent on placing of signs required by this section. Waldman v. Sanders Motor Co., 214 Iowa 1139, 243 N.W. 555 (1932).

3. Questions for jury. (No Annotations)

321.290 Special Restrictions

1. In general.

Exceptions to the general speed limits set pursuant to this section must be posted to be in effect and enforceable. O.A.G. July 10, 1980.

State highway commission has authority and jurisdiction to set speed limits on primary road extensions. O.A.G. July 30, 1973.

Highway commission has authority to determine, after an engineering and traffic investigation, speed limits other than those set out in subsection 5 of section 321.285. O.A.G. November 6, 1963.

Authority of highway commission to declare speed limits. O.A.G. 1940, p. 306.

321.291 Information or Notice

1. In general.

Whether motorist's violation of speed limit was only issue in operator's license revocation. Richard v. Holliday, 153 N.W.2d 473 (Iowa 1967).

321.292 Civil Action Unaffected (No Annotations)

321.293 Local Authorities may Alter Limits

Exceptions to the general speed limits set pursuant to this section must be posted to be in effect and enforceable. O.A.G. July 10, 1980.

State highway commission has power to regulate the erection of traffic control devices on primary roads and extensions of primary roads. O.A.G. August 23, 1955.

2. Power to establish speed limits.

State highway commission has authority and jurisdiction to set speed limits on primary road extensions. O.A.G. July 30, 1973.

Cities have implied power to designate a sector or through streets as a special speed district. O.A.G. 1938, p. 596.

3. Validity of ordinance.

Ordinance on speed held valid though signs were placed within city limits. Pilgrim v. Brown, 168 Iowa 177, 150 N.W. 1 (1914).

4. Operation and effect of ordinance.

Held inapplicable to bicycle. Dice v. Johnson, 187 Iowa 1134, 175 N.W. 38 (1919).

Lesser speed than authorized by city does not of itself indicate carefulness. Livingstone v. Dole, 184 Iowa 1340, 167 N.W. 639 (1918).

321.294 Minimum Speed Regulation

For annotations, see I.C.A., section 321.294.

321.295 Limitation on Bridge or Elevated Structures

1. In general.

Exceptions to the general speed limits set pursuant to this section must be posted to be in effect and enforceable. O.A.G. July 10, 1980.

Motorists obligated to drive with care commensurate with road conditions. Evans v. Muscatine Bridge Corp., 228 Iowa 811, 293 N.W. 470 (1940).

2. Questions for jury.

Whether motorists should have seen truck is for jury. Graham v. Orr, 228 Iowa 755, 292 N.W. 838 (1940).

Operation of auto at reasonable rate for jury. Yance v. Hoskins, 225 Iowa 1108, 281 N.W. 489 (1938).

Question of control of truck for jury. Hawkins v. Burton, 225 Iowa 707, 281 N.W. 342 (1938).

321.296 Repealed Act 1976 (66 G.A.), ch. 1165, § 37.

321.297 Driving on Right Hand Side of Roadway - Exceptions

1. In general.

Truck and automobile collision within city limits of Cedar Rapids applicable under this section providing operator of vehicle must drive on right hand side of street. Golden v. Springer, 238 N.W.2d 314 (Iowa 1976).

4. Duty to Travel on Right Hand Side.

Trial court instruction in err when jury told that parking area of street is not part of roadway to determine statutory duty to drive on right side. Kearney v. Ahmann, 264 N.W.2d 768 (Iowa 1978).

6. Excuse for Noncompliance with Statute.

Emergency is valid excuse for failing to obey statute. Bannon v. Pfiffner, 333 N.W.2d 464 (Iowa 1983).

Not necessary that doctrine of legal excuse be pleaded before it may be instructed upon. Golden v. Springer, 238 N.W.2d 314 (Iowa 1976).

8. Evidence.

Lay witness allowed to testify in tractor and truck collision. Becker v. Goos, 310 N.W.2d 535 (Iowa Ct. App. 1981).

SPECIAL STOPS REQUIRED

321.342 Stop at Certain Railroad Crossings - Posting Warnings

4. Warning devices.

Statute authorizing governmental units to erect stop signs at particularly dangerous highway-railroad grade crossings. Symmonds v. Chicago, M., St.P. & P.R. Co., 242 N.W.2d 262 (Iowa 1976).

Stop sign did not provide adequate additional warning of proximity of railroad. Maier v. Illinois Cent. R. Co., 244 N.W.2d 388 (Iowa 1975).

For other citations, see I.C.A.

321.344 Heavy Equipment at Crossing

1. Decisions in Other States.
Under Iowa law crane operator guilty of contributory negligence in violation this section. Noe v. Chicago Great Western Railway Co., 263 N.E.2d 889 (Ill. App. 2nd 1970).
Crane operator's contributory negligence barred recovery for injures sustained when crane was struck by train. Id.

321.345 Stop or Yield at Highways

1. In general.
For annotations, see I.C.A., section 321.345.
Highway commission has authority to control erection of traffic signals on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.
Mandatory upon county board of supervisors to furnish, erect and maintain standard signs required for county trunk roads. O.A.G. 1932, p. 106.

2. Duty of motorist to stop. (No Annotations)

3. Duty of driver on through highway. (No Annotations)

4. Erection of signs.
Where primary highway is part of intersection, highway commission may place stop signs at all entrances to that intersection. State v. Wissler, 253 Iowa 792, 113 N.W.2d 721 (1962).
Board of supervisors creation of four way stop could not reverse procedure established by legislature. O.A.G. 1951, p. 68.
For further annotations, see I.C.A., section 321.345.

321.346 Cost of Signs (No Annotations)

321.347 Exceptions

1. In general.
Highway commission has authority to control erection of traffic control signals on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.
Board of supervisors creation of four way stop could not reverse procedure established by legislature. O.A.G. 1952, p. 68.

321.348 Limitations on Cities and Towns

1. In general.
Highway commission has authority to control erection of traffic control signals on primary roads and extensions of primary roads in cities and towns. O.A.G. August 23, 1955.

321.349 Exceptions

1. Construction and application.
Erection of traffic control signals on primary road extensions without first securing permission of state highway commission. O.A.G. August 23, 1955.
Traffic control signals referred to in this section to be distinguished from speed detection devices. Id.

321.350 Primary Roads as Through Highway (No Annotations)

321.351 Repealed. Acts 1957 (57 G.A.) Ch. 139 § 1.

321.352 Additional Signs - Cost

1. In general.
Where signs erected on county trunk roads by county board of supervisors conflict with general statute relating to preference at intersections, such signs would govern. Rogers v. Jefferson, 224 Iowa 324, 275 N.W. 874 (1937).
Local authorities may not, by ordinance, abrogate mandate of legislature. O.A.G. 1951, p. 68.

STOPPING, STANDING AND PARKING

321.358 Stopping, Standing, or Parking

1. In general.
Illegal parking constitutes "illegal obstruction." Knaus Trucklines v. Commercial Freight Lines, 238 Iowa 1356, 29 N.W.2d 204 (1947).

2. Parking regulations.
Ordinance held to not prohibit parking of motor vehicles on streets. Griffin v. McNeil, 198 Iowa 1359, 201 N.W. 78 (1924).
Right and duty of city to keep public streets free from nuisances. Pugh v. City of Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

3. Prosecutions.
Evidence that motorists' car had engine trouble aided in overcoming charge of unlawful obstruction of traffic. State v. Bethards, 32 N.W.2d 769 (Iowa 1948).
Prosecution for willful parking and disobeying traffic officer. State v. Berg, 237 Iowa 356, 21 N.W.2d 777 (1946).

4. Liability of motorist.
For case citations, see I.C.A.

5. Contributory negligence.
For case citations, see I.C.A.

6. Police cars.
For case citations, see I.C.A.

7. Pleading.
For case citations, see I.C.A.

8. Questions for jury.
For case citations, see I.C.A.

9. Instructions.
For case citations, see I.C.A.

MISCELLANEOUS RULES

321.369 Putting Glass, Etc. on Highway

1. In general.
County attorney should prosecute violations. O.A.G. 1911-12, p. 638.

2. Knowledge.

Person has no duty to remove substance deposited upon highway before he is aware of its presence. Krueger v. Noel, 318 N.W.2d 220 (Iowa 1982).

3. Instructions.

Jury instruction regarding personal injury action whereby motorcycle slipped on antifreeze on road. Krueger v. Noel, 318 N.W.2d 220 (Iowa 1982).

321.370 Removing Injurious Material

1. Obstruction in streets.

Contractor has no greater right than owner to obstruct street. Hatfield v. White Line Motor Freight Co., 223 Iowa 7, 272 N.W. 99 (1937).

2. Knowledge.

Knowledge of deposit of substance defined in statute is element of statute prohibiting deposit of destructive material on highway, until person has knowledge that he or his vehicle has deposited substance he is unaware of duty to remove. Krueger v. Noel, 318 N.W.2d 220 (Iowa 1982).

321.371 Clearing up Wrecks (No Annotations)

SAFETY STANDARDS

321.381 Scope and Effect of Regulations

1. In general.

Rule that nighttime operation of tractor on highway without rear red light constitutes negligence per se by both bailer for hire and bailee. Verhow v. Kroack, 195 N.W.2d 379 (Iowa 1972).

Lawn type utility tractors not complying with safety standards in this section and §§ 321.382 and 321.383, cannot be driven on public streets or highways. O.A.G. May 3, 1967.

LIGHTING EQUIPMENT

For case citations, see I.C.A.

MISCELLANEOUS EQUIPMENT

For case citations, see I.C.A.

SIZE, WEIGHT, AND LOAD

321.452 Scope and Effect

1. In general.

Permits for movement of vehicles of excess size and weight. O.A.G. July 9, 1968 (No. 68-7-2).

Issuance of single trip permits by commission, counties and cities and towns. O.A.G. June 28, 1968 (No. 68-6-3).

Presumption that Nebraska has statute similar to this state. State v. Robbins, 235 Iowa 602, 15 N.W.2d 877 (1944).

Purpose of this and related laws for safety on highways. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

321.453 Exceptions

1/2. Validity.

Statutes establishing formulas for determination of maximum legal vehicular weights. State v. Wehde, 258 N.W.2d 347 (Iowa 1977).

1. In general.

This section provides certain exceptions from vehicle load limits and is not controlling over section 321.463 which specifies maximum load limitation. State v. Glenn, 234 N.W.2d 396 (Iowa 1975).

This section establishing exceptions to motor vehicle load limitation section is exemption statute and as such must be strictly construed against one claiming exemption. State v. Ricke, 160 N.W.2d 499 (Iowa 1968).

Permits for movement of vehicles of excess size and weight. O.A.G. July 9, 1968 (No. 68-7-2).

When permits may be issued by the commission, counties, and cities and towns for moves on primary highway extensions. O.A.G. June 28, 1968 (No. 68-6-3).

Purpose of this section to allow temporary moving of vehicles without penalty. O.A.G. 1940, p. 114.

2. Road machinery.

Tractor-scraper, which was used in road building, was "road machinery" which was exempt from statutory weight limitation while such vehicle was being driven to county road work site. State v. McDonald, 197 N.W.2d 573 (Iowa 1972).

"Road machinery" defined. State v. Ricke, 160 N.W.2d 499 (Iowa 1968).

Motor truck with underbody blade is road maintenance machinery and requires no permit. O.A.G. 1940, p. 309.

3. Agricultural machinery.

Movement of farm machinery on highway in tandem prohibited. O.A.G. 1952, p. 75.

Moving of machinery from factory does not come within the exceptions of this chapter. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

Hay baler permanently mounted on truck is implement of husbandry and no permit required. O.A.G. 1940, p. 304.

Combine is implement of husbandry. Worthington v. McDonald, 68 N.W.2d 89 (Iowa 1955).

4. Implements of husbandry.

For case citations, see I.C.A.

321.454 Width of Vehicles

1. Construction and application.

Purpose of this section to provide for safe highway travel. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

Movement where road exceeds legal width to be in accordance with last clause of § 321.453. O.A.G. 1940, p. 114.

321.455 Projecting Loads on Passenger Vehicles (No Annotations)

321.456 Height of Vehicles

1. Construction and application.

Railroad retains obligation to warn of low clearance under railroad bridge. Wittrup v. Chicago & Northwestern Ry. Co., 226 N.W.2d 822 (Iowa 1975).

321.457 Maximum Length

1/2. Validity.

Subd. 6 of this section barring use of trucks longer than 60 feet on Iowa's interstate highways unconstitutionally burdened interstate commerce. Consolidated Freightways Corp. of Delaware v. Kassel, 612 F.2d 1064 (8th Cir. 1979).

Delegation of power to transportation commission to adopt rules governing truck length not unconstitutional. O.A.G. January 20, 1976.

1. In general.

Subd. 6 of this section barring use of trucks longer than 60 feet on Iowa's interstate highways unconstitutionally burdened interstate commerce. Consolidated Freightways Corp. of Delaware v. Kassel, 612 F.2d 1064 (8th Cir. 1979).

Purpose of this section is to promote safe travel on highways. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

Delegation of power to transportation commission to adopt rules governing truck length not unconstitutional. O.A.G. January 20, 1976.

Movements of train of farm equipment not contemplated if necessity does not demand such. O.A.G. 1952, p. 75.

2. Overall length.

Kassel v. Consolidated Freightways Corp., 101 Supreme Court 1309, only requires Iowa to allow 65' twin trailers on certain interstate highways. O.A.G., May 14, 1981.

A device to provide supplemental axle to transfer and carry portion of load is not separate vehicle but integral part of main unit, maximum length 35'. O.A.G., March 22, 1972.

Motor truck drawing dolly coupled to semi trailer is combination of three vehicles coupled together as motor vehicle, subject to overall length limitation, inclusive of front and rear bumpers, of 60'. O.A.G., May 4, 1971.

A combination of a motor vehicle upon which is fastened a van box and also bears a portion of the weight of a semi trailer is a combination of three vehicles, maximum length 60'. O.A.G., April 29, 1970.

"Combination of vehicles coupled together" - defined. O.A.G. March 22, 1972. O.A.G. May 4, 1971. O.A.G. April 29, 1970. O.A.G. April 4, 1969.

Includes load carried on vehicle and/or trailer. O.A.G. 1938, p. 523.

3. Appeal.

Burden of proving timely appeal. State v. Nolte, 249 N.W.2d 607 (Iowa 1977).

321.458 Loading Beyond Front

1. Construction and application.

Purpose of this section to promote safe travel on highways. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

Crane not an integral part of truck. O.A.G. March 16, 1956.

321.459 Dual Axle Requirement

1. Construction and application.
This section contemplates each axle extending entirely across a vehicle. The 40" measurement applies only to tandem axle. O.A.G. 1940, p. 455.

321.460 Spilling Loads on Highways

1. In general.
Action for injuries caused by spilling gravel. Lockwood v. Wiltgen, 251 Iowa 484, 101 N.W.2d 724 (1960).

2. Evidence.
Evidence of crushed rock and water deposited on highway. Davidson v. Cooney, 259 Iowa 1278, 147 N.W.2d 819 (1967).

3. Jury questions.
Crushed rock and water deposited on highway proximate cause of automobile injuries. Davidson v. Cooney, 259 Iowa 1278, 147 N.W.2d 819 (1967).

321.461 Trailers and Towed Vehicles (No Annotations)

321.462 Drawbars and Safety Chains (No Annotations)

321.463 Maximum Gross Weight

1/2. Validity.
This section, establishing formulas for determination of maximum legal vehicular weights and fines to be assessed when weight limits are exceeded, is subject to traditional equal protection analysis. State v. Wehde, 258 N.W.2d 347 (Iowa 1977).

1. Construction and application.
This section is a penal statute. State v. Glenn, 234 N.W.2d 396 (Iowa 1975).
Tractor-scraper, which was used in road building was "road machinery" which was exempt from statutory weight limitations. State v. McDonald, 197 N.W.2d 573 (Iowa 1972).
Purpose is safety and prevention of deterioration of highways. State v. Balsley, 242 Iowa 845, 48 N.W.2d 287 (1951).
Purpose is for safety of travel on highways. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).
School buses not exempt from weight restrictions. O.A.G. 1930, p. 300.

2. Group of axles.
Meaning axles contiguous and segregated by reason of use - not all axles. State v. Balsley, 242 Iowa 845, 48 N.W.2d 287 (1951).
Maximum load on distance between axles. O.A.G. 1953, p. 89.

3. Penalties are mandatory.
Imposed on amount of excess weight over authorized weight. O.A.G. 1952, p. 125.

4. Tolerances.
Should be allowed before imposing fine. O.A.G. 1952, p. 125.

5. Review.

State's appeal from decision sustaining demurrer properly taken to supreme court rather than district court. State v. Wehde, 258 N.W.2d 347 (Iowa 1977).

Whether defendant was in violation of this section specifying motor vehicle load limitations was a question for the jury. State v. Glenn, 234 N.W.2d 396 (Iowa 1975).

6. Indictment and information.

Information charging defendant with violation of this section governing maximum motor vehicle loads which contained reference to the section was sufficient to notify defendant of the charge against him. State v. Glenn, 234 N.W.2d 396 (Iowa 1975).

321.464 Investigation as to Safety (No Annotations)

321.465 Weighing Vehicles and Removal of Excess

Peace officer may direct a vehicle to weigh in at the nearest public scales, as defined in this section, but not at a private commercial scale, and a peace officer is not required to weigh the vehicle at the time and place of stopping. O.A.G. August 21, 1967.

Peace officers of highway commission have authority to stop and weigh vehicles within corporate limits of cities and towns. O.A.G. 1946, p. 42.

321.466 Increased loading capacity - Reregistration.

1. In general.

Tolerance for registration fee purposes not intended by legislature to establish tolerance for axle overload purposes. State v. Sands, 280 N.W.2d 370 (Iowa 1979).

Reciprocity provisions of Iowa code discussed. State v. Robbins, 235 Iowa 602, 15 N.W.2d 877 (1944).

License fee on common carriers charge for use of the streets for business. Solberg v. Davenport, 211 Iowa 612, 232 N.W. 477 (1930).

Trailers less than 1000 lb. weight but hauling two tons subject to license fee. O.A.G. 1934, p. 691.

2. Transportation of agricultural products.

Meaning is products in original form. State v. Bauer, 236 Iowa 1020, 20 N.W.2d 431 (1945).

Not applicable to products treated or changed. O.A.G. 1951, p. 28.

Tolerance allowed "raw farm" products does not include fish or butter. O.A.G. 1944, p. 29.

321.467 to 321.470 Repealed Acts 1967 (62 G.A.) Ch. 285, § 1. Eff. July 1, 1967. See now § 321E.1 et. seq.

321.471 Local Authorities may Restrict

1. Construction and application.

County boards of supervisors have only such powers as are expressly conferred by statute or impliedly conferred. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Sign erected for the purpose of limiting traffic which states the substance of the ordinance authorizing it may be a proper sign under section 321.472. O.A.G. August 23, 1971.

Name of authorizing body need not appear on sign. Id.

With the exception of single trip permits issued by the highway commission for moves on primary highway extensions, permits may be issued by the commission, counties and cities and towns but only for moves on that system of roads for which they are by law responsible to maintain. O.A.G. June 28, 1968.

Municipality could not block street used for coasting, so as to make presence of truck thereon unlawful. Dennier v. Johnson, 214 Iowa 770, 240 N.W. 745 (1932).

Board of supervisors authority to prohibit operation of school buses, and milk and cream trucks. O.A.G. 1948, p. 173.

School buses are not exempt from weight restrictions. O.A.G. 1930, p.300.

321.472 Signs Posted

1. Construction and application.

A sign erected for the purpose of limiting traffic which states the substance of the ordinance authorizing it may be a proper sign under this section. O.A.G. August 23, 1971.

The name of the authorizing body need not appear on the sign. Id.

321.473 Limiting Trucks - Rubbish Vehicles

1. In general.

County could fulfill its responsibility with reference to limited load capacity bridges if motorists were advised or warned of existing and potential hazards by posted warning signs. O.A.G. October 4, 1977.

Penalty provided in I.C.A. section 321.474, is not applicable to violations stated in this section. O.A.G. December 9, 1974.

The commission, counties and cities and towns may issue permits for moves on that system of roads for which they are by law responsible to maintain. O.A.G. June 28, 1968 (No. 68-6-3).

Board of supervisors could prohibit school buses and milk and cream trucks from using the roads when such use might damage or destroy the road because of climatic conditions. O.A.G. 1948, p. 173.

School buses not exempt from weight restrictions. O.A.G. 1930, p. 300.

321.474 Department may Restrict

1. In general.

Penalty provided in this section not applicable to violations stated in I.C.A., section 321.473. O.A.G. December 9, 1974.

Highway commission had no authority to make rule that no vehicle should stop on traveled portion of road unless disabled. Albrecht v. Waterloo Const. Co., 218 Iowa 1205, 257 N.W. 183 (1934).

School buses are not exempt from weight restrictions. O.A.G. 1930, p. 300.

321.475 Liability for Damage

1. In general.

County board of supervisors could assign its cause of action against defendant for damages to bridge. Schmitter v. Kauffman, 274 N.W.2d 723 (Iowa 1979).

Operating overloaded truck is "illegal operation" thereof under this section and damage to secondary bridge may be recovered. O.A.G. March 13, 1970.

Board of supervisors could prohibit school buses and milk and cream trucks from using the road when to allow such might cause destruction or damage to the road because of climatic conditions. O.A.G. 1948, p. 143.

2. Bridges.

Negligent destruction of bridge - damages recoverable. Schmitter v. Kauffman, 274 N.W.2d 723 (Iowa 1979).

This section not basis for suit by highway commission to recover for negligent damage cost to bridge. State v. F. W. Fitch Co., 263 Iowa 208, 17 N.W.2d 380 (1945).

3. Assignment of claims. (No Annotations)

321.476 Weighing Vehicles by Department

1. Construction and application.

Moving of farm machinery from the factory does not come within exceptions of this chapter. Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942).

2. Authority of commission.

Enforcement of motor vehicle laws in general reserved to dept. of public safety. Merchants Motor Freight v. State Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

321.477 Employees as Peace Officers

1. Construction and application.

This section grants power to enforce section 321.476. Merchants Motor Freight v. State Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

2. Authority of employees of commission.

Authority limited to matters of size, weight and load of vehicles. Merchants Motor Freight v. State Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

May stop and weigh vehicles within corporate limits of cities and towns. O.A.G. 1946, p. 42.

321.478 Bond (No Annotations)

321.479 Badge of Authority (No Annotations)

321.480 Limitation on Expense (No Annotations)

321.481 No Impairment of Other Authority

Enforcement of motor vehicle laws in general reserved to dept. of public safety. Merchants Motor Freight, v. State Highway Commission, 239 Iowa 888, 32 N.W.2d 773 (1948).

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

321A.1 Definitions

1. Validity.

This chapter not applicable to mobile homes. Brown Enterprises, Inc. v. Fulton, 192 N.W.2d 773 (Iowa 1971).

Uninsured motorist policy did not violate public policy. Detrick v. Aetna Cas. & Sur. Co., 261 Iowa 1246, 158 N.W.2d 99 (1968).

This section, which applies to all operators or owners of motor vehicles, is not discriminatory and does not constitute invalid class legislation. Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52, (1951).

1.5. Construction and application.

Owner of insured automobile allowed under financial responsibility statute to use vehicle without liability insurance and was free to purchase limited liability coverage provided by policy in effect when he sustained fatal injuries as a passenger in vehicle driven with his consent. Walker v. American Family Mutual Insurance Co., 340 N.W.2d 599 (Iowa 1983).

Financial responsibility statute does not require auto insurer to protect public from financially irresponsible motorist. Walker v. American Family Mutual Insurance Co., 340 N.W.2d 599 (Iowa 1983).

Deceased's owner liability insurance with provision excluding bodily injury coverage to insured or member of family, was not invalid as contrary to public policy and did not preclude wrongful death suit by insured owner's estate. Walker v. American Family Mutual Insurance Company, 340 N.W.2d 599 (Iowa 1983).

Insurance clauses not purporting to reduce uninsured motorist insurance in two policies below statutory minimum were valid. McClure v. Employers Mut. Cas. Co., 238 N.W.2d 321 (Iowa 1976).

2. Release.

Release barred plaintiff from maintaining a cause of action for personal injuries. Brown v. Hughes, 251 Iowa 444, 99 N.W.2d 305 (1959).

3. Purpose.

Uninsured motorist's policy, defining vehicle as one having no bond or policy in at least amount specified by financial responsibility law, did not afford excess coverage to persons injured with vehicle that had no policy in amount required by law although damage was in excess of latter amount. Detrick v. Aetna Casualty and Sur. Co. 261 Iowa 1246, 158 N.W.2d 99 (1968).

Purpose of motor vehicle financial responsibility act to protect public from financial irresponsibility of motorists upon streets and highways. Motor Vehicle Cas. Co. v. LeMars Mut. Ins. Co. of Iowa, 254 Iowa 68, 116 N.W.2d 434 (1962).

4. Exclusions.

Policy not issued to comply with law. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973).

5. Operator.

Defined. Pfeiffer v. Weiland, 226 N.W.2d 218 (Iowa 1975).

321A.2 Director to Administer Chapter - Judicial Review

1. Suspension of licenses. (No Annotations)

2. Purpose.

Purpose of motor vehicle financial responsibility act is to protect public from financial irresponsibility of motorists upon streets and highways. Motor Vehicle Cas. Co. v. LeMars Mut. Ins. Co. of Iowa, 254 Iowa 68, 116 N.W.2d 434 (1962).

3. Review.

Issue of driver's failure to comply with this act could not be raised on appeal when not presented to trial court. Goodsell v. State Auto. & Cas. Underwriters, 261 Iowa 135, 153 N.W.2d 458 (1967).

321A.3 Director to Furnish Operating Record - Fees to be Charged and Disposition of Fees

1. In general.

Members of the public may obtain an abstract of the conviction and accident record of any person upon payment of one dollar. O.A.G. 1952, p. 117.

321A.4 Effect of Failure to Report Accidents (No Annotations)

321A.5 Security Required Following Accident - Exceptions

1. Validity.

Privilege to operate motor vehicle on the highway is not a property right, and suspension of motorist's license without a hearing does not constitute a denial of motorist's property without a due process of law. Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951).

2. In general.

For case citations, see I.C.A.

3. Notice by Insurer

For case citations, see I.C.A.

4. Compromise and Settlement

Election to settle an opposing claim and to buy a release from the other party constitutes a compromise of the entire controversy, absent any reservation of right to sue on the claim. Brown v. Hughes, 251 Iowa 444, 99 N.W.2d 305 (1959).

5. Accident Reports

An accident occurring on private property must be reported to the department of public safety. O.A.G. September 5, 1962.

321A.6 Exceptions to Requirement of Security

For case citations, see I.C.A.

321A.7 Duration of Suspension (No Annotations)

321A.8 Application to Nonresidents, Unlicensed Drivers and Unregistered Motor Vehicles (No Annotations)

321A.9 Form and Amount of Security (No Annotations)

321A.10 Custody, Disposition and Return of Security (No Annotations)

321A.11 Matters not to be Evidence in Civil Suits (No Annotations)

321A.12 Courts to Report Nonpayment of Judgments (No Annotations)

321A.13 Suspension for Nonpayment of Judgments - Exceptions

1. In general.

Suspension of drivers license authorized until judgment paid. O.A.G. December 31, 1968 (No. 68-12-21).

321A.14 Suspension to Continue Until Judgments Paid and Proof Given

Receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. Perez v. Campbell, 91 S.CT. 1704 (1971).

Suspension of drivers license authorized until judgment is paid. O.A.G. December 31, 1968 (No. 68-12-21).

321A.15 Payments Sufficient to Satisfy Requirements (No Annotations)

321A.16 Installment Payment of Judgments - Default (No Annotations)

321A.17 Proof Required Upon Certain Convictions

1. Validity.

One whose drivers license was suspended for a conviction of violating drivers license restrictions must be required to prove financial responsibility for the future. O.A.G. December 16, 1974.

2. In general.

License revocation per se law, § 321.281, is distinct from OMVUI law, no license revocation provisions for conviction under § 321.283, 321.560 and 321B.7. No financial responsibility need be filed under section 321A.17 for deferred judgment revocation under 321.281. O.A.G., December 24, 1981.

Former Iowa resident who moves out of state with suspended license and registration must file proof of financial responsibility before driving in this state. February 22, 1965.

3. Notice.

Must be sent by registered certified mail to the licensee or served on him personally. O.A.G. July 27, 1959.

4. Suspension of license.

Prosecution for driving while operators license was under suspension. State v. Hoffer, 197 N.W.2d 368 (Iowa 1972).

Operating a motor vehicle without a license, which is a violation that can be prosecuted under section 321A.32, does not result in suspension of the violator's license. O.A.G. December 9, 1968 (No. 68-12-3).

321A.18 Alternate Methods of Giving Proof

1. Construction and application.

Evidence would not support conviction for driving while license suspended, when defendant had previous notice of suspension for 90 days but as to whom it was as reasonable to believe he may have tolled the suspension by proving financial responsibility as not. State v. Hoffer, 197 N.W.2d 368 (Iowa 1970).

One whose driver's license was suspended for conviction of violating drivers license restrictions must be required to prove financial responsibility for the future. O.A.G. December 16, 1974.

321A.19 Certificate of Insurance as Proof (No Annotations)

321A.20 Certificate Furnished by Nonresident as Proof (No Annotations)

321A.21 "Motor Vehicle Liability Policy" Defined

1. In general.

The provisions of this act do not void the provisions of a vouluntary insurance contract in those situations beyond the contemplation of the act, such as where the insured has never been involved in an accident. Western Cas. & Sur. Co. v. General Cas. Co. of Wis., 200 N.W.2d 892 (Iowa 1972).

"Automobile liability insurance" defined. Detrick v. Aetna Cas. & Sur. Co., 261 Iowa 1246, 158 N.W.2d 99 (1968).

2. Insurance.

For case citations, see I.C.A.

321A.22 Notice of Cancellation or Termination of Certified Policy (No Annotations)

321A.23 Chapter not to Affect Other Policies (No Annotations)

321A.24 Bond as Proof (No Annotations)

321A.25 Money or Securities as Proof (No Annotations)

321A.26 Owner may give Proof for Others (No Annotations)

321A.27 Substitution of Proof (No Annotations)

321A.28 Other Proof may be Required (No Annotations)

321A.29 Duration of Proof - When Proof may be Cancelled or Returned (No Annotations)

VIOLATIONS OF PROVISIONS OF CHAPTER - PENALTIES

321A.30 Transfer of Registration to Defeat Purpose of Chapter Prohibited

1. In general.

Registration of a motor vehicles which has been transferred by bona fide sale, which vehicle is unregistered through suspension by operation of financial and safety responsibility law, may be accomplished on a form provided by the department. O.A.G. 1948, p. 135.

321A.31 Surrender of License and Registration (No Annotations)

321A.32 Other Violations - Penalties

1. In general.
Suspension of operator's license applies only on roads open to use of the public as a matter of right. O.A.G. May 6, 1968 (No. 68-5-2).
Criminal intent not required for a conviction. State v. Sonderleiter, 251 Iowa 106, 99 N.W.2d 393 (1959).

2. Driving without license.
For case citations, see I.C.A.

3. Proof of suspension.
State v. Hoffer, 197 N.W.2d 368 (Iowa 1972).

4. Default in payment of fine. (No Annotations)

5. Evidence of financial responsibility.
For case citations, see I.C.A.

6. Review.
Issue of driver's failure to comply with financial responsibility act which was not presented to trial court could not be raised on appeal. Goodsell v. State Auto & Cas. Underwriters, 261 Iowa 135, 153 N.W.2d 458 (1967).
For other citations, see I.C.A.

321A.33 Exceptions

1. In general.
Convicted OMVUI operator arrested for driving while license suspended, not required to be charged under revocation of § 321.209 for OMVUI, was properly charged with serious misdemeanor provision of §321A.32. State v. Kotz, 337 N.W.2d 530 (Iowa 1983).
Section 321.174 is proper for charging person driving while license revoked pursuant to §321B.7. O.A.G., May 17, 1973.
The motor vehicle financial and safety responsibility act does not apply to authorized operator of a vehicle owned by United States, the state or any political subdivision or municipality, nor to such owner thereof. O.A.G. 1948, p. 98.

321A.34 Self-Insurers (No Annotations)

321A.35 Past Application of Chapter

For case citation, see I.C.A.

321A.36 Chapter not to Prevent Other Process (No Annotations)

321A.37 Uniformity of Interpretation (No Annotations)

321A.38 Title of Chapter (No Annotations)

321A.39 Liability Insurance - Statement (No Annotations)

CHAPTER 327F

CONSTRUCTION AND OPERATION OF RAILWAYS [NEW]

327F.1 Crossing Railway, Canal, or Watercourse

1. Construction and application.

Violation of this chapter is criminal in nature and the action should be pursued by the county attorney. O.A.G. January 4, 1980.

Railroad takes franchise subject to duty of making modifications necessary to carry road bed across such public improvements as drains thereafter established. Chicago, B. & Q. R. Co. v. Board of Sup'rs of Appanoose County, Iowa , 182 F. 291, 104 C.C.A. 573 31 L. R. A., N. S. 1117 (1910).

Quaere on right of junior railway to cross tracks of senior railway without condemnation. Chicago Great Western R. Co. v. Des Moines Western R. Co., 186 Iowa 270, 169 N.W. 637 (1918).

Congressional acts held permissive, not mandatory. Richmond v. Dubuque & S. C. R. Co., 33 Iowa 422 (1872), motion denied, 82 U.S. 3, 15 Wall. 3, 21 L. Ed. 118, affirmed, 86 U.S. 584, 19 Wall. 584, 22 L. Ed. 173.

2. Crossing another railroad.

This section gave railroad right to cross tracks of another. Chicago, M. & St. P. Ry. Co. v. Old Colony Trust Co., 216 F. 577, 132 C. C. A. 581 (1914).

Remedy for unfit or unsuitable railroad crossing. Illinois Cent. Ry. Co. v. Waterloo, C. F. & N. Ry. Co., 186 Iowa 1207, 173 N.W. 288 (1919).

Right of junior company to cross tracks of senior. Chicago Great Western R. Co. v. Des Moines Western R. Co., 186 Iowa 270, 169 N.W. 637 (1919)

Crossing railway must bear expense. Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 182 Iowa 550, 164 N.W. 208 (1917), modified on other grounds, 165 N.W. 993.

Grade crossing held reasonably necessary and would not "unnecessarily impede travel" on plaintiff's road. Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co., 146 Iowa 666, 125 N.W. 672 (1910).

Order requiring defendant to construct under crossing was proper. Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 91 Iowa 16, 58 N.W. 918 (1894).

Under crossing required in view of serious disadvantages of grade crossing. Humeston & S. Ry. Co. v. Chicago, St. P. & K. C. Ry. Co., 74 Iowa 554, 38 N.W. 413.

3. Contract for crossing.

Railroad right of way has substantially of fee and contract by which another road is given crossing rights is based on valuable consideration. Chicago M. & St. P. Ry. Co. v. Old Colony Trust Co., 216 F. 577, 132 C. C. A. 581 (1914).

Cost of system of switches at crossing apportioned between affected railroads. Manhattan Trust Co. v. Sioux City & N. R. Co., C. C., 81 F. 50 (1897).

Contract between crossing railroads obviating disputes as to expense of maintaining flagmen etc., does not lack consideration in view of this section. Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 182 Iowa 550, 164 N.W. 208 (1917), modified on other grounds, 165 N.W. 993.

4. Flooding adjoining lands.

See Notes of Decision under § 327F.2 Maintenance of bridges - damages.

5. Actions in general.

Where petition to require railway, crossing at grade, to install interlocking switch was demurred to, such had effect of admitting certain facts pleaded but did not admit ill consequences plaintiff argued it apprehended therefrom. Illinois Cent. Ry. Co. v. Waterloo, C. F. & N. Ry. Co., 186 Iowa 1207, 173 N.W. 288 (1919).

Where unnecessary interference with crossing exists equity may prescribe conditions of crossing. Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 182 Iowa 550, 164 N.W. 208 (1917), modified on other grounds, 165 N.W. 993.

Construction of overhead crossing waived right to grade crossing. Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 91 Iowa 16, 58 N.W. 918 (1894).

6. Injunction.

Where, without leave to make changes, defendant constructed grade crossing, plaintiff not bound to reimburse defendant prior to securing injunction. Humeston & S. Ry. Co. v. Chicago, St. P. & K. C. Ry. Co., 74 Iowa 554, 38 N.W. 413 (1888).

327F.2 Maintenance of Bridges - Damages

1. Construction and application.

Company required to keep in repair culvert through embankment for drainage ditch in natural water course across right of way, but drainage district was chargeable with expense of constructing culvert. Mason City & Ft. D. R. Co. v. Board of Sup'rs of Wright County, 144 Iowa 10, 121 N.W. 39 (1909).

This section inapplicable where railroad has properly taken care of water in right of way and built bridge because of construction of drainage district. Mason City & Ft. D. R. Co. v. Board of Sup'rs of Wright County, 116 N.W. 805 (Iowa 1908), reversed on other grounds, 144 Iowa 10, 121 N.W. 39 (1909).

Liability of railroad not extended for acts of persons not its agent or servants. Callahan v. Burlington & M. R. R. Co., 23 Iowa 562 (1868).

2. Highway bridge.

Railroad not required to construct and maintain railing on approach to bridge strong enough to resist automobile striking it. Medema v. Hines, C. C. A., 273 F. 52 (1921).

3. Grade Crossing.

Duty of railroad to construct and maintain reasonably safe crossings at points where track intersects highways. Monson v. Chicago, R. I. & P. Ry. Co., 181 Iowa 1354, 159 N.W. 679 (1916), rehearing denied and modified on other grounds, 165 N.W. 305.

4. Flooding adjoining lands.

For annotations, see I.C.A.

5. Duty to provide adequate water course.

For annotations, see I.C.A.

6. Obstructing natural flow of water.

For annotations, see I.C.A.

7. Unprecedented floods.
For annotations, see I.C.A.

8. Cause of flooding in general.
For annotations, see I.C.A.

9. Concurrent causes.
For annotations, see I.C.A.

10. Easement of railroad.
Mortgagee's lien subject to pre-existing easement of railroad maintaining bridge and embankment. Kellogg v. Illinois Cent. R. Co., 204 Iowa 368, 213 N.W. 253 (1927), rehearing denied, 204 Iowa 368, 215 N.W. 258.
Physical facts held to constitute notice to landowner of easement of railroad in bridge for drainage. Johnson v. Chicago, B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

11. Defenses.
In action against railroad for injury to growing crops caused by overflow due to acts of company, exercise of care by plaintiff necessary to recovery. Brous v. Wabash R. Co., 160 Iowa 701, 142 N.W. 416 (1913).
One suing for damages for flooding his land cannot recover damages caused by himself, by construction of drains from other ponds, and such showing would merely reduce recovery. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).
Fact that plaintiff dug ditches draining water to culvert complained of would not defeat recovery unless shown he augmented flow through the culvert. Harvey v. Mason City & Ft. Dodge R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L.R.A., N.S., 973, 113 Am. St. Rep. 483.
No defense to company that culvert was erected according to plans of skillful engineers. Houghtaling v. Chicago, G. W. R. Co., 117 Iowa 540, 91 N.W. 811 (1902).
Where company fully informed of injury not necessary that it be served with notice of nuisance and demand for abatement. Willitts. v. Chicago, B. & K. C. R. Co., 88 Iowa 281, 55 N.W. 313 (1893), 21 L.R.A. 608.

12. Settlement of claims.
For annotations, see I.C.A.

13. Actions in general.
For annotations, see I.C.A.

14. Injunction.
For annotations, see I.C.A.

15. Pleading.
For annotations, see I.C.A.

16. Presumptions and burden of proof.
For annotations, see I.C.A.

17. Admissibility of evidence.
For annotations, see I.C.A.

18. Weight and sufficiency of evidence.
For annotations, see I.C.A.

19. Trial.
For annotations, see I.C.A.

20. Instructions.
For annotations, see I.C.A.

21. Measure of damages.
For annotations, see I.C.A.

22. Construing construction as a whole.
For annotations, see I.C.A.

23. Instructions already given.
For annotations, see I.C.A.

24. Damages.
In action for flooding, measure of damages was difference in market value before and after, not limiting values to part overflowed, but to farm as a whole. Thompson v. Illinois Cent. R. Co., 177 Iowa 328, 158 N.W. 676 (1916). Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

Measure of damages is difference in value immediately before and immediately after flooding. Sullens v Chicago, R. I. & P. R. Co., 74 Iowa 659, 38 N.W. 545 (1888), 7 Am. St. Rep. 501.

Only in case of permanent injury does difference in value before and after apply to entire tract. Thompson v. Illinois Cent. R. Co., 191 Iowa 35, 179 N.W. 191 (1920).

Measure of damages to leasehold is its difference in value before and after flooding. Straight Bros. Co. v Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

Measure of damages to growing crops is value at time of injury, or value when matured less expenses of maturing and marketing same. Brous v. Wabash R. Co., 160 Iowa 701, 142 N.W. 416 (1913).

Measure of damages for obstructing cattle passageway would be depreciation in entire farm. Hastings v. Chicago, R. I. & P. Ry. Co., 148 Iowa 390, 126 N.W. 786 (1910).

Plaintiff entitled to fair and reasonable market value of crops destroyed. Delashmutt v. Chicago, B. & Q. R. Co., 148 Iowa 556, 126 N.W. 359 (1910).

Measure of damages to growing crops is value at time of injury, or value when matured less expenses of maturing and marketing same. Tretter v. Chicago Great Western Ry. Co., 147 Iowa 375, 126 N.W. 339 (1910).

Measure of damages to growing crops of owner of land differs from measure of damages where crops are grown on land of another. Jefferis v. Chicago & N. W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910).

Rule that damages is difference in fair market value of land with the crops before and value afterward does not apply to damages suffered by tenant from year to year. Wilson v. Chicago, R. I. & P. Ry. Co., 144 Iowa 99, 121 N.W. 1102 (1909).

Loss must be determined with reference to existing conditions. Blunck v. Chicago & N. W. Ry. Co., 115 N.W. 1013 (Iowa 1908), reversed on other grounds, 142 Iowa 146, 120 N.W. 737.

Measure of damages for overflow is difference in market value of land just before and just after overflow. Sullens v. Chicago, R. I. & P. R. Co., 74 Iowa 659, 38 N.W. 545 (1888), 7 Am. St. Rep. 501.

Measure of damages was rental value of premises. Hull v. Chicago, B. & P. R. Co., 65 Iowa 713, 22 N.W. 940 (1885).

Growing crops regarded as part of realty, this measure applied was value of land plus growing crops. Drake v. Chicago, R. I. & P. Ry. Co., 63 Iowa 302, 19 N.W. 215 (1884), 50 Am. Rep. 746.

327F.3 Catwalks and Handrails (No Annotations)

327F.4 Rights of Riparian Owners

1. Construction and application.

Under this section fee owners of adjacent shore lands may construct piers and other convenient structures, but riparian owner holds only to high water mark. Hagula v. Mississippi River Power Co., D. C., 202 F. 776 (1913).

"Riparian owner" is owner of land abutting river, and "littoral owner" is one whose land abuts a lake. Peck v. Alfred Olsen Const. Co., 216 Iowa 519, 245 N.W. 131 (1932), 89 A.L.R. 1147.

2. Control by governmental authorities.

Authorities may build wharves and levees on bank of river below high water mark, and make other improvements without consent of, or compensation to adjacent proprietor. Barney v. City of Keokuk, 94 U.S. 324, 24 L. Ed. 224 (1876)

Bayous and sloughs of Mississippi river, not required in interests of commerce, are subject to state or municipal control. Ingraham v. Chicago, D. & M. R. Co., 34 Iowa 249 (1872).

3. Rights of riparian owners.

Ownership of riparian lands by accretion is recognized. Rand v. Miller, 250 Iowa 699, 95 N.W.2d 916 (1959).

In suit to enjoin reconstruction of dam it was not shown to create a public nuisance. Shortell v. Des Moines Electric Co., 186 Iowa 469, 172 N.W. 649 (1919).

4. Structures permitted.

Riparian proprietor had no right to erect, without legislative authority, a solid pier of masonry within navigable channel. Northwestern Union Packet Co. v. Atlee, C. C., Fed. Cas. No. 10,341, 2 Dill. 479, 12 Am. Law Reg., N.S., 561, 7 Am. Law Rev. 752, 18 Int. Rev. Rec. 157, reversed on other grounds, 88 U.S. 389, 21 Wall. 389, 22 L. Ed. 619 (1873).

5. Liability of riparian owner.

Where, without authority, riparian owner erected a pier in navigable channel he was liable for sinking of barge which collided with pier in night. Atlee v. Union Packet Co., 88 U.S. 389, 21 Wall. 389, 22 L. Ed. 619 (1874).

372F.5 Railroad on Riparian Land or Lots

1. Validity.

This section not in conflict with U.S. statutes authorizing certain construction for protection of property. Davenport & N. W. Ry. Co. v. Renwick, 102 U. S. 180, 26 L. Ed. 51 (1880).

State could provide that railway could not appropriate land between high and low water mark without compensation to riparian owner. Renwick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

2. Necessity for compensating owner.

Though improvements by riparian owner were unauthorized railroad could not appropriate such without compensation. Davenport & N. W. Ry. Co. v. Renwick, 102 U.S. 180, 26 L. Ed. 51 (1880).

3. Defenses to owner's claim.

To entitle riparian owner to damages for appropriation of land on river bank of Mississippi or Missouri Rivers not necessary that he should have erected a pier or crib in front of his property. Renwick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

Riparian owner cannot recover damages for being deprived of access to stream by construction of railroad between high and low water marks. Tomlin v. Dubuque, B. & M. Ry. Co., 32 Iowa 106, 7 Am. Rep. 176 (1871).

4. Actions.

Whether improvements failing to comply with Act of Congress could be taken without compensation was "Federal question." Davenport & N. W. Ry. Co. v. Renwick, 102 U.S. 180, 26 L. Ed. 51 (1880).

In action for damages for construction of railroad between high and low water mark jury should consider entire premises leased though divided by street. Renwick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

327F.6 through 327F.38, Inclusive, Omitted.

CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPURTRACKS AND REVERSION [NEW]

Division I. Fences, crossings and interlocking switches.

327G.1 Definition (No Annotations)

327G.2 Crossings - Signs

1/2. Validity.

This section requiring railroads to maintain cattle guards at all crossings not unconstitutional. Burchette v. Chicago, R.I. & P.R. Co., 234 N.W.2d 149 (Iowa 1975).

1. Construction and application.

Requirement that large and distinct letters be visible from whatever direction travelers might approach. Illinois Cent. R. Co. v. Kean, 365 F.2d 785 (8th Cir. 1966).

Extra hazardous crossing requires installation of additional signaling devices. Kuper v. Chicago and Northwestern Transp. Co., 290 N.W.2d 903 (Iowa 1980).

Railroad takes its franchise subject to duty of making such modifications in its roadbed as may be necessary to carry road cross improvements such as highways thereafter established. Chicago, B. & Q.R. Co. v. Board of Sup'rs of Appanoose County, Iowa, 182 F. 291 (1910).

Statute enlarging liability of railroad is of no avail to person injured prior to passage of such law. Payne v. Chicago, R.I. & P.R. Co., 44 Iowa 236 (1876).

2. Cattle guards.

Where injury case was tried to court, question of negligence of railroad was for court. Warren v. Chicago, B. & Q.R. Co., 219 Iowa 723, 259 N.W. 115 (1935).

Purpose of cattle guard to deter and repel cattle from crossing it. Harsch v. Chicago R.I. & P.R. Co., 211 Iowa 1377, 232 N.W. 144 (1930).

Action for death of child. Farrell v. Chicago R.I. & P.R. Co., 123 Iowa 679, 99 N.W. 578 (1904).

Question of whether cattle guard was out of order and thereby allowed steer on right of way was for jury. Black v. Minneapolis & St. L.R. Co., 122 Iowa 32, 96 N.W. 984 (1903).

Suit for grass loss due to failure to construct cattle guards. Raridan v. Central Iowa R. Co., 69 Iowa 527, 29 N.W. 599 (1866).

Animal fatally injured in cattle guard. Meade v. Kansas City, St. J. & C.B.R. Co., 45 Iowa 699 (1877).

After application, owner was justified in assuming cattle guards would be erected. Smith v. Chicago, C. & D.R. Co., 38 Iowa 518 (1874).

3. Nature and sufficiency, cattle guards.

Action for loss of horse which crossed cattle guard. O'Mara v. Newton & N.W.R. Co., 140 Iowa 190, 118 N.W. 377 (1908).

Cattle guard must extend clear across right of way and prevent animals from crossing. Heskett v. Wabash, ST.L. & P.R. Co., 61 Iowa 467, 16 N.W. 525 (1883).

Evidence that cattle guard constructed like one in controversy, had proved sufficient, was properly rejected. Downing v. Chicago, R.I. & P.R. Co., 43 Iowa 96 (1876).

4. Duty to construct and maintain cattle guards.

Company liable to maintain cattle guards under this section. Giger v. Chicago & N.W. R. Co., 80 Iowa 492, 45 N.W. 906 (1890).

Requirement of cattle guards where company enters "fenced land" is same whether fenced land belongs to adjoining owner or is part of right of way. Robinson v. Chicago, R.I. & P.R. Co., 67 Iowa 292, 25 N.W. 249 (1885).

Cattle guards must be kept in repair. Miller v. Chicago, R.I. & P.R. Co., 66 Iowa 546, 24 N.W. 36 (1885).

Where land is afterwards improved and enclosed, cattle guards must be provided. Heskett v. Wabash, St.L. & P.R. Co., 61 Iowa 467, 16 N.W. 525 (1883).

Company held liable for damage to crops after being notified to construct cattle guard. Donald v. St. Louis, K.C. & N.Ry. Co., 44 Iowa 157 (1876).

Injured party need not go on railway to repair cattle guard. Downing v. Chicago R.I. & P.R. Co., 43 Iowa 96 (1876).

Provision applies to fences dividing lands of same owner. Smith v. Chicago C. & D.R. Co., 38 Iowa 518 (1874).

This section does not create liability for failure to provide cattle guards at private crossings. Bartlett v. Dubuque & S.C.R. Co., 20 Iowa 188 (1866).

5. Proximate cause, cattle guards.

For annotations, see I.C.A.

6. Contributory negligence, cattle guards.

For annotations, see I.C.A.

7. Damages, cattle guards.

For annotations, see I.C.A.

8. Double damages, cattle guards.

For annotations, see I.C.A.

9. Fences.

For annotations, see I.C.A.

10. Warning signs.

Intention of statute was to make failure to provide sign boards at highway crossings conclusive evidence of negligence. Field v. Chicago, B. & Q. Ry. Co., 14 F. 332 (1882).

Statutory requirements for warnings at crossings are minimum standards. Lindquist v. Des Moines Union Ry. Co., 239 Iowa 356, 30 N.W.2d 120 (1948).

Whether extra warnings and safe guards should be provided at peculiarly hazardous crossing question for jury. Hitchcock v. Iowa Southern Utilities Co. of Delaware, 233 Iowa 301, 6 N.W.2d 29 (1942).

Failure to maintain signs or warning signals, if constituting negligence as a matter of law was not the proximate cause of injuries caused by collision on foggy night with railroad car occupying crossing. Dolan v. Bremner, 220 Iowa 1143, 263 N.W. 798 (1936).

This provision did not enlarge liability of company for casualty occuring before enactment took effect. Payne v. Chicago, R.I. & P.R. Co., 44 Iowa 236 (1876).

Failure to have warning sign at crossing was negligence. Correll v. Burlington C.R. & M.R. Co., 38 Iowa 120 (1874).

Railroad's failure to post warning sign did not render railroad strictly liable for injuries sustained by automobile driver. Bradwell v. Illinois Cent. Gulf R. Co., 562 F.2d 561 (8th Cir. 1977).

Sole purpose of statutes requiring railways to erect warning signs at crossings is to warn unwary travelers of the position of the railroad. Illinois Cent. R. Co. v. Kean, 365 F.2d 785 (8th Cir. 1966).

Additional signalling devices required at extra hazardous crossing. Kuper v. Chicago & Northwestern Transp. Co., 290 N.W.2d 903 (Iowa 1980).

Railroad's negligence in failing to provide a warning sign with large and distinct letters, and in permitting crossbuck to be placed in an inconspicuous manner. Plumb v. Minneapolis & St. L. Ry. Co., 249 Iowa 1187, 91 N.W.2d 380 (1958).

11. Nature and sufficiency, warning signs.

This section requires that railway erect crossing sign with large and distinct letters, giving notice of proximity of tracks. Illinois Cent. R. Co. v. Kean, 365 F.2d 785 (8th Cir. 1966).

Stop sign did not provide adequate warning of proximity of railroad. Maier v. Illinois Cent. R. Co., 234 N.W.2d 388 (Iowa 1975).

Installation of automatic crossing bells or other signals warning of approach of train is required only where crossing is more than ordinarily dangerous. Hammarmeister v. Illinois Cent. R. Co., 254 Iowa 253, 117 N.W.2d 463 (1962).

Where driver of car testified that he knew where crossing was and used it for years it was nonmaterial that signal was not in proper repair. Dilliner v. Joyce, 233 Iowa 279, 6 N.W.2d 275 (1942).

Sign helped to fairly warn approaching travelers. Hitchcock v. Iowa Southern Utilities Co. of Delaware, 233 Iowa 301, 6 N.W.2d 29 (1942).

12. Contributory negligence, warning signs.

For annotations, see I.C.A.

13. Evidence to show hazardous nature of crossing at nighttime - jury determination.

Russell v. Chicago, R. I. & P. R. Co., 249 Iowa 664, 86 N.W.2d 843 (1958).

Negligence of railroad held to be proximate cause of injury. Chicago Great Western R. Co. v. Mackie, C. C. A., 60 F.2d 384 (1932).

Instruction submitting issue of negligence without defining duty of railroad with respect thereto was erroneous. Peterson v. Chicago, M. & St. P. Ry. Co., 185 Iowa 378, 170 N.W. 452 (1919).

Railroad company has right to cross streets of municipality without consent of city authorities. Morgan v. Des Moines Union R. Co., 113 Iowa 561, 85 N.W. 902 (1901).

Mandamus may lie to compel railroad to construct another crossing in city where other crossing is dangerous and causes delay and inconvenience because of switching. City of Ft. Dodge v. Minneapolis & St. L. R. Co., 87 Iowa 389, 54 N.W. 243 (1893).

Railroad not liable under this section for stock killed at crossing of road traveled by public as highway. Soward v. Chicago & N. W. R. Co., 33 Iowa 386 (1872).

To protect itself from liability, fences should be built to, and cattle guards erected at highway crossing. Andre v. Chicago & N. W. R. Co., 30 Iowa 107 (1870).

14. Nature and sufficiency, safe crossings.

Railroad crossing only ordinarily dangerous. Hammarmeister v. Illinois Cent. R. Co., 254 Iowa 253, 117 N.W.2d 463 (1962).

Railroad not liable for accident resulting from defect in highway near crossing, where defect outside plank adjoining outer rail. Gable v. Kriege, 221 Iowa 852, 267 N.W. 86, 105 A. L. R. 539 (1936).

Railroad required to make good and sufficient crossing where its track crosses highway. Herrstrom V. Newton & N. W. R. Co., 129 Iowa 507, 105 N.W. 436 (1905).

Railroad crossing street at grade may cross at angle if tracks are not laid in front of property belonging to others. Morgan v. Des Moines Union R. Co., 113 Iowa 561, 85 N.W. 902 (1901).

Requirement of erecting warning signs not applicable to overhead crossings. City of Albia v. Chicago, B. & Q. R. Co., 102 Iowa 624, 71 N.W. 541 (1897).

Court could require construction of overhead crossing where mandamus was petitioned for. City of Ft. Dodge v. Minneapolis & St. L. R. Co., 87 Iowa 389, 54 N.W. 243 (1893).

Where crossings at highways are constructed that they can be crossed with reasonable safety and convenience, such are sufficient to protect company from liabilities for accidents alleged due to insufficient condition of crossing. Meeker v. Chicago, M. & St. P. R. Co., 64 Iowa 641, 21 N.W. 120 (1884).

15. Duty to construct and maintain, safe crossings.

Railway company must construct and maintain such crossings. Chicago, St. P. M. & O. Ry. Co. v. Washington, C. A. Minn., 179 F.2d 548 (1950).

Liability to sand, gravel, or cinder icy crossing discussed. Guttenfelder v. Chicago, R. I. & P. R. Co., 243 Iowa 755, 52 N.W.2d 50 (1952).

Railroad and city had duty to maintain viaduct in safe condition. Harris v. Chicago, M., St. P. & P. R. R. Co., 224 Iowa 1319, 278 N.W. 338 (1938).

Spur track, constructed at expense of railway and coal yard proprietor held a joint enterprise and "operated" by railroad. Lane v. Interurban Ry. Co., 190 Iowa 738, 180 N.W. 895 (1921).

Elevation of two or three inches between road surface and top of planks in crossing did not, as matter of law, make railroad negligent. Peterson v. Chicago, M. & St. P. Ry. Co., 185 Iowa 378, 170 N.W. 452 (1919).

Duty of railroad to construct and maintain reasonably safe crossings. Monson v. Chicago, R. I. & P. Ry. Co., 181 Iowa 1354, 159 N.W. 679 (1916), rehearing denied and opinion modified on other grounds, 165 N.W. 305.

Railroad had duty to construct crossing. Craig v. Wabash R. Co., 121 Iowa 471, 96 N.W. 965 (1903).

Absent legislation railroad not required to construct crossings over its right of way to extend or connect streets established after location and acquisition of right of way. City of Albia v. Chicago, B. & Q. R. Co., 102 Iowa 624, 71 N.W. 541 (1897).

Fact that there was a steep hill, impractical for loaded teams would not excuse failure to build crossing before hill graded. City of Ft. Dodge v. Minneapolis & St. L. R. Co., 87 Iowa 389, 54 N.W. 243 (1893).

Crossings become part of railroad itself to which right of public cannot be defeated by changes in ownership. Swan v. Burlington, C. R. & N. R. Co., 72 Iowa 650, 34 N.W. 457 (1887).

Company had duty to keep bridge and approaches in safe condition. City of Newton v. Chicago, R. I. & P. Ry. Co., 66 Iowa 422, 23 N.W. 905 (1885).

Highway must be placed in as good condition as before construction of crossing. Beatty v. Central Iowa R. Co., 58 Iowa 242, 12 N.W. 332 (1882).

Road districts were not relieved from duty of maintaining highway in good condition. Farley v. Chicago, R. I. & P. R. Co., 42 Iowa 234 (1875).

16. Obstruction at crossings.

Evidence of obstruction of highway by trains and similar accidents were admissable to show knowledge of company of hazardous condition. Lindquist v. Des Moines Union Ry. Co., 30 N.W.2d 120 (1948).

That railroad authorized to operate across highway no defense against obstruction of highway. Jenks v. Lansing Lumber Co., 97 Iowa 342, 66 N.W. 231 (1895).

Railroad liable for damage caused by obstruction outside the traveled way but within right of way of highway. Hanson v. Chicago, St. P. & K. C. R. Co., 94 Iowa 409, 62 N.W. 788 (1895).

Erection or maintenance of obstruction may create liability in railroad. State v. Minneapolis & St. L. R. Co., 88 Iowa 689, 56 N.W. 400 (1893).

Railroad liable for leaving carcass of cow on highway. Baxter v. Chicago, R. I. & P. R. Co., 87 Iowa 488, 54 N.W. 350 (1893).

Fact that obstruction of street necessary in switching cars no defense. State v. Chicago, M. & St. P. R. Co., 77 Iowa 442, 42 N.W. 365, 4 L. R. A. 298 (1889).

17. Bridges and culverts at crossings.

Ridge in crossing shown to be safe to pass over at reasonable speed. Myers v. Chicago, M. & St. P. Ry. Co., C. C., 101 F. 915 (1900).

Railroad required to construct and maintain necessary bridges and culverts incident to construction and maintenance of proper crossing over public highway. O.A.G. 1928, p. 191.

18. Approaches to crossing.

Railroad required to maintain that part of crossing structure made necessary by existence of tracks and roadbed. Gable v. Kriege, 221 Iowa 852, 267 N.W. 86, 105 A. L. R. 539 (1936).

Approach to crossing situated on railroad right of way is a part thereof. See v. Wabash R. Co., 123 Iowa 443, 99 N.W. 106 (1904).

Where approaches to railway at highway crossing not built exactly opposite each other, question for jury as to sufficiency of crossing. Meeker v. Chicago, M. & St. P. R. Co., 64 Iowa 641, 21 N.W. 120 (1884). Farley v. Chicago, R. I. & P. R. Co., 42 Iowa 234 (1875).

19. Knowledge of defective condition.

Failure of automobile driver familiar with crossing and warning sign. Bradwell v. Illinois Cent. Gulf R. Co., 562 F.2d 561 (8th Cir. 1977).

No warning as to existence of railway crossing is necessary when motorist has actual knowledge of the condition. Illinois Cent. R. Co. v. Kean, 365 F.2d 785 (8th Cir. 1966).

Railroad charged with implied notice of defect which existed for years. Monson v. Chicago, R. I. & P. Ry. Co., 181 Iowa 1354, 159 N.W. 679 (1916), rehearing denied and opinion modified on other grounds, 165 N.W. 305.

20. Contributory negligence, crossings.

For annotations, see I.C.A.

21. Road improvements at crossings.
Where railroad has mere easement in right-of-way, it is not subject to special assessments for road improvements. O.A.G. 1919-20, p. 302.

22. Actions for negligence of railroad.
For annotations, see I.C.A.

23. Presumptions and burden of proof in actions for negligence.
For annotations, see I.C.A.

24. Evidence in actions for negligence.
Admission of evidence of two prior accidents at crossing. Kuper v. Chicago & Northwestern Transp. Co., 290 N.W.2d 903 (Iowa 1980).
For additional annotations, see I.C.A.

25. Questions for jury in actions for negligence.
For annotations, see I.C.A.

26. Instructions in actions for negligence.
For annotations, see I.C.A.

27. Review of actions for negligence.
For annotations, see I.C.A.

28. Sidewalks.
Railroad has duty to maintain safe sidewalks at its railroad crossing. Chicago, St. P., M. & O. Ry. Co. v. Washington, C. A. Minn., 179 F.2d 548 (1950).

29. Flagman.
For annotations, see I.C.A.

30. Pleadings.
For annotations, see I.C.A.

31. Presumptions and burden of proof.
For annotations, see I.C.A.

327G.3 Railway Fences Required

1. Construction and application.
This section requires railroad companies to fence their right-of-ways. This obligation continues for as long as the right-of-way is owned by the railroad company regardless of whether the line has been abandoned or the tracks removed therefrom. O.A.G. March 12, 1980.
For basic development of notes of decisions, see section 478.2 in main volume.

3. Defects in fences.
Owner of cow pastured on railway property claimed that railroad failed to comply with railroad fencing statute s327G.2 and 327G.4 when auto driver sustained personal injury after collision with cow. State Farm Mutual Auto Insurance Co. v. Nelson, 166 N.W.2d 803 (Iowa 1969).

13. Damages.

Section 478.7 imposing double damages on railroad which refused to pay cattle owner damages for injured cattle within 30 days as result of railroad's failure to maintain cattle guard was not subject to equal protection clause since section treated railroads alike and reasonable basis existed for treating railroads differently than other industries. Burchette v. Chicago, R.I. and P.R. Company, 234 N.W.2d 149 (Iowa 1975).

327G.4 Specifications

1. Construction and application.

Railroad's failure to comply with the railroad fencing statute requirement. State Farm Mut. Auto. Ins. Co. v. Nelson, 166 N.W.2d 803 (Iowa 1969).

For basic development of notes of decisions, see section 478.4 in main volume.

327G.5 Hog-Tight Fences

For basic development of notes of decisions, see section 478.5 in main volume.

327G.6 Failure to Fence

For basic development of notes of decisions, see section 478.6 in main volume.

327G.7 Double Damages

1. Validity.

This section imposing double damages not subject to challenge under the equal protection clause. Burchette v. Chicago, R. I. & P. R. Co., 234 N.W.2d 149 (Iowa 1975).

For basic development of notes of decisions, see section 478.7 in main volume.

327G.8 Laws and Local Regulations Not Applicable

For basic development of notes of decisions, see section 478.8 in main volume.

327G.9 Failure to Fence - General Penalty

For basic development of notes of decisions, see section 478.10 in main volume.

327G.10 Killing of Stock - Interpretative Clause

For basic development of notes of decisions, see section 478.11 in main volume.

327G.11 Private Crossings

For basic development of notes of decisions, see section 478.12 in main volume.

327G.12 Overhead, Underground, or More Than One Crossing

For basic development of notes of decisions, see section 478.13 in main volume.

327G.13 Signals at Road Crossings

For basic development of notes of decisions, see section 478.19 in main volume.

327G.14 Violations

Formerly section 478.20. Renumbered section 327G.14 by Code Editor in 1976.

327G.15 Railway and Highway Crossing at Grade

1. Construction and application.

In enacting statutes dealing with authority of Commerce Commission in regard to railroad and highway crossings, intent of legislature was to retain jurisdiction in the Commerce Commission over all such crossings whether existing or created by new facilities. Chicago, R. I. & P. R. Co. v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

It is duty of railroad to construct and maintain reasonable safe crossings. Monson v. Chicago, R. I. & P. Ry. Co., 181 Iowa 1354, 159 N.W. 679 (1916), rehearing denied and modified on other grounds, 165 N.W. 305.

Mere nonuser of platted street would not defeat right of city to open and replank crossing after wrongful destruction by railroad. Chicago, R. I. & P. R. v. City of Council Bluffs, 109 Iowa 425, 80 N.W. 564 (1899).

Word "over" as used in authorization to cross over city street without consent of city, meant "upon." State v. Davenport & St. P. R. Co., 47 Iowa 507 (1877).

"Over" means at an elevation above, as opposed to "under." Milburn v. City of Cedar Rapids, 12 Iowa 246 (1861).

2. Contracts.

Agreement by railroad to keep bridge in repair no consideration for contract by city to maintain approaches to bridge where law placed burden of maintenance of bridge and approaches on railroad. City of Newton v. Chicago, R. I. & P. R. Co., 66 Iowa 422, 23 N.W. 905 (1885).

Under contract company limited to construction at grade established by city. Slatten v. Des Moines Valley R. Co., 29 Iowa 148, 4 Am. Rep. 205 (1870).

Contract releasing railroad from maintaining or replacing viaduct did not preclude subsequent city council from applying to railroad commissioners for replacement and request for share to be borne by railroad. O.A.G. 1922, p. 224.

3. Location of crossing.

Neither city nor highway commissioners have authority to forbid laying of tracks across street in city even though necessary to alter grade of street therefore. O.A.G. 1923-24, p. 187.

4. Rights and remedies of property owners.

Though authorized to build overhead crossing for a highway over its right-of-way, damages were payable to owner thereby deprived of access to the highway. Wulke v. Chicago, M. & St. P. Ry. Co., 189 Iowa 722, 178 N.W. 1009 (1920).

Where crossing necessitated raise in grade of street, owner was entitled to damages. Gates v. Chicago, St. P. & K. C. R. Co., 82 Iowa 518, 48 N.W. 1040 (1891).

Landowners could recover damages resulting from closing of private road by railroad tracks. Gear v. C. C. & D. R. Co., 39 Iowa 23 (1874).

5. Commerce Commission.

Supreme court in holding that railroad commissioners lacked jurisdiction to authorize abandonment of overhead bridge in town and substitution of cinder crossing did not intend to affect contractual rights previously acquired. Town of Huxley v. Conway, 226 Iowa 268, 284 N.W. 136 (1939).

6. Actions.

Action by railroad to enjoin another railroad from constructing grade crossing over its tracks. Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. Ry. Co., 91 Iowa 16, 58 N.W. 918 (1894).

Instruction that failure to put in crossing might amount to negligence was erroneous where there was no allegation that road was constructed in an improper manner. O'Connor v. St. Louis, K. C. & N. R. Co., 56 Iowa 735, 10 N.W. 263 (1881).

7. Prior laws.

For annotations, see I.C.A.

For basic development of notes of decisions, see section 478.21 in main volume.

327G.16 Disagreement - Application - Notice

1. Construction and application.

Stay of condemnation proceedings instituted by highway commission until issues contemplated by statute dealing with authority of commerce commission in regard to railway and highway crossings could be determined. Chicago, R. I. & P. R. Co. v. Iowa State Highway Commission, 182 N.W.2d 160 (Iowa 1970).

Board of supervisors should make application to board of railroad commissioners as provided in Code 1924, section 8021, incorporated in this section. O.A.G. 1925-26, p. 369.

Disagreeements between board of supervisors and highway commissioners regarding details of construction and distribution of expense should be submitted to railroad commission. O.A.G. 1923-24, p. 189.

Railroad commissioners had authority to determine matter of change of grade of street in city or town in case of dispute. O.A.G. 1923-24, p. 187.

For basic development of notes of decisions, see section 478.22 in main volume.

327G.17 Hearing - Order

1. Construction and application.

Board of railroad commissioners has no powers except those expressly granted and those incidental to or implied in powers granted. Incorporated Town of Huxley v. Conway, 226 Iowa 268, 284 N.W. 136 (1939).

For basic development of notes of decisions, see section 478.23 in main volume.

327G.18 Railway Company to Hold in Trust

Formerly § 478.24. Renumbered § 327G.18 by Code Editor in 1976.

327G.19 Grade Crossing Fund

Formerly § 478.25. Renumbered § 327G.19 by Code Editor in 1976.
Former § 478.25 was repealed by Acts 1949 (52 G.A.) ch. 247, § 2.

327G.20 Reserved

327G.21 Condition After Change - Temporary Ways

1. Construction and application.

Injured person could not recover without evidence showing approaches to viaduct were unreasonable or that there was negligence in its construction or maintenance. Harris v. Chicago, M. St. P. & P. R. Co., 224 Iowa 1319, 278 N.W. 338 (1938).

2. Repairs.

Where bridge over tracks was necessary at street crossing company liable for expense of keeping in repair both bridge and approaches. City of Newton v. Chicago, R. I. & P. R. Co., 66 Iowa 422, 23 N.W. 905 (1885).

3. Use of streets.

Power granted to railways by Code 1873, to occupy streets was, by implication, withdrawn by amendment in Chapter 47, Laws of 1874. Stanley v. City of Davenport, 54 Iowa 463, 2 N.W. 1064, 37 Am. Rep. 216 (1880), affirmed, 54 Iowa 463, 6 N.W. 706, 37 Am. Rep. 216.

Indictments for improper and negligent construction should in terms charge the fact. State v. Davenport & St. P. R. Co., 47 Iowa 507 (1877).

Railroad was entitled, subject to proper equitable and police regulations, to construct its road over city street without city consent. Chicago, N. & S. W. R. Co. v. City of Newton, 36 Iowa 299 (1873).

For basic development of notes of decisions, see section 478.27 in main volume.

327G.22 Railway Crossings Near Mississippi River

Formerly § 478.28. Renumbered § 327G.22 by Code Editor in 1976.

327G.23 Grade Crossings

For basic development of notes of decisions, see § 478.29 in main volume.

327G.24 through 327G.27 Repealed

327G.28 Compulsory Establishment

Formerly § 478.36. Renumbered § 327G.28 by Code Editor in 1976.

327G.29 Grade Crossing Surface Repair Fund

327G.30 Adjustment of Expense (No Annotations)

327G.31 Disagreement Resolved (No Annotations)

327G.32 Blocking Highway Crossing

1. In general.

Statute allowing cities to limit blockage of street by ordinance and Administrative Procedure Act doesn't require promulgation of rules to govern notice given by transportation regulation board. Chicago and North Western Transportation Co. v. Iowa Transportation Regulation Board, 322 N.W.2d 273 (Iowa 1982).

327G.33 to 327G.60 Reserved

DIVISION II. PRIVATE BUILDINGS AND SPUR TRACKS

327G.61 Definition

Formerly § 481.9. Renumbered § 327G.61 by Code Editor in 1976.

327G.62 Buildings on Railroad Lands

Formerly § 481.1. Renumbered § 327G.62 by Code Editor in 1976.

1. Construct and application.

Elevator companies permanent scale pit is a "building" within § 327G.63, imposing negligence liability. Farmers Elevator Co. v. Chicago R.I. and P.R. Co., 260 Iowa 478, 149 N.W.2d 867 (1967).

327G.63 Destruction of Buildings

Formerly § 481.2. Renumbered § 327G.63 by Code Editor in 1976.

1. Construction and application.

Railroad employees negligence causing damage to elevator companies scale mechanism, causing railroad liability, not withstanding exculpatory lease provision because damage not caused by railroad for elevator company's benefit. Farmers Elevator Co. v. Chicago R.I. and P.R. Co., 260 Iowa 478, 149 N.W.2d 867 (1967).

327G.64 Spur Tracks

Formerly § 481.3. Renumbered § 327G.64 by Code Editor in 1976.

1/2. Validity.

Statutes authorizing railroad to condemn right of way for spur track requires successful operation of existing industry, and condemning land for track construction to manufacturer, warehouse, etc., not unconstitutional as taking of private property. Reter v. Davenport, R.I. and N.W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952).

3/4. Construction and application.

Condemnees completed loss of access to railroad and sewer for personal damage claim, not using term access in correct form because no proof they had right to use railroad or sewer, that spur track or lateral sewer presently existed or that they had commerce commission order that spur track be built. They were using "access" in broad sense of "quality of being easy to approach", and comdemnees therefore not precluded from pleading loss of access. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

4. Eminent domain.

Test of use of proposed branchline whereby railroad seeks to condemn right of way. Reter v. Davenport, R.I. and N.W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952).

327G.65 Cost of Construction

Formerly § 481.4. Renumbered § 327G.65 by Code Editor in 1976.

1. Construction and application.

Condemnation of right of way for spur track. Reter v. Davenport, R.I. and N.W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952).

327G.66 Bond for Construction

Formerly § 481.5. Renumbered § 327G.66 by Code Editor in 1976.

327G.67 Costs in Excess of Deposit

Formerly § 481.6. Renumbered § 327G.67 by Code Editor in 1976.

327G.68 Failure of Company to Act

Formerly § 481.7. Renumbered § 327G.68 by Code Editor in 1976.

327G.69 Connections with Original Spurs

Formerly § 481.8. Renumbered § 327G.69 by Code Editor in 1976.

327G.70 to 327G.75 Reserved

DIVISION III. REVERSION TO OWNERS UPON ABANDONMENT

327G.76 Relocation of Railway

1. Construction and application.

It is competent for legislature to say to whom such abandoned land shall revert. Atkin v. Westfall, 69 N.W.2d 523 (1955).

Legislature had in mind distinction between abandoning part of right of way by relocation and failure to use or operate for eight years and in former event § 473.1 applies, and in case of latter § 473.2 applies. Id.

Deed to railroad conveyed strip only for certain specified purposes so that fee title to strip reverted to county, which owned rest of tract, upon abandonment, and company's deed to third party conveyed nothing. Keokuk County v. Reinier, 227 Iowa 499, 288 N.W. 676 (1939).

Abandonment of land good defense to claim for additional damages on appeal from condemnation award. Hastings v. Burlington & M.R.R. Co., 38 Iowa 316 (1874).

2. Abandonment.

By acquiescence in boundary railroad lost title to land encroached upon, independent of adverse possesstion. Helmick v. Davenport, R.I. & N.W. Ry. Co., 174 Iowa 558, 156 N.W. 736 (1916).

Evidence failed to establish abandonment. Marling V. Burlington C.R. & N. Ry. Co., 67 Iowa 331, 25 N.W. 268 (1885).

3. Refund of money paid.

Upon abandonment and reversion railroad not entitled to refund of condemnation award. Hastings v. B. & M. R. R. Co., 38 Iowa 316 (1874).

4. Reversion.

Right-of-way, conveyed by deed with provision that it should "revert" to grantor or his heirs or assigns on abandonment, reverted to present owners on either side of center line of track. Brugman v. Bloomer, 234 Iowa 813, 13 N.W.2d 313 (1944).

Word "revert" means to turn back, to return to. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

Burden of establishing ownership and right to damages on person claiming abandoned right-of-way. Montgomery County v. Case, 212 Iowa 73, 232 N.W. 150 (1930).

5. Claiming reversion.

Neither re-entry, demand of possession, nor notice of forfeiture is necessary step in action to establish reversioner's right to property. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

Formerly § 473.1. Renumbered section 327G.76 by Code Editor in 1976.

327G.77 Reversion of Railroad Right-of-Way

1. Validity.

It is competent for a legislature to say to whom such abandoned land shall revert. Atkin v. Westfall, 69 N.W.2d 523 (Iowa 1955).

Legislature had in mind distinction between abandoning part of right-of-way by relocation and failure to use or operate for eight years and in former event section 473.1 applies, and in case of latter section 473.2 applies. Id.

Statute does not operate retrospectively as it does not create suspension but merely prescribes its effect. Skillman v. Chicago, M. & St. P. R. Co., 78 Iowa 404, 43 N.W. 275 (1889), 16 Am. St. Rep. 452.

2. Construction and application.

This section did not attach reversionary interest to conveyance to railroad, which acquired easement to the property and subsequently abandoned it by I.C.C. order. Johnson v. Burlington Northern, Inc., 294 N.W.2d 63 (Iowa 1980).

Where deed conveyed tract in fee simple to railroad, reverter statute, making provision for reversion of right-of-way, did not apply. Turner v. Unknown Claimants of Land in Section 4, 87 N. Tp., Range 32 West of 5th Principal Meridian, 207 N.W.2d 544 (Iowa 1973).

Competent for legislature to say to whom land shall revert. Atkin v. Westfall, 69 N.W.2d 523 (1955).

Though railroad had not reached plaintiff's land there was commencement of construction. Vandewater v. Chicago, R.I. & P. Ry. Co., 170 Iowa 687, 153 N.W. 190 (1915), Ann Cas. 1917C 1132.

This section did not forbid forfeiture for abandonment of use in accordance with provisions of deed. McClain v. Chicago, R.I. & P.R. Co., 90 Iowa 646, 57 N.W. 594 (1894).

3. Use, operation, abandonment, and breach of condition.

Condition in deed as to abandonment not breached by change in name of company or in merger or consolidation. Reichard v. Chicago B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

Where plaintiff abandoned right-of-way for five years deed by plaintiff's grantor to defendant did not vest title in defendant as having reverted to grantor. Monarch Coal Co. v. Phillips Coal Co., 178 Iowa 660, 156 N.W. 297 (1916).

Reversion worked by failure to construct or operate line in eight years. Vandewater v. Chicago, R.I. & P. Ry. Co., 170 Iowa 687, 153 N.W. 190 (1915), Ann. Cas. 1917C, 1132.

Evidence admissible in action by owner to recover right-of-way for nonuser that road was built to reach certain mines, now abandoned and that coal company obtained right-of-way. Gill v. Chicago & N. W. R. Co., 117 Iowa 278, 90 N.W. 606 (1902).

Nonuser did not constitute abandonment of right-of-way. Morgan v. Des Moines Union R. Co., 113 Iowa 561, 85 N.W. 902 (1901).

Evidence held competent to show company "ceased permanently" to use way within meaning of grant. McClain v. Chicago, R. I. & P. R. Co., 90 Iowa 646, 57 N.W. 594 (1894).

Re-entry within eight years was not a trespass. Fernow v. Chicago, M. & St. P. R. Co., 75 Iowa 526, 39 N.W. 869 (1888).

Alienation of right-of-way by grantee, and failure to use it for purpose which granted, did not constitute abandonment. Barlow v. Chicago, R. I. & P. R. Co., 29 Iowa 276 (1870).

4. Reversion.

When right-of-way reverts easement, with all its incidents, is extinguished. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

There must be failure to use or operate for eight years prior to reversion taking place. Monarch Coal Co. v. Phillips Coal Co., 178 Iowa 660, 156 N.W. 297 (1916).

Reversion was to grantor despite provision that reversion should be to owner of the land from which right-of-way was taken. Spencer v. Wabash R. Co., 132 Iowa 129, 109 N.W. 453 (1906).

It is competent for legislature to say to whom it shall revert upon abandonment. Smith v. Hall, 103 Iowa 95, 72 N.W. 427 (1897).

5. Fee in railroad.

Section inapplicable where fee is acquired by deed rather than by easement through condemnation. Montgomery County v. Case, 212 Iowa 73, 232 N.W. 150 (1930).

A title in fee not reduced to mere easement. Chicago, M. & St. P. Ry. Co. v. Town of Churdan, 196 Iowa 1057, 195 N.W. 996 (1923).

Where fee to company was not limited in any way, company did not lose title by non user. Watkins v. Iowa Cent. R. Co., 123 Iowa 390, 98 N.W. 910 (1904).

6. Conveyance by railroad.

Rights of grantees of railroad subject to conditions in deed which railroad took to the property. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

7. Transfers by owners.

Possibility of reverter transformed into fee simple by abandonment of land by railroad. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

Exception in deed of right-of-way retained what title grantor had in it, in him. Hall v. Wabash R. Co., 133 Iowa 714, 110 N.W. 1039 (1907).

Deed failed to pass reversionary interest in right-of-way. Spencer v. Wabash R. Co., 132 Iowa 129, 109 N.W. 453 (1906).

Where owner, prior to abandonment, conveyed remainder of tract he parted with rights in reversion to grantee. Smith v. Hall, 103 Iowa 95, 72 N.W. 427 (1897).

8. Claiming reversion.

Neither re-entry, demand of possession, nor notice of forfeiture is an essential step in establishing reversioner's right to property. Reichard v. Chicago, B. & Q. R. Co., 231 Iowa 563, 1 N.W.2d 721 (1942).

9. Waiver and estoppel.

Deed given to correct prior deed, and expressly reserving to grantor all rights under former deed, was not waiver of former abandonment by railroad. Gill v. Chicago & N. W. R. Co., 117 Iowa 278, 90 N.W. 606 (1902).

When defendant induced railroad to abandon depot and build on his land facts estopped him from asserting title. Des Moines & Ft. D. R. Co. v. Lynd, 94 Iowa 368, 62 N.W. 806 (1895).

Plaintiff precluded from insisting on abandonment by agreement with defendant's lessee, whereby lessee constructed and maintained road complained of. Marling v. Burlington, C. R. & N. Ry. Co., 67 Iowa 331, 25 N.W. 268 (1885).

10. Refund of money paid.

Owner not required to return compensation prior to quiet title action. Vandewater v. Chicago, R. I. & P. Ry. Co., 170 Iowa 687, 153 N.W. 190 (1915), Ann Cas. 1917C, 1132.

11. Condemnation after abandonment.

Right-of-way previously condemned, paid for and abandoned could not be again condemned without compensation. Remey v. Iowa Cent. R. Co., 116 Iowa 133, 89 N.W. 218 (1902).

Formerly § 473.2. Renumbered § 327G.77 by Code Editor in 1976.

327G.78 Sale of Railroad Property (No Annotations)

327G.79 Valuing Rail Property (No Annotations)

327G.80 Reserved

DIVISION IV

ACQUISITION OF RIGHT-OF-WAY

327G.81 Maintenance of Improvements Along Right-of-Way (No Annotations)

CHAPTER 343

GENERAL DUTIES OF COUNTY OFFICERS

Repealed Act 81, ch. 117, § 1244.

CHAPTER 346

COUNTY BONDS

346.1 Funding and Refunding Bonds

1. Construction and application.

Section 75.2 applies to creation of original indebtedness, not to issuance of funding or refunding bonds which should be advertised. O.A.G. 1930, p. 372.

Supervisors may not issue warrant against general fund to obtain funds with which to redeem warrants issued to pay claims. O.A.G. 1911-12, p. 411.

2. Power and duty to issue bonds.

Authorization by voters necessary. Carpenter v. Buena Vista County, 1878, Fed. Cas. No. 2,429; 5 Dill 556.

Where officers issue bonds without authority, a purchaser is not protected. Clapp v. Cedar County, 5 Iowa 15, 5 Clarke 15 (1857).

Counties or municipalities may issue bonds for judgment debt. Iowa Railroad Land Co. v. Carroll County, 39 Iowa 151 (1874).

3. Refunding.

Not an increase of indebtedness, merely a change in form. Hibbs v. Fenton, 218 Iowa 553, 255 N.W. 688 (1934).

Road bonds - refunding - notice. O.A.G. 1930, p. 353.

Discretion of board of supervisors. O.A.G. 1922, p. 297.

4. Indebtedness subject to limitation.

Refunding bonds do not increase total indebtedness. Aetna Life Ins. Co. v. Lyon County, 44 F. 329 (1890).

Bonds issued for outstanding warrants do not increase indebtedness. Reynolds v. Lyon County, Iowa, 97 F. 155 (1899).

Holder of bond not subrogated to rights of creditors who were paid from the proceeds. Aetna Life Ins. Co. v. Lyon County, Iowa, 95 F. 325 (1899).

Refunding bonds issued to take up prior valid debt are not rendered invalid because in excess of limitations. Aetna Life Ins. Co. v. Lyon County, 44 F. 329 (1890).

When refunding bonds may be invalid in exceeding limitation. Reynolds v. Lyon County, 121 Iowa 733, 96 N.W. 1096 (1903).

Invalid bonds not considered in computing indebtedness. Keene Five-Cent. Sav. Bank v. Lyon County of State of Iowa, 90 F. 523 (1898).

Interest coupons attached to bonds are not part of the principal debt. Duran v. Iowa County, Fed. Cas. No. 4,189, 1 N.W. 69 (1864).

6. Holder for value.

Negotiable bonds issued to satisfy judgment on warrants in excess of limitation were valid in hands of innocent purchasers. Sioux City & St. P. R. Co. v. Osceola County, 45 Iowa 168 (1876). Sioux City & St. P. R. Co. v. County of Osceola, 52 Iowa 26, 2 N.W. 593 (1879).

Bonafide purchaser of bearer bonds, takes free from infirmity in origin of bonds. Cromwell v. Sac County, 96 U.S. 51 (1877).

Evidence did not show bond holder was holder for value. Smith v. Sac County, 78 U.S. 139, 1 Wall. 139 (1870).

7. Constructive notice of irregularities.

Nonpayment of interest installment. Cromwell v. Sac County, 96 U.S. 51 (1877).

Holder of bonds issued in excess of limitation takes with notice of infirmity. McPherson v. Foster Bros., 43 Iowa 48 (1876).

8. Interest and premiums.

County cannot pay compensation other than interest to bank for debts owing to bank. O.A.G. 1919-20, p. 667.

9. Sale or exchange of bonds.

"Upon best available terms" indicates advertising for bids should be done. O.A.G. 1934, p. 639.

"Exchange" as used in section 75.9 applies where funding or refunding bonds issued are to be exchanged with holder of outstanding bonds or judgment. O.A.G. 1932, p. 269.

10. Payment of bonds.

Duty of board of supervisors to levy tax for payment. Sioux City & St. P. R. Co. v. Osceola County, 52 Iowa 26, 2 N.W. 593 (1879).

Section 346.10 does not limit levy that may be made. O.A.G. 1940, p. 489.

11. Voluntary payments of invalid bonds.

Validity of new bonds for others which were void. Lyon County v. Ashuelot Nat. Bank, 87 F. 137 (1898).

12. Estoppel.

Representations did not estop county. Aetna Life Ins. Co. v. Lyon County, 44 F. 329 (1890).

County held to be estopped. Slutts v. Dana, 109 N.W. 794 (Iowa 1906).

346.2 Refunding Bridge Bonds

1. Construction and application.

Building and repairing of bridges is such expense and indebtedness for which bonds may be issued. Slutts v. Dana, 138 Iowa 244, 115 N.W. 1115 (1908).

2. Payment of bonds.

Supervisors had authority to repair bridges despite budget limitation. O.A.G. 1948, p. 47.

346.3 Rate of Interest - Form of Bond

1. Construction and application.

For annotations, see I.C.A.

346.4 Provisions Applicable

1. Procedure for issuance.

Negotiation refunding bonds presumed issued according to law. Keene Five-Cent Sav. Bank v. Lyon County, Iowa, 97 F. 159 (1899).

2. Notice of sale.
Must be published and bids taken unless bonds are to be exchanged for debts outstanding as evidenced by bonds or warrants or judgment. O.A.G. 1932, p. 269.

346.5 Bonds - Negotiation of - Duties of Treasurer

1. Sale of bonds.
County could not contract for the exchange of outstanding warrants for funding bonds yet to be issued by supervisors. O.A.G. 1934, p. 460.
Contracts by which bank agreed to cash county warrants at par and county would issue funding bonds and exchange them at par with interest for warrants to accumulate was illegal. O.A.G. 1922, p. 297.

2. Duties of treasurer.
To sell or exchange bonds on best possible terms. O.A.G. 1922, p. 297.

346.6 Proceeds - How Applied

1. Construction and application.
Funding bonds not to be sold on contract before issuance of such bonds to take up warrants not yet issued for indebtedness not incurred. O.A.G. 1919-20, p. 668.

2. Innocent holders for value.
For annotations, see I.C.A.

3. Unlawful diversion of funds.
For annotations, see I.C.A.

346.7 Record of Bonds Sold and Transferred (No Annotations)

346.8 Treasurer to Report Bonds Sold (No Annotations)

346.9 Unconstitutional Issue

1. Construction and application.
Issuance of funding bonds for valid indebtedness not prohibited by section 346.9. Hibbs v. Fenton, 218 Iowa 553, 255 N.W. 688 (1934).

2. Refunding bonds, issuance of.
Exchange of refunding bonds for valid debts does not increase indebtedness. Hibbs v. Fenton, 218 Iowa 553, 255 N.W. 688 (1934).

346.10 Tax for Bonded Indebtedness

1. Construction and application.
This section not limitation on amount of levy that may be made for funding and refunding the bonds. O.A.G. 1940, p. 489.

2. Exceptions.
For annotations, see I.C.A.

CHAPTER 355

LAND SURVEYS

355.1 County Surveyor - Appointment and Duties

1. Construction and application.

County boards of supervisors have only powers expressly conferred by statute are impliedly so conferred. Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

Applicant desiring engineer to stake out and make survey in connection with designation of location of new lines may use provisions of this section. O.A.G. 1938, p. 315.

355.2 Field Notes of Original Survey

1. Construction and application.

Auditor proper custodian of copy of government field notes and they are admissible in evidence when certified by him as required by law. Keller v. Harrison, 139 Iowa 383, 116 N.W. 327 (1908).

When surveys differ, county supervisors should be governed by transcript of sealed notes of governmental survey found in auditors office. O.A.G. 1898, p. 167.

355.3 Corners

1. Construction and application.

A surveyor may set concrete or iron pin to establish a corner, and such pin constitutes a permanent monument. O.A.G. May 10, 1974.

355.4 Rules to be Followed

1. Construction and application.

Boundaries established by government survey, whether right or wrong, control over survey of county surveyor. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

Locating original government quarter section corner. Leathers v. Oberlander, 139 Iowa 179, 117 N.W. 30 (1908).

Surveys to be in accord with rules established by congress. Hootman v. Hootman, 133 Iowa 632, 111 N.W. 60 (1907).

Method of determining center of section which had not been fixed by government survey. Gerke v. Lucas, 92 Iowa 79, 60 N.W. 538 (1894).

Where a given number of acres are sold out of a corner of quarter section, premises should be surveyed into a square. Morris' Adm'rs v. Stuart's Adm'rs, 1 G. Greene 375 (1848).

2. Apportionment of excess or deficiency.

Variances to be distributed between the several subdivisions of the whole line in proportion to their respective length. Moreland v. Page, 2 Iowa 139, 2 Clarke 139, error dismissed, 61 U.S. 522, 20 How. 522, 15 L. Ed. 1009 (1855). Newcomb v. Lewis, 31 Iowa 488 (1871).

Proportioning excess acreage between purchasers. Hootman v. Hootman, 133 Iowa 632, 111 N.W. 60 (1907).

355.5 Record Furnished - Presumptive Evidence

1. Construction and application.

A surveyor may set a concrete or iron pin to establish a corner, and such pin constitutes a permanent monument. O.A.G. May 10, 1974.

Where original plat was unimpeached boundary lines accepted as true regardless of variations appearing in later surveys. Ross v. Myerly, 237 Iowa 1126, 24 N.W.2d 577 (1946).

Plat made by county surveyor properly identified and more than thirty years old was competent as an "ancient document". Plattsmouth Bridge Co. v. Globe Oil & Refining Co., 232 Iowa 1118, 7 N.W.2d 409 (1943).

Evidence of survey of highway by public surveyor was sufficient to establish location of highway, and to show obstruction was within highway. Webster County v. Wasem Plaster Co., 188 Iowa 1158, 174 N.W. 583 (1919).

Record of field notes and plat of county surveyor not a record of any link in chain of title. Keller v. Harrison, 151 Iowa 320, 128 N.W. 851 (1910), Ann. Cas. 1913A, 300, rehearing denied, 151 Iowa 320, 131 N.W. 53, Ann. Cas. 1913A, 300.

2. Presumption of correctness.

County surveyor's plat showing river channel and land bordering thereon as accretion land subject to taxation was presumptive evidence that it was privately owned. Plattsmouth Bridge Co. v. Globe Oil & Refining Co., 232 Iowa 1118, 7 N.W.2d 409 (1943).

Evidence held sufficient to overcome presumptive correctness of county survey. McAninch v. Hulse, 113 Iowa 58, 84 N.W. 914 (1901).

Presumption of correctly made survey. Strait v. Cook, 46 Iowa 57 (1877).

3. Parol testimony.

Parol evidence of location of original monuments and corners of government survey was sufficient to overcome plats and field notes of government survey which differed as to location of corners and lines. Rowell v. Clark, 119 Iowa 299, 93 N.W. 280 (1903).

Parol testimony of unrecorded survey, not clearly shown to have been made with knowledge of the parties was not given presumption of correctness. McAninch v. Hulse, 113 Iowa 58, 84 N.W. 914 (1901).

355.6 Record Book (No Annotations)

355.7 Record (No Annotations)

355.8 Chainmen (No Annotations)

355.9 Witnesses - Fees (No Annotations)

355.10 Right to Enter upon Land (No Annotations)

355.11 Damages - Procedure (No Annotations)

355.12 Tender (No Annotations)

355.13 Costs (No Annotations)

355.14 Federal Surveys - Defacement (No Annotations)

355.15 Fees (No Annotations)

358A.4 Areas and Districts

1. Validity.

Zoning ordinance provision directing zoning board of adjustment to interpret boundary of two districts in case of variance. Zilm v. Zoning Bd. of Adjustment, Polk County, 260 Iowa 787, 150 N.W.2d 606 (1967).

2. In general.

Zoning decisions are exercise of police power to promote health, safety, order and morals of society. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

This section authorizes the county board of supervisors to divide a portion of county into zoning districts without so dividing the entire county. O.A.G. August 7, 1967.

Establishment of zoning districts is a legislative function, delegated by state legislature to county board of supervisors who may not in turn delegate function to zoning board of adjustment. Zilm v. Zoning Bd. of Adjustment, Polk County, 260 Iowa 787, 150 N.W.2d 606 (1967).

3. Boundary lines.

Fixing of boundary between two adjoining zoning districts. Zilm v. Zoning Bd. of Adjustment, Polk County, 260 Iowa 787, 150 N.W.2d 606 (1967).

Under zoning ordinance providing that "boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines" boundary line of abutting districts was center line of avenue which divided districts. Jersild v. Sarcone, 260 Iowa 288, 149 N.W.2d 179 (1967).

Zoning commission has authority to make recommendations as to boundaries of zoning districts within counties and to recommend appropriate regulations under section 358A.8 but does not have enforcement authority. O.A.G. August 7, 1967.

4. Setback lines.

Zoning ordinance providing for building or setback lines must be reasonable, clear and unambiguous, uniform in operation and not unfairly discriminatory. Jersild v. Sarcone, 260 Iowa 288, 149 N.W.2d 179 (1967).

5. Review.

Court in reviewing order of zoning board of adjustment could not substitute its judgment for that of board. Zilm v. Zoning Board of Adjustment, Polk County, 260 Iowa 787, 150 N.W.2d 606 (1967).

358A.5 Objectives

1. Construction and application.

Whether board has zoned in accordance with comprehensive plan. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

Authority for board of supervisors to adopt subdivison ordinances exists in chapter 358A, and the requirements of notice and hearings set out therein must be followed. O.A.G. November 15, 1978.

Section 306.21 does not provide the board with authority to adopt such ordinances without notice and hearing. Id.

Counties establishing county zoning must have a "comprehensive plan" which is a general statement of policy of the result to be achieved in the community as a whole. O.A.G. July 14, 1972.

2. Spot zoning.
Validity. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

358A.6 Public Hearings

1. Construction and application.
Formal evidentiary hearing before county board of supervisors not required. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

Authority for board of supervisors to adopt subdivision ordinances exists in chapter 358A and the requirements of notice and hearing set out therein must be followed. O.A.G. November 15, 1978.

Section 306.21 does not provide the board with authority to adopt such ordinances without notice and hearing. Id.

Statutory requirement of public hearing prior to zoning change is mandatory and jurisdictional. Bowen v. Story County Bd. of Sup'rs, 209 N.W.2d 569 (Iowa 1973).

Public hearings must be held by the zoning commission and by the board of supervisors prior to adoption of zoning regulations, restrictions or effecting the change of district boundaries. O.A.G. February 1, 1971.

2. Type of hearing.
Type of hearing contemplated by this section governing public hearings held by county board of supervisors in making rezoning decision is of comment-argument type. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

3. Review.
Limited scope of review applicable to determine whether decision of board to rezone was fairly debatable. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

358A.7 Changes and Amendments

1. In general.
Statutory requirement of public hearing prior to zoning change is mandatory and jurisdictional. Bowen v. Story County Bd. of Sup'rs, 209 N.W.2d 569 (Iowa 1973).

Board of adjustment does not have jurisdiction to hear and adjudicate appeal from action of board of supervisors changing zoning classification. Boomhower v. Cerro Gordo County Bd. of Adjustment, 163 N.W.2d 75, (Iowa 1968).

358A.8 Commission Appointed

1. Construction and application.
Members of county zoning commission appointed by county board of supervisors to make independent recommendations to board concerning property boundaries, and regulations or restrictions related thereto. O.A.G. June 30, 1980.

No incompatibility in functions of zoning board of adjustment and county fair board. O.A.G. December 31, 1968 (No. 68-12-24).

358A.16 Decision (No Annotations)

358A.17 Vote Required (No Annotations)

358A.18 Petition to Court

For annotations, see I.C.A.

358A.19 Review by Court

For annotations, see I.C.A.

358A.20 Record Advanced (No Annotations)

358A.21 Trial to Court

For annotations, see I.C.A.

358A.22 Precedence (No Annotations)

358A.23 Restraining Order (No Annotations)

358A.24 Conflict with other Regulations

1. In general.

County zoning regulations do not apply to land acquired and maintained by the state for governmental purposes. O.A.G. October 23, 1973.

358A.25 Zoning for Family Homes

1. In general.

County zoning pursuant to chapter 358A is required to adopt agricultural land preservation ordinance pursuant to zoning authority before imposing restriction on land, the county which has not adopted said zoning may not adopt agricultural land preservation ordinance. O.A.G., May 4, 1983.

358A.26 Penalty

1. In general.

County is "municipal corporation" for purpose of enacting zoning ordinances pursuant to statutory authority and comes within purview of section 366.1 giving municipal corporations power to enforce obedience to their ordinances. Wapello County v. Ward, 257 Iowa 1231, 136 N.W.2d 249 (1965).

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

362.2 Definitions

1. Construction and application - in general.

Civil service commissions sole prerogative to give promotional examinations does not constitute authority to establish promotional qualifications. Bryan v. City of Des Moines, 261 N.W.2d 685 (Iowa 1978).

Street construction and repair and sewage collection and disposal constitute local affairs which cities are authorized to handle under home rule amendment. Green v. City of Cascade, 231 N.W.2d 882 (Iowa 1975).

5. Dual Office Holding.

Positions of county attorney and city attorney are incompatible. O.A.G., July 14, 1976.

7. Street intersections.

While city street intersections with other roads and local service-street facilities may be established or constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the state highway commission incorporating one with the other. O.A.G. April 4, 1969.

362.5 Contract Defined

8. Effect of violation of statute.

Ordinance of an incorporated town vacating a highway was void because of interest of councilmen voting for it. Kreuger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.1 Scope

1. Validity.

Provision of home - rule act that a city may, except as expressly limited by the constitution, exercise any power and perform any function which it deems appropriate does not, on its face, violate state constitutional provision vesting the legislative authority of the state in the general assembly. Green v. City of Cascade, 231 N.W.2d 882 (Iowa 1975).

2. Construction and application.

Municipality acts in representative capacity for abutting property owners in special assesment proceeding for street improvements. Sioux City v. Western Asphalt Paving Corporation, 223 Iowa 279, 271 N.W. 624 (1937).

3. Nature of municipalities.

For annotations, see I.C.A.

4. Municipal powers generally.

For annotations, see I.C.A.

5. Legislative power over municipalities.

Where the fee of the streets is in the city for the use and benefit of the public, general assembly has control thereof, and may prescribe terms and conditions on which public may use same. Sears v. Marshalltown Street Ry. Co., 65 Iowa 742, 23 N.W. 150 (1885).

For additional annotations, see I.C.A.

6. Delegation of power to city, generally.

Cities and towns derive their power and authority by virtue of statute, and may exercise only such powers as are granted or are necessarily incident thereto. City of Ames v. Olson, 253 Iowa 983, 114 N.W.2d 904 (1962).

82. Condemnation.

Right of owners of property abutting on street to ingress and egress from their premises by way of such street is a property right, which cannot be denied without just compensation. Hathaway v. Sioux City, 57 N.W.2d 228 (Iowa 1953).

Payment of cost of street widening and change of grade by assessment of a benefited property. Midwest Securities Corporation v. City of Des Moines, 200 Iowa 245, 202 N.W. 565 (1925).

Where city council establishes new street grade, but annuls appraisement of damages, property owner may obtain action against city. Hempstead v. City of Des Moines, 52 Iowa 303, 3 N.W. 123 (1879).

In proceedings to assess damages to property by reason of location of street thereon, witnesses testifying to value not required to be experts. Town of Cherokee v. Sioux City & I.F. Town Lot & Land Co., 52 Iowa 279, 3 N.W. 42 (1879).

In action for damages against municipal corporation for injuries sustained by reason of change of grade of street, opinions of witnesses as to value of property before and after change are admissible. Dalzell v. City of Davenport, 12 Iowa 437 (1861).

Ordering of improvement in manner provided by statute is condition precedent to right to condemn property and proceed to construct improvement. O.A.G. 1925-26, p. 245.

83. Appeal, condemnation.

Only question involved in eminent domain procedure is value of property taken and only appeal that can be taken is from award of damages. Stellingwerf v. Lenihan, 85 N.W.2d 912 (Iowa 1957).

84. Improvements, generally.

Power to regulate and improve roads and highways given by statute to city government does not carry with it right to condemn and open them, or take away the general power conferred upon county court to establish highways. Knowles v. City of Muscatine, 20 Iowa 248 (1866).

Toll bridges in city. Clark v. City of Des Moines, 19 Iowa 199 (1865). Mullarky v. Town of Cedar Falls, 19 Iowa 21 (1865).

Council of incorporated city may, under general power to cause streets thereof to be "paved, graded or macadamized," cause sidewalks of plank, or other material, in its discretion, to be constructed. Burlington & M.R.R. Co. v. Spearman, 12 Iowa 112 (1861).

85. Streets and alleys - in general.

Abutting owner assessed for paving not entitled to credit for old curb and gutter torn up. Goldsmith v. Sac City, 198 Iowa 1103, 199 N.W. 983 (1924).

Property owner entitled to be heard on question of whether her land was adjacent to an improvement. Hauge v. City of Des Moines, 197 Iowa 907, 196 N.W. 68 (1923).

Adjacent property benefited by opening and extending of a street was properly assessed, though more than half way from the improved street to the next street. Royal v. City of Des Moines, 195 Iowa 23, 191 N.W. 377 (1923).

Where plat was made of land dividing it into lots, streets, and alleys prior to incorporation of town embracing the land platted, streets and alleys became county roads. Chrisman v. Brandes, 137 Iowa 433, 112 N.W. 833 (1907).

Act authorizing and creating roads refers not only to roads and highways, but also to roads which lie within limits of cities and towns. City of Newton v. Board of Sup'rs of Jasper County, 135 Iowa 27, 112 N.W. 167 (1907).

Board of supervisors not authorized to lay out highway over land within limits of a corporate town. Gallaher v. Head, 72 Iowa 173, 33 N.W. 620 (1887).

86. Contracts and contractors, streets and alleys.

A Contract to keep pavement of street in repair provided that repairs should be made on notice from city engineer and street committee. American Bonding Co. of Baltimore v. City of Ottumwa, 137 F. 572 (1905).

Contractor's statutory bond to repair pavement must be measured by statute and not by wording of bond. Charles City v. Rasmussen, 210 Iowa 841, 232 N.W. 137 (1930).

Contractor and bondsman not liable under statutory bond for ordinary wear and tear on the pavement. Id.

Evidence that repairs to pavement were made for cause for which contractor was not liable, held not to give city counterclaim against assignee of contract. Central Trust Co. v. City of Des Moines, 205 Iowa 742, 218 N.W. 580 (1928).

For additional annotations, see I.C.A.

87. Water supply.
For annotations, see I.C.A.

88. Sidewalks.
For annotations, see I.C.A.

108. Weeds, destruction of.
Primary duty upon cities and towns to destroy all noxious weeds growing within parkings, streets and alleys in corporate limits, and other weeds growing therein as render streets and alleys unsafe for public travel. O.A.G. 1938, p. 802.
Weed law had no application to extermination of ordinary or other than noxious weeds within corporate limits of cities and towns. O.A.G. 1938, p. 408.

262. Use of streets and alleys, generally.
Right to use streets is given alike to all citizens, and includes full width and length thereof. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).
Care and control of streets and sidewalks vested in municipalities, and they may adopt ordinances in pursuance of such power. Pugh v. City of Des Moines, 176 Iowa 593, 156 N.W 892 (1916).

383. Public works.
Municipal corporation liable for careless or neglect of agents in construction of public works. Templin v. Iowa City, 14 Iowa 59 (1862).
City which constructed bridge according to competent engineers' specifications not liable for damages. Wm. Tackberry Co. v. Simmons Warehouse Co., 170 Iowa 203, 152 N.W. 779 (1915).
City undertaking construction and maintenance of public work assumes performance of ministerial function. Hines v. City of Nevada, 150 Iowa 620, 130 N.W. 181 (1911).

384. Improvements, generally.
Engineering expertness not imputed to members of city council. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

388. Streets, alleys and sidewalks.
Municipality's duty to maintain streets and alleys does not relieve property owners or others from duty not to obstruct them so as to endanger safety of public rightfully using them nor from liability for damage occasioned thereby. Smith v. J.C. Penney Co., 260 Iowa 573, 149 N.W.2d 794 (1967).
City must exercise reasonable and ordinary care to maintain streets in safe condition for travel in the usual and ordinary modes of travel, which includes use by pedestrians. Engman v. City of Des Moines, 255 Iowa 1039, 125 N.W.2d 235 (1964).
Negligent maintenance of extension of primary road system in city. Smith v. City of Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).
Municipality under duty to remove ice and snow from sidewalks, but no corresponding duty in reference to streets and highways, and hence, municipality not generally liable to respond in damages for injuries sustained by reason of accumulation of ice and snow in traveled portion of streets. Bahner v. Des Moines, 230 Iowa 13, 296 N.W. 728 (1941).

Smoothing down private at juncture with street did not make city liable for maintenance thereof as city road. Archip v. Sioux City, 213 Iowa 1198, 241 N.W. 300 (1932).

City's duty to maintain street in reasonably safe condition for travel not affected by fact that defective grade in street was constructed by county, and constituted an approach to a bridge. Whitlatch v. City of Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

Owner of property which is depreciated permanently in value by carelessness in improvement of street may recover damages. Cotes v. City of Davenport, 9 Iowa 227 (1859).

364.2 Vesting of Power

115. Use of streets, generally.

Electric company was authorized to maintain high voltage transmission line on streets. Dilley v. Iowa Public Service Co., 210 Iowa 1332, 227 N.W. 173 (1929).

Location of telephone pole between curb and sidewalk was not necessarily a nuisance. Greenland v. City of Des Moines, 206 Iowa 1298, 221 N.W. 953 (1928).

City not entitled to compensation for use of its streets. City of Des Moines v. Iowa Telephone Co., 181 Iowa 1282, 162 N.W. 323 (1917).

Municipality has power to regulate placing of telephone poles in streets. Wendt v. Incorporated Town of Akron, 161 Iowa 338, 142 N.W 1024 (1913).

Authorization for the construction of telephone or telegraph lines along public roads. Farmers' Telephone Co. of Quimby v. Town of Washata, 157 Iowa 447, 133 N.W. 361 (1911).

No telephone company authorized to locate, erect or maintain its poles along streets and public highways of city or town unless it received a franchise therefor from the city or town. O.A.G. 1904, p. 316.

116. Rental for streets.

For annotations, see I.C.A.

117. Street railways, generally.

For annotations, see I.C.A.

364.3 Limitation of Powers

For annotations, see I.C.A.

364.4 Property Right

For annotations, see I.C.A.

364.5 Joint Action - League of Municipalities

For annotations, see I.C.A.

364.6 Procedure

For annotations, see I.C.A.

364.7 Disposal of Property

2. In general.

Urban renewal property acquired and demolished. O.A.G., November 22, 1978.

Municipality may deed property on vacating street. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1920).

City acquires fee simple title of land dedicated for street use, but when land is dedicated with limitations on the dedication and city accepts the plat as dedicated, such action is not void and the limitations have been recognized. Leverton v. Laird, 190 N.W.2d 427 (Iowa 1971).

City has wide discretion in opening, control and vacation of streets and alleys, and interference with that discretion by courts is justified only in a clear case of arbitrary and unjust exercise of discretion. Stoessel v. City of Ottumwa, 227 Iowa 1021, 289 N.W. 718 (1940).

Town acquired title to allegedly dedicated street, had authority to vacate it, and could convey title to individuals only if street was properly accepted, opened and used by the public. Patrick v. Cheney, 226 Iowa 853, 285 N.W. 184 (1939).

City may vacate street and make use of the ground for any legitimate purpose not constituting a nuisance. Walker v. City of Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

7. Exchange.

Highway commission and county board of supervisors not authorized to exchange land. O.A.G. October 16, 1972.

364.8 Overpasses or Underpasses

For annotations, see I.C.A.

364.9 Flood Control - Railway Tracks

For annotations, see I.C.A.

364.10 Repealed by Acts 1976 (66 G.A.) ch. 1183, § 98.

364.11 Street Construction by Railways

1. Validity.

Street railway's duty to pave between tracks not invalid. Marshalltown Light, Power & Ry. Co. v. City of Marshalltown, 127 Iowa 637, 103 N.W. 1005 (1905).

Paving requirement between rails. Sioux City St.R. Co. v. Sioux City, 78 Iowa 742, 39 N.W. 498 (1888).

For additional annotations, see I.C.A.

2. Construction and application.

"Railroad" as distinquished from "street railway". Des Moines City R. Co. v. City of Des Moines, 183 Iowa 1261, 159 N.W. 450 (1916).

Railway companies to construct and repair street improvements between rails of their tracks and foot outside thereof. O.A.G. 1934, p. 362.

3. Street railways.

Street railway's duty to pave between tracks not invalid. Marshalltown Light, Power & R. Co. v. City of Marshalltown, 127 Iowa 637, 103 N.W. 1005 (1905).

Street railway not properly assessable for portion of cost of paving. Ft. Dodge Electric Light & Power Co. v. City of Ft. Dodge, 115 Iowa 568, 89 N.W. 7 (1902).

For additional annotations, see I.C.A.

4. Grades.
For annotations, see I.C.A.

5. Crossing.
For annotations, see I.C.A.

6. Forfeiture.
For annotations, see I.C.A.

7. Limitations.
Statute of limitations will not run to defeat the right of a city, in the exercise of its governmental powers, to open and use a disused crossing over a railroad right of way. Chicago R.I. & P.Ry. v. City of Council Bluffs, 109 Iowa 425, 80 N.W. 564 (1899).

8. Contracts.
For annotations, see I.C.A.

9. Notice.
For annotations, see I.C.A.

10. Lien.
For annotations, see I.C.A.

11. Assessment certificates.
For annotations, see I.C.A.

12. Right of action.
For annotations, see I.C.A.

13. Defenses.
For annotations, see I.C.A.

14. Burden of proof.
For annotations, see I.C.A.

15. Evidence.
For annotations, see I.C.A.

16. Decree or judgment.
For annotations, see I.C.A.

17. Interest.
For annotations, see I.C.A.

18. Conclusiveness of adjudication.
For annotations, see I.C.A.

19. Equitable relief.
For annotations, see I.C.A.

20. Repeals.
For annotations, see I.C.A.

364.12 Responsibility for Public Places

I. IN GENERAL

1. Construction and application.

Duty of governmental body to maintain streets or highways includes duty to repair. Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976).

Negligence of state in failing to eliminate hazard. Posting "bump" sign did not excuse duty to repair. Id.

Section giving city care and control of public places does not make city insurer of safety of users of its streets and places, but does impose different standard of care than rests upon private owners. Lindstrom v. Mason City, 256 Iowa 83, 126 N.W.2d 292 (1964).

Maintenance and repair of streets is a governmental function rather than a proprietary one. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 784 (1957).

Municipal councils exercise large discretion in control of streets, but unreasonable and arbitrary exercise thereof may be restrained. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Where the title to the fee of a street is in the city, that title carries with it the obligation to keep the street in repair, free from obstructions, and reasonably safe. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188 (1915).

2. Drains and sewers - in general.

As an incident to empowering municipalities to open, grade, pave, curb and otherwise improve their streets, alleys and highways, surface water could, in some degree, be diverted from its natural course. Cole v. City of Des Moines, 212 Iowa 1270, 232 N.W. 800 (1930).

Injury to lot by overflow of surface water - improving city streets. Hoffman v. City of Muscatine, 113 Iowa 332, 85 N.W. 17 (1901).

Drain tiles and street drainage. Eggert v. Templeton, 113 Iowa 266, 85 N.W. 19 (1901).

9. Railroad crossings and right of way.

City seeking to require railroad to abandon right of way along certain street within city because of traffic problem had right to apply to Interstate Commerce Commission for abandonment of such portion of line. City of Des Moines, Iowa v. Chicago & N.W. Ry. Co., 159 F. Supp. 223 (1958).

II. TORTS

101. Nature of tort liability.

Municipality liable for failure of street maintenance or for negligent street construction. Mardis v. City of Des Moines, 34 N.W.2d 620 (Iowa 1948).

Municipality cannot be held liable for inability to protect citizens against all accidents occurring in streets for reasons other than defect therein. Armstrong v. Waffle, 212 Iowa 335, 236 N.W. 507 (1931).

An organized town cannot surrender the control of its streets, so as to escape obligation to keep the same in a reasonably safe condition. Humboldt County v. Incorporated Town of Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

Injuries resulting from negligent failure to barricade or light a trench dug in the street. Spurling v. Incorporated Town of Stratford, 195 Iowa 1002, 191 N.W. 724 (1923).

City could not escape liability for defect in street on fact that defect did not amount to a nuisance. Raine v. City of Dubuque, 169 Iowa 388, 151 N.W. 518 (1915).

Municipal corporation liable for injuries resulting from defective streets. Bills v. City of Ottumwa, 35 Iowa 107 (1872).

City liable for personal injuries resulting from defective condition of roads and bridges within its corporate limits. Rusch v. City of Davenport, 6 Iowa 443 (1858).

102. Duty to repair or maintain.

Cities and towns have care, supervision, and control of all public streets and alleys and duty to keep them open and free from nuisances. Smith v. J.C. Penney Co., 260 Iowa 573, 149 N.W.2d 794 (1967).

Duty of city is only to maintain streets in reasonably safe condition, no liability for consequences which could not be reasonably forseen. McCormick v. Sioux City, 243 Iowa 35, 50 N.W.2d 564 (1952).

For additional annotations, see I.C.A.

103. Care required of municipality.

City is not insurer of safety of travelers on streets, but is required to use ordinary and reasonable care to keep streets in safe condition. Abraham v. Sioux City, 218 Iowa 1068, 250 N.W. 461 (1933).

Failure on part of city or town to exercise reasonable care. Fetters v. City of Des Moines, 260 Iowa 490, 149 N.W.2d 815 (1967).

Municipal corporation in exercise of powers and duties delegated by legislature, are held to strict observance of this section dealing with care in control of streets and public grounds. Lindstrom v. Mason City, 256 Iowa 83, 126 N.W.2d 292 (1964).

This section requires city to exercise reasonable and ordinary care to maintain streets in a safe condition. Pietz v. City of Oskaloosa, 250 Iowa 374, 92 N.W.2d 577 (1958).

Care and control of streets and sidewalks vested in municipalities, and they may adopt ordinances in pursuance of such power which are reasonable and do not conflict with state laws or violate private rights. Pugh v. City of Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

For additional annotations, see I.C.A.

104. Governmental functions.

Town council of municipality has discretion to adopt plan for street construction recommended by competent engineer. Dodds v. Town of West Liberty, 225 Iowa 506, 281 N.W. 476 (1938).

For additional annotations, see I.C.A.

105. Property owners, liability of.

For annotations, see I.C.A.

106. Person causing defects or dangerous condition, liability of.

Duty to exercise due care to avoid injuring members of traveling public using streets rests not only on municipality but on others making excavations in or near streets. Leonard v. Mel Foster Co., 244 Iowa 1319, 60 N.W.2d 532 (1953).

Water company granted right to use streets of city for construction of water system has duty of seeing that instrumentalities by which it distributes its water supply to patrons be constructed and maintained with reasonable care for safety of those using street. City of Des Moines v. Des Moines Water Co., 188 Iowa 24, 175 N.W. 821 (1920).

Person making excavation in street liable for injuries to third persons resulting from failure to erect suitable barriers. City of Ottumwa v. Parks, 43 Iowa 119 (1876).

107. Places to which liability extends - in general.

Negligent maintenance of extension of primary road system in city. Smith v. City of Algona, 232 Iowa 362, 5 N.W.2d 625 (1942).

Smoothing down private road at juncture with street did not make city liable for maintenance thereof as city road. Archip v. Sioux City, 213 Iowa 1198, 241 N.W. 300 (1932).

City, although creating allegedly dangerous condition in private road, was not liable for death allegedly caused thereby because city failed to place barrier across road at intersection with public street. Id.

Control and supervision of municipal streets confided to municipal councils, and it is there duty to maintain and free from nuisances and obstructions, and their power extends to areaways. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

Organized town cannot surrender control of its streets. Humboldt County v. Incorporate Town of Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

Public right in street extends upward - overhead structure was nuisance and municipality liable for injuries resulting therefrom. Wheeler v. City of Ft. Dodge, 131 Iowa 566, 108 N.W. 1057 (1906).

For additional annotations, see I.C.A.

108. Unopened, unimproved or partially opened streets.

Duty of municipality to use reasonable diligence to keep streets free from obstructions applies only to parts of streets dedicated to vehicular traffic. Morse v. Incorporated Town of Castana, 213 Iowa 1225, 241 N.W. 304 (1932).

For additional annotations, see I.C.A.

109. Parks.

The provision that cities shall keep highways, streets, avenues, alleys, public squares and commons open and in repair and free from nuisance, includes parks. Woodard v. City of Des Moines, 182 Iowa 1102, 165 N.W. 313 (1917).

For additional annotations, see I.C.A.

110. Property adjacent to street.

Duty imposed by statute on cities and towns of maintaining streets and sidewalks in reasonably safe condition does not relieve property owners or others from duty not to obstruct or place dangerous instrumentalities thereon. Beyer v. City of Dubuque, 258 Iowa 476, 139 N.W.2d 448 (1966).

For additional annotations, see I.C.A.

111. Cause of, or responsibility for, defect or dangerous condition.

City's duty to maintain street in reasonably safe condition is not affected by fact that defective grade in street was constructed by county, and constituted an approach to a bridge. Whitlatch v. City of Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

Excavations in principal streets of a city made under direction of street commissioner and foreman in accordance with survey and plat by city engineer. Millard v. Webster City, 113 Iowa 220, 84 N.W. 1044 (1901).

For additional annotations, see I.C.A.

112. Time allowed for making repairs or eliminating defects.

Municipality's duty to maintain streets in reasonably safe condition for travel includes, when necessary, erection of barriers or guardrails along grades and at dangerous places. Whitlatch v. City of Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

City not negligent per se in leaving pile of dirt on street for use in repairing pavement. Ferguson v. City of Des Moines, 197 Iowa 689, 198 N.W. 40 (1924).

Duty of city to place signal light at danger point to warn travelers. Kendall v. City of Des Moines, 183 Iowa 866, 167 N.W. 684 (1918).

City not negligent in warning or guarding travelers against sewer excavation. Frohs v. City of Dubuque, 169 Iowa 431, 150 N.W 62 (1914).

For additional annotations, see I.C.A.

113. Nature of defects - in general.

Height of elevation or depth of depression not decisive determinants on question of liability. Beach v. City of Des Moines, 238 Iowa 312, 26 N.W.2d 81 (1947).

Where plans prepared by engineer for construction of alley intersection were not obviously defective, no negligence of city in adopting the plans. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Whether defect in public street so dangerous as to constitute negligence on part of city depends upon surrounding circumstances. Thomas v. City of Ft. Madison, 225 Iowa 822, 281 N.W. 748 (1938).

For additional annotations, see I.C.A.

114. Streets, construction or condition.

City not liable for injuries resulting from city's adoption of an improper plan for improvement of a street due to error of judgment on part of engineer, unless plan obviously so hazardous that it would be considered hazardous as a matter of law. Dodds v. Town of West Liberty, 255 Iowa 506, 281 N.W. 476 (1938).

City not liable for engineer's preparation of approach. Griffin v. City of Marion, 163 Iowa 435, 144 N.W. 1011 (1914).

Construction of an approach from a street to a sidewalk at a slope of one foot in seven is not negligence per se. Lush v. Incorporated Town of Parkersburg, 127 Iowa 701, 104 N.W. 336 (1905).

For additional annotations, see I.C.A.

115. Sidewalks or crosswalks, construction or condition.

For annotations, see I.C.A.

116. Depressions or projections.

For annotations, see I.C.A.

117. Excavations.

For annotations, see I.C.A.

118. Notice of injury.

For annotations, see I.C.A.

119. Notice of defects or obstruction.

What constitutes length of time sufficient to constitute constructive notice to municipality of dangerous condition and reasonable opportunity remedy condition is generally a question for the jury. Hovden v. City of Decorah, 261 Iowa 624, 155 N.W.2d 534 (1968).

For additional annotations, see I.C.A.

120. Necessity of notice of defect or obstruction.

While a municipality must exercise ordinary diligence in keeping its streets in repair, it cannot be held negligent until it has notice of the defect complained of, actual or constructive, and an opportunity to remedy. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W. 465 (1922).

For additional annotations, see I.C.A.

121. Officer or agent notified of defect.

For annotations, see I.C.A.

122. Unsafe condition caused by, or under authority of municipality, notice of defect.

For annotations, see I.C.A.

123. Defect in construction or repair.

Notice to city of defect in original construction of street or failure to perform positive duty is conclusively presumed. Whitlatch v. City of Iowa Falls, 199 Iowa 73, 201 N.W. 83 (1924).

Where city gave abutting owner a permit to tear up street, it had notice of dangerous condition of street resulting from digging, and city was charged with nondelegable duty to care for its streets. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W. 465 (1922).

For additional annotations, see I.C.A.

124. Constructive notice of defects or obstructions.

Length of time sufficient to constitute constructive notice of dangerous condition and what constitutes a reasonable opportunity to remedy it - depends on facts and circumstances of each case - question for trier of fact. Anderson v. City of Ft. Dodge, 213 N.W.2d 527 (Iowa 1973).

For additional annotations, see I.C.A.

125. Time of existence of defect or obstruction, constructive notice.

There is no fixed or definite rule as to length of time a defect or obstruction in street must have existed to furnish notice. Each case depends upon facts and circumstances. Parks v. City of Des Moines, 195 Iowa 972, 191 N.W. 728 (1923).

For additional annotations, see I.C.A.

126. Proximate cause of injury.

For annotations, see I.C.A.

127. Contributory negligence - in general.

Pedestrian's contributory negligence not measured by duty owed him by city to maintain street in reasonably safe condition. Engman v. City of Des Moines, 255 Iowa 1039, 125 N.W.2d 235 (1964).

For additional annotations, see I.C.A.

128. Care required, contributory negligence.

Pedestrian to exercise ordinary care to avoid falling on city streets. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Travelers must use reasonable care to avoid injury while using public highway. Corbin v. City of Dubuque, 207 Iowa 1168, 224 N.W. 828 (1929).

For additional annotations, see I.C.A.

129. Knowledge of defect or dangerous condition, contributory negligence.
Mere knowledge of defective condition of public street will not, as a matter of law, render a pedestrian guilty of negligence in using same, unless it was imprudent and dangerous to attempt its use. Taylor v. City of Sibley, 238 Iowa 1010, 29 N.W.2d 251 (1947).
For additional annotations, see I.C.A.

130. Inadvertence or momentary forgetfulness, contributory negligence.
For annotations, see I.C.A.

131. Persons under disability, contributory negligence.
For annotations, see I.C.A.

132. Automobile cases, contributory negligence.
Driver may rely on presumption that municipality performed its duty in maintaining its streets in reasonably safe condition. Spiker v. City of Ottumwa, 193 Iowa 844, 186 N.W 465 (1922).
For additional annotations, see I.C.A.

133. Traveling in nighttime, contributory negligence.
For annotations, see I.C.A.

134. Traveling in nighttime with knowledge of danger, contributory negligence.
For annotations, see I.C.A.

135. Duty to observe defects or dangers, contributory negligence.
For annotations, see I.C.A.

136. Right to assume street is free from defects, contributory negligence.
For annotations, see I.C.A.

137. Choice of ways, contributory negligence.
For annotations, see I.C.A.

III. ACTIONS FOR INJURIES

Subdivision Index

IV. BRIDGES AND CULVERTS

301. Construction and repair of bridges and culverts, generally.

Construction and maintenance of bridges in towns and within cities not controlling their own bridge fund is to be undertaken by the county. O.A.G. 1925-26, p. 265.

City council has authority to narrow or change a public highway established by board of supervisors before the city was incorporated. O.A.G. 1898, p. 124.

For additional annotations, see I.C.A.

302. Charter provisions.

Where town, under its charter, had control of streets, it could contract for construction of free bridges over a stream dividing them. Mullarky v. Town of Cedar Falls, 19 Iowa 21 (1865).

Under Des Moines city charter, city without authority to erect a toll bridge within the city limits. Clark v. City of Des Moines, 19 Iowa 199 (1865).

For additional annotations, see I.C.A.

303. Location of bridges.

City council may locate bridges wherever public necessity requires, without submitting its plans and specifications to river front improvement commission. O.A.G. 1906, p. 191.

304. Culverts.

City bound to exercise reasonable care in construction of culverts rendered necessary by extension of streets. Van Pelt v. City of Davenport, 42 Iowa 308 (1875).

City not liable where it employed a competent engineer in the construction of a culvert. Id.

Where drain is established wholly within a city of second class, board of supervisors should construct such culverts as are reasonably necessary and city such other culverts as it may desire, or it may contribute to construction of county culverts. O.A.G. 1919-20, p. 336.

305. Railroads, grants to.

Grant to railroad company of right to lay and maintain track over a bridge belonging to city. City of Des Moines v. Chicago R.I. & P.R. Co., 41 Iowa 569 (1875).

306. Repair of bridges.

Whether an approach is part of a bridge or viaduct depends on whether the approach is essential to enable travelers to reach the main structure. Shope v. City of Des Moines, 188 Iowa 1141, 177 N.W. 79 (1920).

County has primary responsibility for repair or replacement of bridge on secondary highway extension within corporate limits of municipality of less than 2000 population if the municipality has not enacted ordinance assuming control of bridge. O.A.G. March 30, 1973.

For additional annotations, see I.C.A.

307. Bids for bridges.

Capitol City Brick & Pipe Co. v. City of Des Moines, 127 N.W. 66 (Iowa 1910).

308. Contracts, bridges.

For annotations, see I.C.A.

309. Claims for materials.

For annotations, see I.C.A.

310. Bond of contractor.

For annotations, see I.C.A.

311. Liability for materials.

For annotations, see I.C.A.

312. Care required.

Whether municipality kept bridges safe in proper manner determined by situtation as it existed before, and not after an accident. Bird v. City of Keokuk, 226 Iowa 456, 284 N.W. 438 (1939).

Counties not responsible for keeping sidewalk over a bridge inside a city free from snow, even though bridge was erected by the county. O.A.G. 1919-20, p. 276.

313. Liability for damages.

Municipalities and their officers are, at common law, liable for injuries to travelers resulting from failure to maintain or repair public bridges. Krause v. Davis County, 44 Iowa 141 (1876).

For additional annotations, see I.C.A.

314. Scrip, bridges.

For annotations, see I.C.A.

115. Bridge fund, prior law.

For annotations, see I.C.A.

316. Injunction.

For annotations, see I.C.A.

317. Contributory negligence, bridges.
For annotations, see I.C.A.

318. Actions - bridges, generally.
For annotations, see I.C.A.

319. Presumptions and burden of proof, bridges.
For annotations, see I.C.A.

320. Evidence, bridges.
For annotations, see I.C.A.

321. Jury questions, bridges.
For annotations, see I.C.A.

322. Instructions, bridges.
For annotations, see I.C.A.

V. NUISANCES AND OBSTRUCTIONS

Subdivision Index

VI. STREETS AND PUBLIC GROUNDS

501. Validity.

Provision authorizing cities to vacate and dispose of streets does not violate Const. Art. 3, § 30. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

502. Streets, generally.

Cities and towns have care, supervision and control of all public streets and alleys and duty to keep them open and free from nuisances. Smith v. J.C. Penney Co., 260 Iowa 573, 149 N.W.2d 794 (1967).

Special charter city has power to open and maintain streets and alleys. Heinz v. City of Davenport, 230 Iowa 7, 296 N.W. 783 (1941).

Control and supervision of municipal streets are confined to municipal councils. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

State having full authority and power over public highways in commonwealth, can delegate its reserved powers as to their control to municipal authorities to act for and represent it. Central Life Assur. Soc. of the U.S. v. City of Des Moines, 185 Iowa 573, 171 N.W. 31 (1919).

503. Jurisdiction.

Board of railroad commissioners had no jurisdiction to authorize railroad to abandon overhead bridge in town and to substitute therefore a cinder roadway and crossing. Incorporated Town of Huxley v. Conway, 226 Iowa 268, 284 N.W. 136 (1939).

Control and supervision of municipal streets confined to municipal councils. Mettler v. City of Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

Board of supervisors, in excess of its jurisdiction, ordered vacation of a street in an unincorporated village. Bowersox v. Board of Sup'rs of Johnson County, 183 Iowa 645, 167 N.W. 582 (1918).

Board of supervisors has no jurisdiction to locate a street within the limits of an incorporated town. Philbrick v. Town of University Place, 106 Iowa 352, 76 N.W. 742 (1898).

Jurisdiction of highways within corporate limits resides exclusively in the corporation. Gallaher v. Head, 72 Iowa 173, 33 N.W. 620 (1887).

Board of supervisors has no authority, to alter or change any street within corporate limits of a city. O.A.G. 1923-24, p. 110.

For additional annotations, see I.C.A.

504. Title and rights in streets.

Municipality has fee title to city street but public has only easement in country highway. Clare v. Wogan, 204 Iowa 1021, 216 N.W. 739 (1927).

Municipalities own fee-simple title to streets. Incorporated of Ackley v. Central States Electric Co., 204 Iowa 1246, 214 N.W. 879 (1927).

Title to streets and alleys of city is held by city in trust for public, and council may not dispose of them in disregard of public good. Lerch v. Short, 192 Iowa 576, 185 N.W. 129 (1921).

Land taken or dedicated for streets is subject to the right of the public. Wegner v. Kelley, 157 N.W. 206 (Iowa 1916).

Fee to all streets and alleys in Des Moines is in the city, but in trust for the general public. Walker v. City of Des Moines, 61 Iowa 215, 142 N.W. 51 (1913).

For additional annotations, see I.C.A.

505. Plenary authority as to streets.

In absence of acceptance under some specific reservation, city has plenary authority to control dedicated streets. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

506. Eminent domain.

Statutes authorized city and commission to take or damage homes for purpose of widening public street in relocating primary highway. Gardner v. Charles City, 259 Iowa 506, 144 N.W. 2d 915 (1966).

Sale of vacated street to railroad does not preclude subsequent condemnation to reopen the street. City of Osceola v. Chicago etc. Ry. Co., 196 F. 777 (1912).

City council alone can determine necessity for street or alley, although authority of the council to condemn land therefor may be subject of appeal to district court. Town of Alvord v. Great Northern Ry. Co., 179 Iowa 465, 161 N.W. 467 (1917).

Eminent domain to be used to provide for destruction of property to prevent spreading of fires. Field v. Des Moines, 39 Iowa 575 (1874).

507. Establishment of streets.

Abusive discretion by city in refusing to open street determined by need of general public. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

City council's discretion to determine whether public necessity requires street be opened. Id.

City may "establish" streets or accept dedication of streets to public without being required to open them to public upon request. Id.

Highways through village become streets upon incorporation. Town of Ackley v. Central States Elec. Co., 206 Iowa 533, 220 N.W. 315 (1928).

Meaning of "establish," "lay off", "extend", "open", "improve". Royal v. Des Moines, 195 Iowa 23, 191 N.W. 377 (1923).

Repeal of ordinance vacating alley cannot re-establish the alley. Bradley v. City of Centerville, 139 Iowa 599, 117 N.W. 968 (1908).

Issue of malice in opening a street should not have been submitted to jury. Young v. Gormley, 119 Iowa 546, 93 N.W. 565 (1903).

Witness permitted to testify to intent of council in passing ordinance establishing a street. Strahan v. Town of Malvern, 77 Iowa 454, 42 N.W. 369 (1889).

While city streets intersections with other roads and local service-street facilities may be established or constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the state highway commission incorporating one with the other. O.A.G. April 4, 1969.

508. Prescription or permissive use of land.

See also I.C.A. 614.1.

The fact that land was used as an alley raised no presumption that the owner knew that it was under a claim of right. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

Permissive use of land does not ripen into title a prescriptive right in the city. Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585 (1912).

Statute of limitations may operate in favor of the city. Johnson v. City of Shenandoah, 153 Iowa 493, 133 N.W. 761 (1911).

Must be at least ten years of continuous use by the public. Davis v. Town of Bonaparte, 137 Iowa 196, 114 N.W. 896 (1908).

Statute of limitations does not run to different governmental powers of a city. Chicago etc. Ry. Co. v. Council Bluffs, 109 Iowa 425, 80 N.W. 564 (1899).

509. Street lines, establishment.

Boundary of highway or alley not established by acquiescence. Johnson v. City of Shenandoah, 153 Iowa 493, 133 N.W. 761 (1911).

Acquiescence may be evidence of location of boundary. City of Eldora v. Edgington, 130 Iowa 151, 106 N.W. 503 (1906).

Improvement of property with reference to the street as laid out may be grounds for injunction against alteration. Delashmutt v. City of Oskaloosa, 94 Iowa 722, 62 N.W. 16 (1895).

510. Delegation of power as to streets.

What the Legislature may itself do in regulating and controlling streets of a city, it may delegate to the municipality. Huston v. City of Des Moines, 176 Iowa 455, 156 N.W. 883 (1916).

For additional annotations, see I.C.A.

511. Future needs, streets.

Cities must be able to intelligently plan their streets for future needs. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

512. Width of street.

Supreme Court cannot limit city commission's reasonable discretion in reducing grade to widen street. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Change of grade of street within discretion of the city. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Presumption of legality and bona fides in widening of street. Central Life v. City of Des Moines, 185 Iowa 573, 171 N.W. 31 (1919).

Evidence sustained finding that street was one hundred feet wide. Menoher v. Town of Gravity, 148 Iowa 695, 127 N.W. 1087 (1910).

Council may narrow or change street established by Supervisors prior to incorporation. O.A.G. 1898, p. 124.

513. Level of streets.

As respects liability of city for changing the established grade of a street. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

514. Extending street.

Interference with rights of railroad in street extension. Chicago etc. R. Co. v. Starkweather, 97 Iowa 159, 66 N.W. 87 (1896).

515. Sprinkling of streets.

Authority to improve, care for, supervise and control streets includes authority to sprinkle streets. McAllen v. Hamblin, 129 Iowa 329, 105 N.W. 593 (1906).

516. Improvement of street.

When owner of lot abutting unopened street which has been dedicated and accepted as public street requests city to improve street, city has discretionary power in matter rather than mandatory duty to open and improve it. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Resurfacing of a city street constituted an improvement so as to authorize state highway commission to assist the city in resurfacing from the primary road fund. O.A.G. 1932, p. 194.

See also annotations to sections 389.20 and 391.2.

Street improvement not subject to injunction in absence of proof of fraud. Husson v. City of Oskaloosa, 1240 Iowa 681, 37 N.W.2d 310 (1949).

Reasonable care required of city in regard to streets. Lohr v. Sioux City, 232 Iowa 1140, 7 N.W.2d 781 (1943).

Degree of care required of city in construction of streets. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Character and extent of improvements in discretion of city. Call Bond and Mortgage Co. v. Great Northern Ry. Co., 227 Iowa 142, 287 N.W. 832 (1939).

Liability of city for adoption of an improper plan for street improvement. Dodds v. West Liberty, 225 Iowa 506, 281 N.W. 476 (1938).

Contracts for improvement. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1931). Lee v. City of Ames, 199 Iowa 1342, 203 N.W. 790 (1925). Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Discretion of council in street improvement. Des Moines City Ry. Co. v. Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Subsequent irregularity for which there is a remedy by appeal does not deprive city of jurisdiction for improvement of street. Koontz v. City of Centerville, 161 Iowa 627, 143 N.S. 490 (1913).

Street improvements held not accepted as required in Code 1897, section 870. Gilcrest & Co. v. Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912), petition overruled 139 N.W. 552.

City has duty to improve street to which it acquires title. Talcott Bros. v. Des Moines, 134 Iowa 113, 109 N.W. 311, 12 L. R. A., N.S., 696 (1906).

City may improve that part of a street within its limits. Backman v. Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

Incorporated town could not improve a street without ordinance or resolution so providing. Eckert v. Town of Walnut, 117 Iowa 629, 91 N.W. 929 (1902).

Presumption that council had information upon which to base decision to improve a street. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1879).

517. Damages from improvement of streets.

City was not liable where culverts were too small to allow proper drainage. Cole v. Des Moines, 212 Iowa 1270, 232 N.W. 800 (1930).

Removal of lateral support in improving street not actionable. Corcoran v. City of Des Moines, 205 Iowa 405, 215 N.W. 948 (1927).

Presumption of legality and bona fides in widening of street. Central Life v. City of Des Moines, 185 Iowa 573, 171 N.W. 31 (1919).

No right of city to drain surface waters flowing onto highway and cast it on adjoining land in larger quantities than in natural course. Cheh v. City of Cedar Rapids, 147 Iowa 247, 126 N.W. 166 (1910).

Overflow of water due to change in fill by owner does not render city liable where change in street did not cause extra flow of water. Hoffman v. City of Muscatine, 113 Iowa 332, 85 N.W. 17 (1901).

Cutting down a street on which no grade had been established - abutting property made more difficult of access, retaining wall rendered necessary, and shade trees standing in street are injured. Damages recoverable. Richardson v. City of Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

View of premises by the jury - instructions to jury in regard to information gained by view. Thompson v. City of Keokuk, 61 Iowa 187, 16 N.W. 82 (1883).

Trust deed given to secure a debt does not preclude owner from recovering for damage done to property. Cotes v. City of Davenport, 9 Iowa 227 (1859).

518. Use of streets - in general.

City's duty to exercise ordinary care includes parking areas. Leonard v. Mel Foster Co., 244 Iowa 1319, 60 N.W.2d 532 (1953).

City has no implied right to grant to individuals the right to use the streets for business purposes. Gates v. City Council of Bloomfield, 243 Iowa 1, 50 N.W.2d 578 (1952).

Municipalities have no implied power to grant privileges to use the streets for private purposes. Cowin v. City of Waterloo, 237 Iowa 202, 21 N.W.2d 705 (1946).

Area within limits of streets where they cross railroad right-of-way constituted portion of "street" within law authorizing supervision thereof by town. Ackley v. Central States Electric Co., 206 Iowa 533, 220 N.W. 315 (1928).

Private use of public street preventing free use as public way prohibited by municipality. Pugh v. City of Des Moines, 176 Iowa 593, 156 N.W. 892 (1916).

City cannot authorize perversion of street to private or other uses. Lacey v. City of Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909).

Municipal corporation cannot put streets to use inconsistent with street purposes. Bennett v. Town of Mount Vernon, 124 Iowa 537, 100 N.W. 349 (1904).

Each municipality may decide which of its streets shall be designated "arterial". O.A.G. Dec. 13, 1961.

519. Public utilities, use of streets.

Council of city without power to lease streets and public places thereof for use in maintaining and conducting telephone exchange. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Interurban electric railway has right without consent of city to construct and maintain spur track across street at right angles with consent of abutting owners. Interurban Ry. Co. v. City of Des Moines, 197 Iowa 1398, 199 N.W. 355 (1924).

Telegraph and telephone companies subject to all regulations within police power of state or of municipal corporation - and use of public streets is a matter of police regulation. East Boyer Telephone Co. v. Incorporated Town of Vail, 166 Iowa 226, 147 N.W. 327 (1914).

Municipality has power to regulate placing of telephone poles in streets. Wendt v. Incorporated Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

520. Abutting owners, privileges and restrictions.

For annotations, see I.C.A.

521. Repair of streets.

City has authority to repair or reconstruct paving. Ellyson v. Des Moines, 179 Iowa 882, 162 N.W. 212 (1917).

City not liable for consequential damages resulting from repairing streets if work not negligently done. O'Connell v. City of Davenport, 164 Iowa 95, 145 N.W. 519 (1914).

Where street improvement being made under valid resolution adopted by city, general taxpayer cannot interfere. Shelby v. City of Burlington, 125 Iowa 343, 101 N.W. 101 (1904).

Use of materials within limits of the highway. Overman v. May, 35 Iowa 89 (1872).

City may buy materials to repair streets without advertising for bids. O.A.G. 1932, p. 97.

City may repair only those streets within its limits. O.A.G. 1918, p. 515.

522. Abandonment or estoppel, streets.

No proof to establish relinquishment of permanent control or ownership by town as to constitute abandonment of areas encroached upon. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Facts did not show abandonment of street. DeNefe v. Agency City, 143 Iowa 237, 121 N.W. 1049 (1909). Baker v. Chicago etc. Ry. Co., 154 Iowa 228, 134 N.W. 587 (1912).

Delay in asserting public right does not create an abandonment or estoppel. Kelroy v. Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

Abandonment or estoppel - when it may occur - non user, acquisition of private rights. Brewer v. Claypool, 223 Iowa 1235, 275 N.W. 34 (1937).

City lost right acquired by deed for street purposes by abandonment. Beim v. Carlson, 209 Iowa 1001, 227 N.W. 421 (1929).

Knowledge of claim and adverse possession plus improvements created estoppel. Page etc. Co. v. Clear Lake, 208 Iowa 735, 225 N.W. 841 (1929).

Minor encroachments by fence create no estoppel. Schultz v. City of Oskaloosa, 193 Iowa 781, 187 N.W. 867 (1922).

Failure of public officials to object to encroachment does not, alone, estop a city. Crawford v. City of Winterset, 186 Iowa 297, 172 N.W. 640 (1919).

City not estopped to prevent encroachment by a porch in absence of consent. Herrick v. Moore, 185 Iowa 828, 169 N.W. 741 (1918).

Construction of fence and planting of trees work no estoppel. Kuehl v. Town of Bettendorf, 179 Iowa 1, 161 N.W. 28 (1916).

Conduct of town creates estoppel. Christopherson v. Forest City, 178 Iowa 893, 160 N.W. 691 (1916).

Estoppel created by executed contract. Zollinger v. City of Newton, 172 Iowa 352, 154 N.W. 611 (1915).

Improvement of ground necessary to create estoppel. Schultz v. Stringer, 168 Iowa 668, 150 N.W. 1063 (1915).

Where land is held for many years and improved, town must show right by unequivocal evidence. Martin v. Town of St. Ansgar, 165 Iowa 560, 146 N.W. 47 (1914).

Acquiescence to improvements, which removal would cause damage, creates estoppel. Bridges v. Grand View, 1913, 158 Iowa 402, 138 N.W. 917 (1913). Johnson v. City of Shenandoah, 153 Iowa 493, 133 N.W. 761 (1911).

Thirty years of failure to object created estoppel. Deutsman v. Kuntze, 147 Iowa 158, 125 N.W. 1007 (1910).

Non user, alone, for 10 years does not create estoppel. Burroughs v. Cherokee, 134 Iowa 429, 109 N.W. 876 (1906).

Building fence and planting trees are not, alone, enough to create estoppel. City of Eldora v. Edgington, 130 Iowa 151, 106 N.W. 503 (1906).

Where encroachments are made purposely, city is not estopped. Vorhes v. Town of Ackley, 127 Iowa 658, 103 N.W 998 (1905).

No estoppel against using streets for public purposes. Bennett v. Mt. Vernon, 124 Iowa 537, 100 N.W. 349, (1904).

Long period of non user by city and open possession by abutter, created estoppel. Weber v. Iowa City, 119 Iowa 633, 93 N.W. 637 (1903).

Failure on part of city to object to encroachment may mature into an estoppel. Corey v. Fort Dodge, 118 Iowa 742, 92 N.W. 704 (1902).

Town estoppel to open alley. Blennerhassett v. Forest City, 117 Iowa 680, 91 N.W. 1044 (1902).

Fact that city taxed the property does not estop city from claiming it had become a public street. Hull v. Cedar rapids, 111 Iowa 466, 83 N.W. 28 (1900).

Invalid ordinance vacating a crossing held to not estop city from reopening such crossing. Chicago etc. Ry. Co. v. Council Bluffs, 109 Iowa 425, 80 N.W. 564 (1899).

Vacation of street is a matter of record, thus parol testimony is not admissible. Lathrop v. Central Iowa Ry. Co., 69 Iowa 105, 28 N.W. 465 (1886).

Where city allowed occupancy of land granated to it for street, for 30 years it was presumed to have abandoned it. Simplot v. City of Dubuque, 49 Iowa 630, Affirmed, 56 Iowa 39, 10 N.W. 221 (1878).

City was not estopped to assert ownership in land occupied by abutter for 16 years. Solberg v. City of Decorah, 41 Iowa 501 (1875).

523. Vacation of streets - in general.

Provisions of chapter 364 would prevail over chapter 306 regarding vacation and disposal of municipal streets in view of § 4.7 that special provisions prevail over general. O.A.G., September 13, 1977.

Cities and towns have authority to vacate streets and alleys, and may do so by ordinance, having due regard for interest of public. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Street should not be vacated if it will seriously inconvenience or injure the public. Kelroy v. Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

Evidence did not show abuse of discretion in vacating alley. Stoessel v. City of Ottumwa, 227 Iowa 1021, 289 N.W. 718 (1940).

Invalid ordinance not a defense to suit to enjoin obstruction of alley. Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

Validity of ordinance vacating alley may be tested by certiorari. Lerch v. Short, 192 Iowa 576, 185 N.W. 129 (1921).

Ordinance held to be void because of interest of one member of council. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

Factors to be considered by council in vacating a street. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

Vacation of county road, making a street a cul-de-sac does not destroy the street as a highway. Chrisman v. Omaha & C.B. Ry. Co., 125 Iowa 133, 100 N.W. 63. (1904).

Estoppel against abutting owners from questioning right of city to vacate street. Lake City v. Fulkerson, 122 Iowa 569, 98 N.W. 376 (1904).

Even where vacation proceedings by city are irregular, it may be estopped against one who improves in reliance thereon. Blennerhassett v. Forest City, 117 Iowa 680, 91 N.W. 1044 (1902).

Ordinarily vacation of street is conclusively deemed for the public good. Burlington Gaslight Co. v. Burlington Ry. Co., 91 Iowa 470, 59 N.W. 292, Affirmed 17 S. Ct. 359, 165 U.S. 370, 41 L. Ed. 749 (1894).

Parol evidence not proper to prove street was vacated. Vacation is a matter of record. Lathrop v. Central Iowa Ry. Co., 69 Iowa 105, 28 N.W. 465 1886).

524. Power to vacate.

Street may be vacated and fee conveyed only if street was properly accepted, opened and used by the public. Patrick v. Cheney, 226 Iowa 853, 285 N.W. 184 (1939).

Street can be vacated by the city or town. McKinney v. Rowland, 197 Iowa 180, 197 N.W. 88 (1924).

Council must act with proper regard for public interests and convenience. Lerch v. Short, 192 Iowa 576, 185 N.W. 129 (1921).

General Assembly may give municipal corporations the power to vacate. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

No presumption that city abused or exceeded its power to vacate. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

Legislature may delegate power to vacate streets to cities and towns. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915).

Power to vacate may not be exercised arbitrarily. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

City could vacate part of a street although lots adjoining depreciated in value. Williams v. Carey, 73 Iowa 194, 34 N.W. 813 (1887).

Right to vacate streets not affected because it was for benefit of private individual. City of Marshalltown v. Forney, 61 Iowa 578, 16 N.W. 740 (1883).

Power of vacation of city organized under Special Charter, but later incorporated under the general laws. Stubenraugh v. Nerfenesch, 54 Iowa 567, 7 N.W. 1 (1880).

Right to vacate not confined to streets which the city or town established. Gray v. Iowa Land Co., 26 Iowa 387 (1869).

525. Damages from vacation.

Need not be determined and paid before vacation is effective. Hubbell v. Des Moines, 173 Iowa 55, 154 N.W. 337 (1915). Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

Ingress and egress of lot owner may not be destroyed. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

Damages consequential on vacation of streets are recoverable. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

Where vacation did not interfere with access of lot owner there were no damages. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

Loss of access must be compensated for. Sutton v. Mentzer, 154 Iowa 1, 134 N.W. 108 (1912). Ridgway v. City of Osceola, 139 Iowa 590, 117 N.W. 974 (1908).

Vacation by city of a street to be used for railroad purposes. Harrington v. Iowa Cent. R. Co., 126 Iowa 388, 102 N.W. 139 (1905).

Owners held to not have a remedy on vacation because all were damaged in different degrees. Borghart v. Cedar Rapids, 126 Iowa 313, 101 N.W. 1120, 68 L.R.A. 306 (1905).

Inconvenience merely is not compensable. Barr v. Oskaloosa, 45 Iowa 275 (1876).

526. Notice of proceedings to vacate.

Cities and incorporated towns may vacate a street or alley by ordinance, without notice to the owners of abutting property. Dempsey v. City of Burlington, 66 Iowa 687, 24 N.W. 508 (1885).

527. Ownership on vacation.

Rights of public are divested and street becomes private property. Tomlin v. Cedar Rapids etc. Co., 141 Iowa 599, 120 N.W. 93 (1909).

City maintains title and may dispose of it for other purposes. Harrington v. Iowa Cent. R. Co., 126 Iowa 388, 102 N.W. 139 (1905).

Title does not revert to original owner. Day v. Schroder, 46 Iowa 546 (1877).

528. Disposition of land, vacation.

City may deed away the property. Krueger v. Ramsey, 188 Iowa 861, 175 N.W. 1 (1919).

City could grant vacated street to railway. Louden v. Starr, 171 Iowa 528, 154 N.W. 331 (1915).

City may use vacated street for any legitimate purpose. Walker v. Des Moines, 161 Iowa 215, 142 N.W. 51 (1913).

Where vacated street is given to railroad, the abutter may not require compensation. Tomlin v. Cedar Rapids etc. Co., 141 Iowa 599, 120 N.W. 93 (1909).

The fact that a vacated street continued in use by the public had no effect on vacation. Bradley v. City of Centerville, 139 Iowa 599 17 N.W. 968 (1908).

Wording of ordinance held to not vacate street but merely gave railroad right to use it. Harrington v. Ry. Co., 126 Iowa 388, 102 N.W. 139 (1905).

Payment of taxes on part of vacated street did not estop city from claiming title. Lake City v. Fulkerson, 122 Iowa 569, 98 N.W. 476 (1904).

The primary inquiry in case of vacation is whether public good will result. Spitzer v. Runyan, 113 Iowa 619, 85 N.W. 782 (1901).

City has power to deed to a private person. Dempsey v. Burlington, 66 Iowa 687, 24 N.W. 508 (1885).

City may not donate vacated streets for private purposes. O.A.G. 1916, p.139.

529. Lighting of Streets - in general.

Cities not required to light their streets - no negligence in failing to do so unless reasonable care dictates. Shannon v. City of Council Bluffs, 194 Iowa 1294, 190 N.W. 951 (1922).

No absolute obligation imposed. Blain v. Town of Montezuma, 150 Iowa 141, 129 N.W. 808 (1911).

530. Contracts for street lighting.

For annotations, see I.C.A.

531. Franchises, street lighting.

For annotations, see I.C.A.

532. Rights and remedies of taxpayers, street lighting.

For annotations, see I.C.A.

533. Actions, street lighting.

For annotations, see I.C.A.

534. Abutting owners, rights.

Owner of property abutting street has special right in street as distinquished from general public where street has been opened and used. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Municipality's duty to maintain streets and alleys does not relieve property owners or others from duty not to obstruct them. Smith v. J.C. Penney Co., 260 Iowa 573, 149 N.W.2d 794 (1967).

Rights of access, light, air and view are property rights. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Abutter can claim rights to alley only through the public. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

Abutters right to reasonable temporary obstruction of street. Jones v. Fort Dodge, 1919, 185 Iowa 600, 171 N.W. 16 (1919).

Lot owner has no title to street. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619, (1918).

Land taken or dedicated for streets is subject to right of abutter. Wegner v. Kelley, 157 N.W. 206, Affirmed 182 Iowa 259, 165 N.W. 449 (1916).

Permission to abutter to use street for private purposes may be implied. Wendt v. Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

City may not authorize an areaway so as to injure property of abutting owner. Perry v. Castner, 124 Iowa 386, 100 N.W. 84, 66 L.R.A. 160 (1904).

Purchaser of lot abutting on an alley does not take to centerline of alley. Blennerhassett v. Forest City, 117 Iowa 680, 91 N.W. 1044 (1902).

Lot owner has right to bring his lot to grade to prevent surface water due to improvements by city from flowing over it. Cedar Falls v. Hansen, 104 Iowa 189, 73 N.W. 585 (1897).

Abutting owners have interest in the street subordinate to rights of the public. Cadle of Muscatine R. Co., 44 Iowa 11 (1876).

535. Access to and use of street or alley.

Right of access may be destroyed but must be compensated for. Liddick v. Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Interference with right of access amounts to a taking. Nalon v. Sioux City, 216 Iowa 1041, 250 N.W. 166 (1933).

Right of access of owner is not shared by the public. Ritchhart v. Barton, 193 Iowa 271, 186 N.W. 851 (1922).

Right of access lost through vacation must be compensated for. Hubbell v. Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

Court had power to fix plaintiffs' right in railroad strip by reason of his ownership in the abutting lot. West Davenport etc., Co. v. Theophilus, 177 Iowa 353, 158 N.W. 689 (1916).

Where abutter had two entrances he had no right to use a portion of the street for an entrance. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188, L.R.A. 1916B, 927 (1915).

Self help by lot owner, against city constructed sewer, is not justified. City of McGregor v. Boyle, 34 Iowa 268 (1872).

536. Trees, abutting owners.

City's assessment against owner of property adjacent to city parking of cost of removal of trees from city parking was void. Shriver v. City of Jefferson, 190 N.W.2d 838 (Iowa 1971).

Owner of lot held to have right to remove tree in public parking. Armstrong v. Waffle, 212 Iowa 335, 236 N.W. 507 (1931).

Owner of lot has property right in trees in parking subject to rights of the State. Newlands v. Iowa etc. Co., 179 Iowa 228, 159 N.W. 244 (1916).

Trees in a street or highway are not a nuisance unless they obstruct travel. Everett v. Council Bluffs, 46 Iowa 66 (1877).

Where a street is acquired by city through prescription, the fee remains in the land owner. Overman v. May, 35 Iowa 89 (1872).

537. Parks.

For annotations, see I.C.A.

538. Market places.

For annotations, see I.C.A.

539. Injunctions, streets.

Work done on street after the filing of decision dissolving injunction is not an act of contempt. Coffey v. Gamble, 117 Iowa 545, 91 N.W. 813 (1902).

Plaintiff entitled to injunction against opening of road. Brown v. City of Cedar Rapids, 117 Iowa 302, 90 N.W. 711 (1902).

Where plaintiff did not own the land he could not restrain city from opening a street through it. Greiner v. Town of Sigourney, 89 N.W. 1103 (1902).

Land owner was not entitled to have opening of street enjoined for defects in the proceedings of council. Rockwell v. Bowers, 88 Iowa 88, 55 N.W. 1 (1893).

Certiorari is proper remedy to review ordinance establishing or vacating a street. Stubenraugh v. Nerfenesch, 54 Iowa 567, 7 N.W. 1 (1880).

Injunction will not lie to restrain city from running bed of stream through a city street. McMahon v. Council Bluffs, 12 Iowa 268 (1861).

Court had no power to restrain removal of building from city street. Sayers v. City of Lyons, 10 Iowa 249 (1859).

Owners of land entitled to injunction during appeal from order dissolving injunction against opening of a street. Trustees v. City of Davenport, 7 Iowa 213, 7 Clarke 213 (1858).

540. Vacation, injunctions against.

Injunction will not lie to prevent vacating of a street. McLachlan v. Town of Gray, 105 Iowa 259, 74 N.W. 773 (1898).

Injunction will not lie to restrain vacation where access was not destroyed. Lorenzen v. Preston, 53 Iowa 580, 5 N.W. 764 (1880).

Plaintiff has burden of showing he has rights which are abridged. Sawyer v. Meyer, 45 Iowa 152 (1876).

There must be a material injury resulting from vacation or establishment of a street. Gray v. Iowa Land Co., 26 Iowa 387 (1869).

541. Pedestrians.

City does not discharge its duty by maintaining streets so that they are reasonably safe for vehicular traffic only, when it can reasonably be expected that street will also be used by pedestrians. Engman v. City of Des Moines, 255 Iowa 1039, 125 N.W.2d 235 (1964).

542. Defects in streets.

Failure to repair hole in middle of street. Engman v. City of Des Moines 255 Iowa 1039, 125 N.W.2d 235 (1964).

543. Alleys.

City required to exercise reasonable care to maintain alley way for pedestrians. Greninger v. City of Des Moines, 264 N.W.2d 615 (Iowa 1978).

544. Review, streets.

Refusal of city to open street was not an abuse of discretion. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

Widening of public street - landowners not entitled to review of legality of proposed action of city and highway commission. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

Review justified only in case of arbitrary and unjust exercise of discretion. Stoessel v. City of Ottumwa, 227 Iowa 1021, 289 N.W. 718 (1940). Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

Courts will not interfere with authorizations granted by the legislature. Central Life Assur. Soc. v. Des Moines, 185 Iowa 573, 171 N.W. 31 (1919).

Discretionary acts when authorized will not be reviewed. Bowersox v. Board, 183 Iowa 645, 167 N.W. 582 (1918).

Judgment of district court finding vacation is not conclusive on appeal. Gable v. Cedar Rapids, 150 Iowa 108, 129 N.W. 737 (1911).

Decision of city council over opening or vacating of streets is conclusive. Platt v. Chicago etc. R. Co., 31 N.W. 883 (1887).

Certiorari is proper remedy to review act of council in vacating street. Stubenraugh v. Nerfenesch, 54 Iowa 567, 7 N.W. 1 (1880).

Decision of council is conclusive. Cherokee v. Sioux City, etc. Land Co., 52 Iowa 279, 3 N.W. 42 (1879).

VII. GRADES AND GRADING OF STREETS

Subdivision Index

601. Grades, generally.

Power to change physical level of a street. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

"Establishment" of a grade means the adoption of a standard level of a street. Id.

Authorization of town and to grade and improve streets. Linn County v. Town of Central City, 247 Iowa 1340, 78 N.W.2d 809 (1956).

City could not escape liability for change of grade. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Trespasser on street cannot prevent city from improving same on grounds part of it is not in the city limits. Backman v. Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

Where assessment was void, owner not liable for benefits conferred on holder of lien for assessment. Carter v. Cemansky, 126 Iowa 506, 102 N.W. 438 (1905).

Owner could discharge rainwater falling on his building and alley. Phillips v. Waterhouse, 69 Iowa 199, 28 N.W. 539 (1886).

602. Grade, establishment.

Permanent grade may be established only by ordinance. McManus v. Hornaday, 99 Iowa 507, 68 N.W. 812 (1896); Blanden v. Fort Dodge, 102 Iowa 441, 71 N.W. 411 (1897); Eckert v. Walnut, 117 Iowa 629, 91 N.W. 929 (1902); Caldwell v. Town of Nashua, 122 Iowa 179, 97 N.W. 1000 (1904); Walter v. Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927); People's etc. Co. v. Des Moines, 213 Iowa 378, 247 N.W. 478 (1932) 79 A.L.R. 1310; Brown v. City of Sigourney, 164 Iowa 184, 145 N.W. 478 (1914); People's etc. Co. v. Des Moines, 241 N.W. 468 (1932).

City liable for lowering grade and thereby rendering driveway useless. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

Supreme court would not limit city commissions' discretion. Des Moines etc. Ry. Co. v. Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Change of established grade must be made by ordinance. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

Establishment of grade for center of street also establishes it for the portion of sidewalks in the street. Beirness v. Missouri Valley, 162 Iowa 720, 144 N.W. 628 (1913).

Work of bringing street to grade could not be started without resolution or ordinance. Collins v. Iowa Falls, 146 Iowa 305, 125 N.W. 226 (1910).

Authority of city to establish grade cannot be controlled. Kemp v. Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

Grading at points of intersection. Kelly v. City of Cedar Falls, 123 Iowa 660, 99 N.W. 556 (1904).

Ordinance fixing grade need not preceed resolution ordering improvement. Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

Ordinance cannot be extended by implication. Morton v. City of Burlington, 106 Iowa 50, 75 N.W. 662 (1898).

Resolution held to not establish grade - merely to provide for future establishment. Blanden v. City of Fort Dodge, 102 Iowa 441, 71 N.W. 411 (1897).

Grade established by ordinance - contents of ordinance. Kepple v. City of Keokuk, 61 Iowa 653, 17 N.W. 140 (1883).

Cities and towns have power to establish grades for city streets. O.A.G. 1949, p. 11.

603. Grading, generally.

Meaning of "grading". Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803, 5 A.L.R. 1523 (1918).

Unauthorized change in grade by city precluded it from assessing abutters property for improvement. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

City cannot deposit earth on lot of abutter in making change. Hendershott v. City of Ottumwa, 46 Iowa 658, 26 Am. Rep. 182 (1877).

Errors as to termination of grade line - effect of. City of Burlington v. Gilbert, 31 Iowa 356, 7 Am. Rep. 143 (1871).

Damages in suit for negligent and unskillful grade. Russell v. City of Burlington, 30 Iowa 262 (1870).

604. Contracts for grading.

Measure of compensation was for the jury. Goben v. Des Moines Asphalt Paving Co., 214 Iowa 834, 239 N.W. 62 (1931).

Contracts by implication. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

605. Expenses of grading, payment.

From general fund or grading fund. Shelby v. City of Burlington, 125 Iowa 343, 101 N.W. 101 (1904).

606. Damages from grading - in general.

Work begun without resolution did not create right of action not otherwise existing. Reilly v. City of Fort Dodge, 118 Iowa 633, 92 N.W. 887 (1902); Wilbur v. City of Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903).

City liable for cutting down street. Markham v. City of Anamosa, 122 Iowa 689, 98 N.W. 493 (1904).

Must be change in established grade to give cause for damages. Wilbur v. City of Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903).

Property must be improved with reference to established grade. Reilly v. City of Fort Dodge, 118 Iowa 633, 92 N.W. 887 (1902).

Failure to comply with code § 465 created liability in city. Blanden v. City of Fort Dodge, 102 Iowa 441, 71 N.W. 411 (1897).

City liable for negligence by permitting obstructions. Powers v. City of Council Bluffs, 50 Iowa 197 (1878).

City liable for negligent change in grade. Hendershott v. City of Ottumwa, 46 Iowa 658, 26 Am. Rep. 182 (1877); Ellis v. Iowa City, 29 Iowa 229 (1870); Templin v. City of Iowa City, 14 Iowa 59, 81 Am. Dec. 455 (1862).

City not liable for proper exercise of authority. Creal v. City of Keokuk, 4 G. Greene 47 (1853).

607. Nature of injury and elements of damages, grading.

Removal of lateral support was not actionable. Corcoran v. City of Des Moines, 205 Iowa 405, 215 N.W. 948 (1927); Talcott Bros. v. City of Des Moines, 134 Iowa 113, 109 N.W. 311, 12 L.R.A., N.S., 696, 120 Am. St. Rep. 419 (1906).

Destruction of trees in parking resulted in no liability in city. Kemp v. City of Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

Failure to follow statutes created liability in city. Brown v. City of Webster City, 115 Iowa 511, 88 N.W. 1070 (1902); Blanden v. City of Fort Dodge, 102 Iowa 441, 71 N.W. 411 (1897).

City not liable for erroneous information as to grade given by city engineer. Waller v. City of Dubuque, 69 Iowa 541, 29 N.W. 456 (1886).

Municipalities not liable for injuries due to improvement of streets without negligence. Creal v. City of Keokuk, 4 G. Greene, 47 (1853).

608. Measure of damages, grading.

Depreciation in value of premises caused by change in street level. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

Value before and value after work was done. Richardson v. City of Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

Instructions to jury. Correll v. City of Cedar Rapids, 110 Iowa 333, 81 N.W. 724 (1900).

Damages due to overflow from negligently constructed culvert. Van Pelt v. City of Davenport, 42 Iowa 308 (1875).

609. Basis or plan of improvement, grading.

In adopting plans, city acts in a "judicial capacity." Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

No liability of city where harm caused by error of judgment. Dodds v. Town of West Liberty, 225 Iowa 506, 281 N.W. 476 (1938); Van Pelt v. City of Davenport, 42 Iowa 308, 20 Am. Rep. 622 (1875).

Liability for defective plans. Hume v. City of Des Moines, 146 Iowa 624, 125 N.W. 846, 29 L.R.A., N.S., 126 Ann. Cas. 1912B, 904 (1910).

Discrepancy between grade and ordinance. Given v. City of Des Moines, 70 Iowa 637, 27 N.W. 803 (1886).

610. Grading in absence of established grade.

No liability attaches to city by mere "establishment" of grade of street. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

City liable for damage caused by changes in surface of street till it establishes a grade. Brown v. City of Sigourney, 164 Iowa 184, 145 N.W. 478 (1914).

Recovery of damages for grading. Wilbur v. City of Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903); Millard v. Webster City, 113 Iowa 220, 84 N.W. 1044 (1901).

Grade must be lowered in manner prescribed by statutes. Blanden v. City of Fort Dodge, 102 Iowa 441, 71 N.W. 411 (1897).

611. Surface waters, grading.

Should not be discharged where it did not naturally flow. Farley v. City of Des Moines, 199 Iowa 974, 203 N.W. 287 (1925); Baker v. Incorporated Town of Akron, 145 Iowa 485, 122 N.W. 926, 30 L.R.A., N.S., 619 (1909).

Natural drainage should not be destroyed. Wilbur v. City of Fort Dodge, 120 Iowa 555, 95 N.W. 186 (1903).

No liability for slight increase in quantity. Hoffman v. City of Muscatine, 113 Iowa 332, 85 N.W. 17 (1901).

City liable for failure to provide for escape of surface water. Ross v. City of Clinton, 46 Iowa 606, 26 Am. Rep. 169 (1877); Damour v. City of Lyons City, 44 Iowa 276 (1876).

City held not liable for deflecting surface waters by embankment. Creal v. City of Keokuk, 4 G. Greene 47 (1853).

612. Drains, gutters and culverts, grading.

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City was liable where in bringing street to grade, it negligently filled drains. Hume v. City of Des Moines, 146 Iowa 624, 125 N.W. 846, 29 L.R.A., N.S., 126, Ann. Cas. 1912B, 904 (1910).

Drain held to be a nuisance. Fitzgerald v. Town of Sharon, 143 Iowa 730, 121 N.W. 523 (1909).

Damges for negligent construction. Cooper v. City of Cedar Rapids, 112 Iowa 367, 83 N.W. 1050 (1900).

City not held liable where it did not accelerate flow of water or collect and discharge it though drains were too small. Knostman & Peterson Furniture Co. v. City of Davenport, 99 Iowa 589, 68 N.W. 887 (1896).

City not liable for not proving gutters and culverts so as to keep water from street, from overflowing lots lowers than street. Morris v. City of Council Bluffs, 67 Iowa 343, 25 N.W. 274, 56 Am. Rep. 343 (1885); Freburg v. City of Davenport, 63 Iowa 119, 18 N.W. 705, 50 Am. Rep. 737 (1884).

City not liable for honest error in judgment of competent engineer. Van Pelt v. City of Davenport, 42 Iowa 308, 20 Am. Rep. 622 (1875).

Liability of city for negligence in construction or failure to construct gutters and drains. Ellis v. Iowa City, 29 Iowa 229 (1870).

City has duty to protect abutter if practicable. Cotes v. City of Davenport, 9 Iowa 227 (1859).

Where city constructs ditch along street it should provide for access to abutting lots. O.A.G. 1911-12, p. 220.

613. Property owners, rights and duties as to surface waters.

Owner's duty one of ordinary care to prevent flooding of his property. Wendt v. Incorporated Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

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614. Estoppel waiver or loss of right to damages.

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Error as to termination of grade line - effect of. City of Burlington v. Gilbert, 31 Iowa 356, 7 Am. Rep. 143 (1871).

615. Release and satisfaction, grading.

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616. Injunctions, grading.

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Discretion of council board - restraint of arbitrary action. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

Injunction should not prevent city from establishing grade in future. Hunter v. City of Ottumwa, 150 Iowa 281, 129 N.W. 961 (1911).

Injunction not granted to prevent construction of retaining wall by railroad for city. Patterson v. City of Burlington, 141 Iowa 291, 119 N.W. 593 (1909).

Change in drainage of surface water was enjoined. Dilly v. Town of Henderson, 118 N.W. 750 (1908).

Damage did not appear sufficient to warrant injunction. Burlington Gaslight Co. v. Burlington C.R. & N.R. Co., 91 Iowa 470, 59 N.W. 292, affirmed 17 S. Ct. 359, 165 U.S. 370, 41 L. Ed. 749 (1894).

Injunction would not lie to prevent construction of drain where plaintiff could not show he would be harmed. Collins v. City of Keokuk, 91 Iowa 293, 59 N.W. 200 (1894).

617. Actions, grading generally.

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Digging and carrying away earth from below grade causing injury is actionable. Freeland v. City of Muscatine, 9 Iowa 461 (1859).

Suit by landowner where premises are occupied by tenant. Cotes v. City of Davenport, 9 Iowa 227 (1859).

618. Evidence, grading.

For annotations, see I.C.A.

619. Instructions, grading.
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620. Curative acts.
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Council may delegate authority to construct a sidewalk. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1859).

802. Nature and necessity of proceedings - sidewalks.

Authority given by council must be aimed at some individual walk. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

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Petition necessary for construction of walk. Tallant v. City of Burlington, 39 Iowa 543 (1874).

804. Ordinance, resolution or order for improvement, sidewalks.

Description of property if erroneous may be waived by conduct of owner. Sunset Golf Club v. Sioux City, 242 Iowa 739, 46 N.W.2d 548 (1951).

Signature of mayor on record of proceedings of council ordering construction was sufficient. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).

Mode of procedure in constructing sidewalks and assessment of costs. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856 (1927).

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Ordinance conferred no authority to remove trees. Waterbury v. Morphew, 146 Iowa 313, 125 N.W. 205 (1910).

Proceedings must be regular to compel owner to construct sidewalk. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Ordinance may authorize owners to build walks according to specifications. Zalesky v. City of Cedar Rapids, 118 Iowa 714, 92 N.W. 657 (1902).

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805. Necessity of ordinance or resolution, sidewalks.

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Ordinance necessary to right of city to exercise the power granted. Kaynor v. District Court of Black Hawk County, 178 Iowa 1055, 158 N.W. 557 (1916).

Notice of owner must comply with ordinance. Zalesky v. City of Cedar Rapids, 118 Iowa 714, 92 N.W. 657 (1902).

806. Notice, sidewalks.

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808. Review of improvement proceedings, sidewalks.

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809. Construction of sidewalk.

Authority to require owners to pave streets includes authority to require construction of walks. Buell v. Ball, 20 Iowa 282 (1866); Warren v. Henly, 31 Iowa 31 (1870).

Duty of city to pedestrians. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

Entitlement of city to materials in walk where it contracts to build another at different grade. Guthrie v. M'murren, 167 Iowa 154, 149 N.W. 71, L.R.A. 1915B, 187 (1914); Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1879).

City could issue warrants to pay for construction of walks. Clark v. City of Des Moines, 19 Iowa 199, 87 Am. Dec. 423 (1865).

City was authorized to construct sidewalk under charter. Burlington & M.R.R. Co. v. Spearman, 12 Iowa 112 (1861).

810. Contracts, sidewalks.

Approval of finished product. Scott v. Stewart, 161 Iowa 141, 140 N.W. 421 (1913).

811. Established grade, sidewalks.

Sidewalk need not be at same grade as street when necessary for drainage. Kaynor v. City of Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Authority of city to establish sidewalk or street grade cannot be controlled. Kemp v. City of Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

Owner can have no duty to build walk until grade is established. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Council could not build walk where no grade was established. Hartrick v. Town of Farmington, 108 Iowa 31, 78 N.W. 794 (1899).

812. Grading required, sidewalks.

Necessary prior to construction of permanent walks. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Owner not liable for city constructed walk in absence of established grade. Kaynor v. District Court of Black Hawk County, 178 Iowa 1055, 158 N.W. 557 (1916).

City required to bring street to established grade prior to building permanent walk. Kaynor v. City of Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Bed of sidewalk must be graded before walk can be built. Bowman v. City of Waverly, 155 Iowa 745, 128 N.W. 950 (1910).

Where council did not comply with prerequisites, court could have enjoined it from enforcing a notice to owner to rebuild walk. Converse v. Incorporated Town of Deep River, 139 Iowa 732, 117 N.W. 1078 (1908).

City must bring street to grade before it can require owner to build walk. O.A.G. 1910, p. 192.

Where no grade is established, town may construct temporary walks. O.A.G. 1909, p. 274.

City could not assess against owner cost of bringing sidewalk bed to grade. O.A.G. 1907, p. 143.

813. Assessments, sidewalks.

Council could assess although proceedings were informal and mayor merely signed. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).

Evidence showed special benefit from improvement of walk. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856.

Work constituted reconstruction, not repair. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

Protest by owner of assessment against another piece of property not admissible to show owner appeared and objected to assessment. Cavanaugh v. City of Des Moines, 179 Iowa 739, 162 N.W. 17 (1917).

Strip between cemetery and street may be assessed for sidewalk improvements. Northern Light Lodge No. 156, I.O.O.F. of Iowa v. Town of Monona, 180 Iowa 62, 161 N.W. 78, L.R.A. 1918A, 150 (1917).

That assessment figure did not include dollar sign could not vitiate assessment. Monroe v. Pearson, 176 Iowa 283, 157 N.W. 849 (1916).

Sale of property for delinquent assessments. Royce v. Town of Aplington, 90 Iowa 352, 57 N.W. 868 (1896).

Where charter conferred no power on city to levy special assessments, the money for walks could be raised only by general taxes. City of Fairfield v. Ratcliff, 20 Iowa 396 (1866).

City could not levy sidewalk tax to pay for construction of walks on bridge. O.A.G. 1925-26, p. 368.

814. Notice of assessment hearing for sidewalks.

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815. Crosswalks, assessments.

Cost of crosswalks may not be assessed against private property. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924); Kaynor v. City of Cedar Falls, 156 Iowa 151, 135 N.W. 564 (1912).

816. Property subject to assessment, sidewalks.

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Strip between cemetery and street. Northern Light Lodge No. 156, I.O.O.F. of Iowa v. Town of Monona, 180 Iowa 62, 161 N.W. 78, L.R.A. 1918A 150 (1917).

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Property owned by county in city limits. Edwards & Walsh Const. Co. v. Jasper County 117 Iowa 365, 90 N.W. 1006, 94 Am. St. Rep. 301 (1902).

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817. Lessees, liability for sidewalks.

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818. Injunctions, sidewalks.

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Suit to restrain excavation which would destroy shade trees. Gallagher v. City of Jefferson, 125 Iowa 324, 101 N.W. 124 (1904).

Contempt proceedings against council annulled. Coffey v. Gamble, 134 Iowa 754, 94 N.W. 936 (1903).

Where money damages were inadequate injunction would lie. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

819. Actions - sidewalks.

Liability of town for sidewalk defects not dependent on population. Graham v. Town of Oxford, 105 Iowa 705, 75 N.W. 473 (1898).

Collection of tax for sidewalk construction. City of Des Moines v. Casady, 21 Iowa 570 (1866).

For additional annotations, see I.C.A.

820. Evidence, sidewalks.

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821. Instructions, sidewalks.

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823. Judgments, sidewalks.

In action to collect tax for construction no personal judgment may be given against one not owner of land when order to construct was given and work done. City of Des Moines v. Casady, 21 Iowa 570 (1866).

824. Snow and ice removal.

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X. SNOW AND ICE, REMOVAL FROM SIDEWALKS [PRIOR LAW]

For annotations, see I.C.A.

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364.13 Installments (No Annotations)

364.14 Personal Injuries

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364.15 Changing Grade of Streets

Index to Notes

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This section not applicable to county highways. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Provisions for damages apply to special charter cities. Phillips v. City of Council Bluffs, 63 Iowa 576, 19 N.W. 672 (1884).

Owners remedy purely statutory. Corcoran v. City of Des Moines, 205 Iowa 405, 215 N.W. 948 (1927).

Abutting owners cannot require city to excavate or fill street to grade. Given v. City of Des Moines, 70 Iowa 637, 27 N.W. 803 (1886).

Establishment by proper legislative action only. Kepple v. City of Keokuk, 61 Iowa 653, 17 N.W. 140 (1883).

Owners remedy purely statetory Corcoran v. City of Des Moines, 205 Iowa 405, 215 N.W. 948 (1927).

Abutting owners cannot require city to excavate or fill street to grade. Given v. City of Des Moines 70 Iowa 637, 27 N.W. 803 (1886).

Establishment by proper legislative action only. Kepple v. City of Keokuk, 61 Iowa 653, 17 N.W. 140 (1883).

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Bringing grade of lot to grade of street is improvement. Witwer Bros. v. City of Cedar Rapids 107 N.W. 604 (1906).

Grading of lot to conform to new grade is improvement for which damages can be recovered when street is finally brought to grade. York v. City of Cedar Rapids, 130 Iowa 435, 103 N.W. 790 (1905).

Building need not be at exact grade of street improvement; with reference to grade is sufficient. Stevens v. City of Cedar Rapids, 128 Iowa 227, 103 N.W. 363 (1905).

Filling of lot prior to building and grading of lot are improvements. Chase v. City of Sioux City, 86 Iowa 603, 53 N.W. 333 (1892).

Question of whether improvements have been made is for jury. Conklin v. City of Keokuk, 73 Iowa 343, 35 N.W. 444 (1887).

Property owner must show improvement with reference grade and that grade was established by city. Morris v. City of Council Bluffs, 67 Iowa 343, 25 N.W. 274, 56 Am. Rep. 343 (1885).

Presumption that city, in constructing streets made them conform to established grade. Thompson v. City of Keokuk, 61 Iowa 187, 16 N.W. 82 (1883).

Owner justified in building with reference to established grade. Damour v. Lyons City, 44 Iowa 276 (1876).

5. Damages.

Absent statute, city not liable for change in grade. Farmer v. City of Cedar Rapids, 116 Iowa 322, 89 N.W. 1105 (1902); Reilly v. City of Fort Dodge, 118 Iowa 633, 92 N.W. 887 (1902); Chiesa & Co. v. City of Des Moines, 158 Iowa 343, 138 N.W. 922, 48 L. R. A.,N. S. 899 (1912).

Cole v. City of Muscatine, 14 Iowa 296 (1862); Kepple v. City of Keokuk, 61 Iowa 653, 17 N.W. 140 (1883).

Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Chiesa & Co. v. City of Des Moines, 158 Iowa 343, 138 N.W. 922, 48 L. R. A., N.S. 899 (1913).

City of Burlington v. Gilbert, 31 Iowa 356, 7 Am. Rep. 143 (1871).

Legislature can provide for damages to street railway owners. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

When damages are payable from assessment fund. Midwest Securities Corporation v. City of Des Moines, 200 Iowa 245, 202 N.W. 565 (1925).

When damages are recoverable-generally. Vilas v. Chicago, M & St. P. Ry. Co., 179 Iowa 1244, 162 N.W. 795 (1917).

Liability of city for change in grade similar to grading without ordinance. Richardson v. City of Sioux City, 136 Iowa 436, 113 N.W. 928 (1907).

No injury caused by ordinance changing grade. Hempstead v. City of Des Moines, 63 Iowa 36, 18 N.W. 676 (1884).

Injury need not be direct. Hemspstead v. City of Des Moines 52 Iowa 303, 3 N.W. 123 (1879).

Damages to be ascertained strictly according to the statutes. City of Burlington v. Gilbert, 31 Iowa 356, 7 Am. Rep. 143 (1871).

6. Nature and elements of damage.

Property owner acquires vested access rights immediately upon dedication and acceptance of a street for public use. Stom v. City of Council Bluffs, 189 N.W.2d. 522 (1971).

Recovery for loss of access. Id.

Damage must be of material consequence, not merely inconvenience. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Evidence of cost of rebuilding house excluded. Corcoran v. City of Des Moines, 205 Iowa 405, 215 N.W. 948 (1927).

Cost of bringing property to conformity with new grade is item of damages. Richardson v. City of Sioux City, 136 Iowa 436, 113 N.W. 928 (1907).

Thompson v. City of Keokuk, 61 Iowa 187, 16 N.W. 82 (1883).

Trees should not be removed unnecessarily. Kemp v. City of Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).

Use and purposes of improvements made can be considered in assessing damages. Preston v. City of Cedar Rapids, 95 Iowa 71, 63 N.W. 577 (1895).

Owner entitled to recover for diminution in actual value of property. Hempstead v. City of Des Moines 52 Iowa 303, 3 N.W. 123 (1879).

Damages recoverable for injuries to land as well as improvements. Dolzell v. City of Davenport, 12 Iowa 437 (1861).

Owner may recover for permanent depreciation. Cotes v. City of Davenport, 9 Iowa 227 (1859).

7. Nature and extent of change.

Viaduct effected change in established grade. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Recovery limited to damages for change of grade. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Slight variance from established grade not material. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

Impairment of access, light and air. Western Newspaper Union v. City of Des Moines, 157 Iowa 685, 140 N.W. 367 (1913).

If change ingrade causes no damage, there is no liability. Meardon v. Iowa City, 148 Iowa 12, 126 N.W. 939 (1910).

Bringing of street to established grade 10 years after establishment held to be a second change. Buser v. City of Cedar Rapids, 115 Iowa 683, 87 N.W. 404 (1901).

Liability of city for cutting down street on which no grade was established. Millard v. City of Webster City, 113 Iowa 220, 84 N.W. 1044 (1901).

Richardson v. City of Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

Recovery may be had for injury though final grade is on line with natural surface of street. Ressegieu v. City of Sioux City, 94 Iowa 543, 63 N.W. 184, 28 L. R. A. 389 (1893).

Where street was lowered a few inches and curb remained same there was no damage. Coates v. City of Dubuque, 68 Iowa 550, 27 N.W. 750 (1886).

Paving of street not a change in grade. Warren v. Henly, 31 Iowa 31 (1870).

8. Constructions before establishment of grade.

Owner paying for paving without established grade cannot recover for later change. Walter v. City of Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927).

Where building was constructed without established grade, no recovery allowed for change. Vilas v. Chicago, M. & St. P. Ry. Co. 179 Iowa 1244, 162 N.W. 795 (1917).

9. Constructions without reference to established grade.

Owner could not recover where he improved with reference to sidewalk constructed below grade. Ayer v. City of Perry, 193 Iowa 181, 186 N.W. 840 (1922).

Owner not entitled to damages for bringing of street to established grade. Collins v. City of Iowa Falls, 146 Iowa 305, 125 N.W. 226. (1910).

Reilly v. City of Fort Dodge, 118 Iowa 633, 92 N.W. 887 (1902).

Farmer v. City of Cedar Rapids, 116 Iowa 322, 89 N.W. 1105 (1902).

10. Location of property.

Damages payable where no grade established and no resolution authorizing regrading. Caldwell v. Town of Nashua, 122 Iowa 179, 97 N.W. 1000 (1904).

Change in grade of parallel streets imposes liability for grade change on intersecting street. Conklin v. City of Keokuk, 73 Iowa 343, 35 N.W. 444 (1887).

11. Measure of damages.

Deprivation of reasonable access to property - compensation for valuable property right which has been taken. Stom v. City of Council Bluffs, 189 N.W.2d. 522 (Iowa 1971).

Right of property owner of ingress and egress to property was private property right.

Depreciation in value of premises caused by change in street level. Tillotson v. Windsor Heights, 249 Iowa 684, 87 N.W.2d 21 (1958).

Value of property immediately before and immediately after. Corcoran v. City of Des Moines, 205 Iowa 405 215 N.W. 948 (1927). Richardson v. City of Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

Consideration of benefits by jury. Meardon v. Iowa City, 148 Iowa 12, 126 N.W. 939 (1910).

Factors bearing on difference in value-cost of bringing to new grade. Richardson v. City of Sioux City, 136 Iowa 436, 113 N.W. 928 (1907).

Evidence showed whole property not improved with reference to grade. Richardson v. City of Sioux City, 136 Iowa 436, 113 N.W. 928 (1907).

Questions called for conclusion of witness. Richardson v. City of Webster City, 111 Iowa 427, 82 N.W. 920 (1900).

Evidence showing benefits admissible. Morton v. City of Burlington, 106 Iowa 50, 75 N.W. 662 (1898).

Parol evidence. King v. City of Des Moines, 99 Iowa 432, 68 N.W. 708 (1896).

Witness may not state opinions on effect of change in value. Dalzell v. City of Davenport, 12 Iowa 437 (1861).

25. Weight and sufficiency of evidence.

In absence of passion and prejudice of jury, award not disturbed. Ideal etc. Works v. Des Moines, 167 Iowa 517, 149 N.W. 640 (1914).

Verdict that property was benefited supported by evidence. McCash v. City of Burlington, 72 Iowa 26, 33 N.W. 346. (1887).

26. Conduct of trial.

Unauthorized new view of premises by juror not prejudicial misconduct. Caldwell v. Town of Nashua, 122 Iowa 179, 97 N.W. 1000 (1904).

27. Jury questions.

Record warranted submission of question of liability to jury. Hathaway v. Sioux City, 244 Iowa 508, 57 N.W.2d 288 (1953).

Question of contributory negligence in maintaining street was for the jury. Wendt v. Incorporated Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

28. Instructions.

Failure to charge more specifically on damages from change of grade was not cause for complaint in absence of request. Botsford v. City of Des Moines, 212 N.W. 673 (1927).

Meaning of "materially and unduly". Walters v. City of Marshalltown, 145 Iowa 457, 120 N.W. 1046, 26 L. R. A., N. S., 199 (1909).

Where one building was built prior to establishment of initial grade. Richardson v. City of Sioux City, 136 Iowa 436, 113 N.W. 928 (1907).

Charge that evidence was received to show whether access was increased. Morton v. City of Burlington, 106 Iowa 50, 75 N.W. 662 (1898).

The measure of recovery. Stewart v. City of Council Bluffs, 84 Iowa 61, 50 N.W. 219 (1891).

Intent of abutter is not measure of whether improvement was made with reference to grade. Conklin v. City of Keokuk, 73 Iowa 343, 35 N.W. 444 (1887).

That jury should consider the improvement as contemplated by the ordinance changing the grade. McCash v. City of Burlington, 72 Iowa 26, 33 N.W. 346 (1887).

That jury was not bound to find same damages as assessed by Commissioners. Thompson v. City of Keokuk, 61 Iowa 187, 16 N.W. 82 (1883).

29. Judgements.

Damages for interference with access not adjudicated in appeal from special assessment. Ashman v. City of Des Moines, 209 Iowa 1247, 228 N.W. 316 (1930), modified on other grounds, 229 N.W. 907.

30. Injunction.

When injunction will not lie to prevent a city from establishing grade for street. Gallaher v. City of Jefferson, 125 Iowa 324, 101 N.W. 124 (1904).

31. Viaducts.

Legislature has authorized different method of procedure in regard to assessment of damages for construction of viaduct from that provided in case of change of grade. Globe Machinery & Supply Co. v. City of Des Moines, 156 Iowa 267, 136 N.W. 518 (1912).

32. Appraisers.

Reasonable compensation allowed for service in appraising damages resulting from change or establishment of street grade. O.A.G. 1928, p. 430.

33. Repeals.

For annotation, see I.C.A.

34. Review.

Supreme Court could assume that just compensation would be complied with by city in connection with highway relocation. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

364.16 Municipal Fire Protection

For annotations, see I.C.A.

In cities and towns which do not control their own bridge levies, agricultural land comprising tracts of ten acres or more are subject to all county levies unless there is a specific exemption. O.A.G. 1930, p. 236.

Counties not responsible for keeping sidewalk over bridge inside of a city free from snow. O.A.G. 1919-20, p. 276.

City had right to control bridge fund collected upon property in city. O.A.G. 1916, p. 122.

County rather than city should pay fees and expenses of registration board for services in registering names preparatory to holding a special city election. O.A.G. 1916, p. 96.

Town not authorized to vote aid in construction of county bridge unless cost of bridge is at least $10,000.00. O.A.G. 1911-12, p. 346.

9. Levy of tax, bridges.

Cities of second class traversed by a stream had power to control their own bridge fund. Murphy v. Berry, 200 Iowa 974, 205 N.W. 777 (1925).

County had no power to levy tax for bridges on property within limits of this city. City of Keokuk v. Kennedy, 156 Iowa 680, 137 N.W. 914 (1912).

City could not levy a bridge or sidewalk tax for purpose of paying for construction of sidewalks on bridge. O.A.G. 1925-26, p. 368.

Authority to levy bridge tax vested in cities. O.A.G. 1919-20, p. 378.

10. Power to control and regulate, bridges.

City could not interfere in use of bridge companies use of right of way. Sioux City, Iowa v. Missouri Valley Pipeline Co. 46 F.2d 819 (1931).

11. Sale and transfer of bridge.

Construction of new bridge in place of unsafe one and charging of tolls. Scott v. Des Moines, 34 Iowa 552 (1872).

Town had no power to execute deed of trust of bridge to trustees authorizing them to collect tolls to pay the debt created by its construction. Mullarkey v. Cedar Falls, 19 Iowa 21 (1865).

12. Toll bridges.

A grant without reservation to railroad to use city owned bridge entitles railroad to use it free of tolls. Des Moines v. Chicago etc. Ry. Co., 41 Iowa 569 (1875).

Collection of tolls by city must be authorized by state law. Clark v. Des Moines, 19 Iowa 199 (1865).

13. Liability for damages, bridges.

City is liable for unsafe condition of bridges within its limits. Fowler v. Town of Strawberry Hill, 74 Iowa 644, 38 N.W. 521 (1888).

18. Recovery of tax paid.

Recovery of taxes paid to company which did not comply with conditions entitling it to aid. Smith v. Omaha etc. Ry. Co., 97 Iowa 545, 66 N.W. 1041 (1896).

II. BUDGETING AND ACCOUNTING

384.13 Finance Committee (No Annotations)

384.14 Office of Committee (No Annotations)

384.15 Rules

1. In general.

A city may require information as to how its public funds are being used. O.A.G. November 7, 1972.

384.16 City Budget

For annotation, see I.C.A.

384.17. Levy by County (No Annotations)

384.18 Budget Amendment

For annotations, see I.C.A.

384.19 Written Protest (No Annotations)

384.20 Separate Accounts

For annotations, see I.C.A.

384.21 Reserved

384.22 Annual Report

For annotations, see I.C.A.

III. GENERAL OBLIGATION BONDS

384.23 Construction of Words "and" and "or" (No Annotations)

384.24 Definitions

For annotations, see I.C.A.

384.25 General Obligation Bonds for Essential Purposes

For annotations, see I.C.A.

384.26 General Obligation Bonds for General Purposes

For annotations, see I.C.A.

384.27 Sale of Bonds

For annotations, see I.C.A.

384.28 Categories for General Obligation Bonds

For annotations, see I.C.A.

384.29 Form of Bonds

For annotations, see I.C.A.

384.30 Execution

For annotations, see I.C.A.

384.31 Negotiable

For annotations, see I.C.A.

384.32 Tax to Pay

For annotations, see I.C.A.

384.33 Action (No Annotations)

384.34 Local Budget Law (No Annotations)

384.35 Rule of Construction (No Annotations)

384.36 Prior Proceedings

For annotations, see I.C.A.

IV. SPECIAL ASSESSMENTS

384.37 Definitions

1. Construction and application.
Work on street held an improvement for which special assessment was proper. Koons v. Lucas, 52 Iowa 177, 3 N.W. 84 (1879).
"Lot." Buell v. Ball, 20 Iowa 282 (1866).

2. Prior law.
Valid. Owen v. City of Sioux City, 91 Iowa 190, 59 N.W. 3 (1894).

3. Sidewalks.
This chapter inapplicable to steps preliminary to construction of walk. Northern Light Lodge No. 156, I.O.O.F. of Iowa, v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).
Pavement between sidewalk and crosswalk not assessable to owner. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924).

4. Paving.
City may not make separate assessments for paving, guttering and curbing. Bailey v. City of Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

5. Reconstruction.
Construction of new surface upon original concrete base constituted a "reconstruction." Fuche v. City of Cedar Rapids, 158 Iowa 392, 139 N.W. 903 (1913).

6. Curative acts.
Legislature may legalize defect in proceedings to improve a street. City of Clinton v. Walliker, 98 Iowa 655, 68 N.W. 431 (1896).

7. Primary road districts.

Annexation of territory within primary road district to a city after boundaries of district had been fixed. In re: Paving White Pole or River to River Road, Polk County, 193 Iowa 423, 187 N.W. 14 (1922).

384.38 Certain Costs Assessed to Private Property

1. Validity.

Apportionment of cost of street paving on abutting lots according to their frontage. Ft. Dodge Electric Light & Power Co. v. City of Ft. Dodge, 115 Iowa 568, 89 N.W. 7 (1902).

Tax should not be levied on property lying beyond limits of the benefits. Grant v. City of Davenport, 36 Iowa 396 (1873).

2. Construction and application.

Special assessments may be levied against abutting property owners to reimburse city. Morrison v. City of Washington, 332 N.W.2d 125 (Iowa ~~appeals~~ Ct. App. 1983).

Statutes permitting special assessment levies by city or town must be strictly construed. H.L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813 (Iowa 1970).

Separate public improvements to be dealt with on their own merits. Husson v. City of Oskaloosa, 37 N.W.2d 310 (1949).

Necessity of improvement determined by city council. Call Bond & Mortgage Co. v. Great Northern Railway, 227 Iowa 142, 287 N.W. 832 (1939).

Statutes relating to special assessments against abutting property strictly construed in favor of property owner. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Right to create liability for assessments is given to city by statute. Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Rigid adherence to statutes relating to public improvements is required. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

For additional annotations, see I.C.A.

3. Purpose.

Purpose to enable cost of street improvement to be taxed in proportion to benefits received by property. O.A.G. 1913-14, p. 159.

4. Legislative intent.

For annotations, see I.C.A.

5. Legislative power.

Legislature has power to authorize municipalities to require streets to be paved, and cost to be assessed on abutting lot owners. Warren v. Henly, 31 Iowa 31 (1870).

6. Mandatory nature.

Manner of exercising right to issue special assessment certificates was mandatory and jurisdictional. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

7. Law governing.

For annotation, see I.C.A.

8. Repeals.

For annotations, see I.C.A.

9. Jurisdiction.
For annotations, see I.C.A.

10 Curative acts.
For annotations, see I.C.A.

11. Powers of city.
City proceeding to establish street without jurisdiction was without power to exercise taxing power for cost of improvement. Beim v. Carlson, 209 Iowa 1001, 227 N.W. 421 (1929).
City not having authority to grade street at expense of abutting property. Gallaher v. Garland, 126 Iowa 206, 101 N.W. 876 (1904).
City has authority to assess abutting lots for expense of curbing a parkway. Downing v. City of Des Moines, 124 Iowa 289, 99 N.W. 1066 (1904).
City could incur expense and issue bonds for extending sewer line past concrete wall on river bank. O.A.G. 1938, p. 333.

12. Counties.
Town agreed to aid county in constructing approach to county bridge. Linn County v. Town of Central City, 247 Iowa 1340, 78 N.W.2d 809 (1956).
Town not authorized to let a contract for town and county work within town to be reimbursed by county. O.A.G. May 31, 1962.

13. Contracts.
For annotations, see I.C.A.

14. Payment of cost from general funds.
City or town had right to improve streets and pave therefor from general fund, or from the highway or poll taxes. Humboldt County v. Incorporated Town of Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).
Municipality may extend sewer, gas and water facilities beyond its corporate limits. O.A.G March 28, 1974.
City could not levy a sidewalk tax for the purpose of paying for construction of sidewalks on a bridge. O.A.G. 1925-26, p. 368.

15. Charters, construction of.
For annotations, see I.C.A.

16. Ordinance.
Where city has fixed by general ordinance the method of procedure to be followed, it is limited to the mode so prescribed. Bowman v. City of Waverly, 155 Iowa 745, 128 N.W. 950 (1910).
For additional annotations, see I.C.A.

17. Sidewalks, ordinance.
Order requiring construction of sidewalks may be either by resolution or motion, and need not be by ordinance or formal resolution. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).
For additional annotations, see I.C.A.

18. Necessity of ordinance.
Ordinance essential to right of city to exercise power granted. Kaynor v. District Court of Black Hawk County, 178 Iowa 1055, 158 N.W. 557 (1916).

19. Delegation of authority.

Construction or reconstruction of permanent sidewalks must be authorized by city council. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

For additional annotations, see I.C.A.

20. Petition for improvement.

City engineer's work constituted reconstruction, and not repair, which the city was unauthorized to undertake. Farraher v. City of Keokuk, 111 Iowa 310, 82 N.W. 773 (1900).

21. Joint improvements.

City street intersections with other roads and local service-street facilities may be established or reconstructed or constructed by cities acting alone - work may also be accomplished by both cities and State Highway Commission incorporating one with the other. O.A.G. April 4, 1969.

City and county authorized to improve a road which is on boundary of city and county and which is one-half in city and one-half in county. O.A.G. Sept. 22, 1966.

22. Temporary improvements.

No authority of city to tax abutting property for cost of temporary improvements. McManus v. Hornaday, 99 Iowa 507, 68 N.W. 812 (1896).

23. Cross walks.

Cost of cross walks cannot be assessed against private property. Mann v. City of Onawa, 199 Iowa 430, 200 N.W. 306 (1924).

For additional annotations, see I.C.A.

24. Intersections.

Cost of paving alley and street intersections was assessable. Dickinson v. Incorporated Town of Guthrie Center, 185 Iowa 541, 170 N.W. 759 (1919).

For additional annotations, see I.C.A.

25. Parking facilities.

City or town council could acquire jurisdiction to defray, by special assessment, only that part of cost attendant upon acquisition or construction of a parking facility which was created or incurred subsequent to passage of the requisition resolution of necessity. H.L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813 (Iowa 1970).

26. Sewer projects.

Property owners have right to be treated fairly and equally in sharing burdens and receiving benefits of sanitary sewer system. Sayles v. Bennett Ave. Development Corp., 258 Iowa 628, 138 N.W.2d 895 (1965).

For additional annotations, see I.C.A.

27. Sidewalks.

Details of duty owed by city to pedestrians in respect to construction of sidewalk differ from those a city owes to pedestrians in construction of an intersection. Russell v. Sioux City, 227 Iowa 1302, 290 N.W. 708 (1940).

For additional annotations, see I.C.A.

28. Streets and roads.

Property owner may be specially assessed by city for paving residential street. Morrison v. City of Washington, 332 N.W.2d 125 (Iowa Ct. App. 1983).

Improvement of a street is a public object which will support a special assessment therefor on abutting property, regardless of the question of benefit to such property. Dewey v. City of Des Moines, 101 Iowa 416, 70 N.W. 605 (1897).

For additional annotations, see I.C.A.

29. Water, gas and electricity.

For annotations, see I.C.A.

30. Tree removal.

Cities and towns may not assess abutting property for cost of removal of trees from city parking in front of owner's residence. O.A.G. May 15, 1969.

City's assessment against owner of property adjacent to city parking of cost of removal of trees from city parking was void. Shriver v. City of Jefferson, 190 N.W.2d 838 (Iowa 1971).

31. Abutting property.

Where lot extended so as to abut on each of two parallel streets, special assessment for improvement of one street could be imposed only on value of that half of the lot which abutted on the improved street. Dunn v. City of Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

For additional annotations, see I.C.A.

32. Definition, abutting property.

Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).
Millan v. City of Chariton, 145 Iowa 648, 124 N.W. 766 (1910).

33. Property not abutting on improvement.

For annotations, see I.C.A.

34. Agricultural property.

Agricultural lands within boundaries of city or town, laid off into lots of more than 10 acres, are exempt from taxation except for city and town road purposes, and paving arterial highways into and out of the city. O.A.G. 1944, p. 76.

35. Benefitted property.

Tax is not void for failure to fix limits; it being presumed that the council in good faith deemed all property in city benefitted. Dubuque & S. C. R. Co. v. Mitchell, 152 Iowa 187, 131 N.W. 25 (1911).

36. Cemetery property.

For annotations, see I.C.A.

37. Corner lots.

Subject to assessment for improvement of two intersecting streets. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Corner lot could legally be assessed for street improvements in each of the streets on which it abutted. Harris v. Evans, 196 Iowa 799, 195 N.W. 178 (1923).

Doubly assessed. Morrison v. Hershire, 32 Iowa 271 (1871).

38. County property.

County property owned and used for public purposes by a county was not exempt from special assessments for street improvements. Edwards & Walsh Construction Co. v. Jasper County, 117 Iowa 365, 90 N.W. 1006 (1902).

Special assessments for street improvements should be against county when the street abutting land owned by county and used by fair association is paved. O.A.G. 1919-20, p. 369.

39. Omitted property.

Omission to assess certain abutting property for benefits because it had once been assessed for the same purpose. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

40. Railroads.

Street railway company with mere right-of-way on street not liable for assessment for improvement of street. Davis v. Lucas, 52 Iowa 730, 3 N.W. 134 (1879).

For additional annotations, see I.C.A.

41. River beds.

For annotations, see I.C.A.

42. School property.

For annotations, see I.C.A.

43. Nature of assessment.

For annotations, see I.C.A.

44. Separate assessments.

For annotations, see I.C.A.

45. Assignment.

For annotations, see I.C.A.

46. Exemptions.

For annotations, see I.C.A.

47. Method of computing assessments.

Town, having by ordinance fixed mode of procedure to construct sidewalks and access costs, is limited to mode prescribed. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856 (1927).

Engineer's use of "curve" to determining of benefits according to area and distance from improvement held not ground for setting aside assessment. In re: Resurfacing Fourth Street in City of Davenport, 203 Iowa 298, 211 N.W. 375 (1926).

City has right to prescribe mode in which tax shall be assessed. City of Burlington v. Quick, 47 Iowa 222 (1877).

48. Area as basis for assessment.

Area method of computing assessment for street paving proper. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

49. Value of property.

Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).
Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

50. Amount of assessment.

For annotations, see I.C.A.

51. Expenses within assessment.
For annotations, see I.C.A.

52. Credit, amount of assessment.
Abutting owner assessed for paving not entitled to credit for old curb and gutter torn up by city. In re: Audubon and Ninth Streets, 198 Iowa 1103, 199 N.W. 983 (1924).

53. Excessive assessments.
Landowner only entitled to relief for amount assessment exceeded that permissible. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).
Assessment including items which could not legally be assessed for is void. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

54. Proportional assessment.
Burden must be distributed ratably on property subject to assessment. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).
Equitable apportionment. Snyder v. City of Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).
For additional annotations, see I.C.A.

55. Uniform assessment.
For annotations, see I.C.A.

56. Form of assessment.
For annotations, see I.C.A.

57. Defects and irregularities in procedure.
For annotations, see I.C.A.

58. Validity of assessment.
Special assessment to pay cost of a disposal ditch. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).
Municipal assessment for street grading wholly void. Carter v. Cemansky, 126 Iowa 506, 102 N.W. 438 (1905).
For additional annotations, see I.C.A.

59. Conformity of work authorized with work done.
Resurfacing versus repair and patching. Not such as to render action void. Noble v. City of Des Moines, 191 Iowa 12, 174 N.W. 44 (1919).
Necessity of substantial compliance with contract before cost of improvement could be assessed upon abutting property. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).
Extension by council of time fixed by contract for completion of street paving not unreasonable as to invalidate assessments. F. M. Hubbell, Son & Co. v. City of Des Moines, 168 Iowa 418, 150 N.W. 701 (1915).
Fraud of contractor in not using amount of cement required by contract renders void the assessment on property abutting thereon. Carter v. Cemansky, 126 Iowa 506, 102 N.W. 438 (1905).

60. Payment of assessment.
For annotations, see I.C.A.

61. Actions to collect assessments.
For annotations, see I.C.A.

62. Use of proceeds of assessment.
Money raised by assessment on land for paving certain streets is a trust fund, and cannot be lawfully appropriate by the city to pay for paving other streets. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

63. Persons liable.
For annotations, see I.C.A.

64. Deeds and conveyances.
For annotations, see I.C.A.

65. Conveyances to evade assessment.
For annotations, see I.C.A.

66. Landlord and tenant.
For annotations, see I.C.A.

67. Injunctions.
For annotations, see I.C.A.

68. Estoppel and waiver.
For annotations, see I.C.A.

69. Payment, estoppel and waiver.
For annotations, see I.C.A.

70. Counterclaim.
For annotations, see I.C.A.

71. Evidence.
Evidence showed special benefit from sidewalk improvements. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856 (1927).
Evidence showed assessment for improvements did not exceed special benefits, and that property was properly included as "adjacent property." In re: Hume, 202 Iowa 969, 208 N.W. 285 (1926).
For additional annotations, see I.C.A.

72. Presumptions and burden of proof.
Assessment by city council for public improvement is presumed legal, equitable, and just. Hahn v. City of LeMars, 197 Iowa 292, 197 N.W. 8 (1924).
Presumption that all real estate receives some degree of benefit from permanent improvement of street adjoining it. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).
Engineer's tentative determination of benefits by using "curve," taking account of the area and distance from improvement, did not preclude reasonable presumption of substantial justice. In re: Resurfacing Fourth Street in City of Davenport, 203 Iowa 298, 211 N.W. 375 (1926).
Presumption that action of town council in levying assessment is correct. Curtis v. Town of Dunlap, 202 Iowa 588, 210 N.W. 800 (1926).
Burden of impeaching an assessment for local improvements is on complaining property owner. In re: Paving Streets in Floyd Park Addition, Sioux City, 197 Iowa 915, 196 N.W. 597 (1924).
For additional annotations, see I.C.A.

73. Instructions.
For annotations, see I.C.A.

74. Judgment.
For annotations, see I.C.A.

75. Review.
That cost of paving streets may be greater than should be borne by small town raises no ground for courts to interfere. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).
For additional annotations, see I.C.A.

384.39 Improvements Brought to Grade

1. Construction and application.
Street should not be permanently improved until grade is established. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A. L. R. 1310 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).
Error or irregularity in procedure does not cause council to lose jurisdiction or render proceeding invalid. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A. L. R. 1310 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).
Assessment for paving alley when no grade was established was void. Walter v. City of Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927).

2. Jurisdiction.
Error or irregularity in procedure does not cause council to lose jurisdiction or render proceeding invalid. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).

3. Powers and duties of cities.
City only required to grade a street to its established grade. Kaynor v. City of Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).
Alley could not be paved above established grade. F. M. Hubbell, Son & Co. v. Bennett Bros, 130 Iowa 66, 106 N.W. 375 (1906).
Authority of city to establish grade is legislative, and when exercised within its limits, cannot be controlled. Kemp v. City of Des Moines, 125 Iowa 640, 101 N.W. 474 (1904).
City must bring street to grade before requiring property owners to lay permanent walks. O.A.G. 1910, p. 192.
Power of municipal corporation to order sidewalks and assess costs thereof. O.A.G. 1907, p. 143.

4. Ordinance.
Change in established grade must be made by ordinance. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).
Subsequent ordinance changing alley grade to conform to improvement could not validate assessment. F. M. Hubbell, Son & Co. v. Bennett Bros., 130 Iowa 66, 106 N.W. 375 (1906).

5. Contracts.
Incumbent upon city to establish grade of street before paving. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

6. Sidewalks.

Sidewalks to be at established grade. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Provision that sidewalks shall be at established grade. Kaynor v. City of Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Where town neither brought the street to grade nor pointed out the grade line, lot owner was not in default for failure to comply with order of council directing construction of a walk. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Where no grade is established, town may construct temporary walks but not permanent walks, and if temporary walks are constructed by town, cost must be kept within statutory limit. O.A.G. 1909, p. 274.

7. Materiality of grade variance.

Variance from established grade, in ordering permanent street improvement, is not a jurisdictional matter depriving council of jurisdiction to assess abutting owners. In re: Audubon and Ninth Streets, 198 Iowa 1103, 199 N.W. 983 (1924).

Slight variance not material. Landis v. City of Marion, 176 Iowa 240, 157 N.W. 841 (1916).

Variance between grade established by council and that on which pavement is laid, does not invalidate special assessment to pay for paving. F. M. Hubbel, Son & Co. v. City of Des Moines, 168 Iowa 418, 150 N.W. 701 (1915).

8. Remedy of property owner.

Traveling of street on which no grade was established - appeal. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A. L. R. 1310 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).

Failure to appear and object after notice is waiver of right to object. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A. L. R. 1310 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).

Variance of two to eighteen inches not grounds for enjoining assessment. Shaver v. J. W. Turner Improvement Co., 1333 N.W. 770 (Iowa 1911).

Plaintiff entitled to injunction to restrain unauthorized construction of a walk. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

9. Injunction.

Will not lie to prevent establishment of permanent grade unless unreasonable and unnecessary. Gallaher v. City of Jefferson, 125 Iowa 324, 101 N.W. 124 (1904).

10. Damages from improvement.

Conformance to grade by property owner. Monarch Mfg. Co. v. Omaha C. B. & S. R. Co., 127 Iowa 511, 103 N.W. 493 (1905).

11. Waiver.

Property owner not appearing and filing objections in proceedings after statutory notice waives right to object because no benefits would accrue unless street grade was first established. People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (1932).

384.40 Underground Improvements

1. Construction and application.

Sewer and water connections with abutting property. Seymour v. City of Ames, 218 Iowa 615, 255 N.W. 874 (1934).

Right of town to put in connections and charge owners. Toben v. Town of Manson, 192 Iowa 1127, 185 N.W. 984 (1922).

Exercise of power granted by this section. O.A.G. 1923-24, p. 403.

2. Ordinance.

Charges for underground water connection by city draw interest. O.A.G. 1923-24, p. 403.

384.41 Petition by Property Owners

1. Construction and application.

Character and extent of improvement of streets left to discretion of city authorities. Call Co. v. Great Northern R. Co., 227 Iowa 142, 287 N.W. 832 (1939).

City without power to pass ordinance without petition. Tallant v. City of Burlington, 39 Iowa 543 (1874).

384.42 Procedure on Public Improvement

1/2. Construction and application.

City may include more than one project in resolution of necessity. O.A.G. April 9, 1976.

1. Jurisdiction.

Where jurisdiction of proceedings for street improvement and assessment for benefits therefrom has been once regularly acquired by city council, it is not lost by subsequent irregularity for which there is a remedy by appeal. Koontz v. City of Centerville, 161 Iowa 627, 143 N.W. 490 (1913).

2. Injunction.

Standing of residents and property owners in city area to which a corporation proposed to extend its sanitary sewer system. Sayles v. Bennett Ave. Development Corp., 258 Iowa 628, 138 N.W.2d 895 (1965).

3. Validity of contract.

Exercise of public utility franchise which city had no power to grant. Sayles v. Bennett Ave. Development Corp., 258 Iowa 628, 138 N.W.2d 895 (1965).

384.43 Preliminary Plans

For annotations, see I.C.A.

384.44 Estimated Cost

For annotations, see I.C.A.

384.45 Plats

1. Construction and application.

Compliance with special assessment statutes necessary to issuance of special assessment certificates to pay for improvements. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Council need not consider added requirements enacted but not yet effective. Butters v. City of Des Moines, 202 Iowa 30, 209 N.W. 401 (1926).

2. Cost of plat.

From improvement fund if proceedings are dismissed and improvement not constructed. O.A.G. 1925-26, p. 61.

3. Duplicate.

For annotations, see I.C.A.

384.46 Lot Valuations

1. In general.

Section 441.2(1) providing special method for valuing agricultural land based on productivity, net earning capacity, and fair market value as agricultural land did not apply to determine if special assessment made for paving of gravel street exceeded statutory limits of 25 percent of the value of lot. City of Clive v. Iowa Concrete Block & Material Co., 298 N.W.2d 585 (Iowa 1980).

384.47 Schedule

1. Construction and application.

Compliance with special assessment statutes necessary to issuance of special assessment certificates to pay for improvements. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Council need not consider added requirements enacted but not yet effective. Butters v. City of Des Moines, 202 Iowa 30, 209 N.W. 401 (1926).

2. Estimate of value.

Owner could assume mistakes in estimate of value of lot would be corrected. Smith, Lichty & Hillman Co. v. Mason City, 210 Iowa 700, 231 N.W. 370 (1930).

384.48 Adoption of Plat

1. Construction and application.

Paving assessment not invalid because in the final order for improvement the width was changed after adoption of the resolution. In re: Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

384.49 Resolution of Necessity

1. Construction and application.

Property owner's waiver of rights for failure to file objection to assessment does not apply to sewer projects. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

City may include more than one project in resolution of necessity. O.A.G., April 9, 1976.

Construction of plant for sewage disposal. Glucose Co. v. Marshalltown C. C. 153 F. 620 (1907).

Payment for street paving by special assessment certificates. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Building of sewers. Dunn v. Sioux City, 206 Iowa 908, 221 N.W. 571 (1928).

Statutory conditions precedent to improvement to be strictly followed. Chicago & N.W. Ry. Co. v. Sedgwick, 203 Iowa 726, 213 N.W. 435 (1927).

Requisition by city of jurisdiction for street improvement. Manning v. City of Ames, 192 Iowa 998, 184 N.W. 347 (1921).

Requirement of resolution of necessity and publication of notice are to be strictly followed. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Variance from established grade not jurisdictional defect. Shaver v. J. W. Turner Improvement Co., 133 N.W. 770 (1912), affirmed, 155 Iowa 492, 136 N.W. 711.

Resolution for sewer construction void for want of jurisdiction. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

2. Ordinance.

City could improve streets without amending prior ordinance where statute prescribed procedure. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

Consistency with statutes required. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529, 3 Ann. Cas. 651 (1905).

Procedure under ordinance held to be mandatory. Starr v. City of Burlington, 45 Iowa 87 (1876).

3. Determination of necessity of improvement.

Council can act on report of committee without having actual knowledge of the facts. Brewster v. City of Davenport, 51 Iowa 427, 1 N.W. 737 (1879).

4. City council.

Council, in ordering street improvements, acts as properly constituted legislative body of city, not as property owners' agent. Schumacher v. City of Clear Lake, 214 Iowa 34, 239 N.W. 71 (1931).

5. Procedure in general.

Must be in compliance with statutes relating to preliminary proceedings. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

Objections raised to notice and material to be used related to regularity not to validity of proceedings. Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

Ordering of improvement in manner provided by statute is condition precedent to right to condemn property and proceed to construct the improvement. O.A.G. 1925-26, p. 245.

6. Necessity of resolution of necessity.

Resolution of necessity needed to assess property according to benefits. Peterson v. Incorporated Town of Stratford, 190 Iowa 45, 180 N.W. 13 (1920).

Adoption of resolution and publication of intent to improve necessary prior to making improvement. Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Resolution held necessary. Eckert v. Incorporated Town of Walnut, 117 Iowa 629, 91 N.W. 929 (1902).

Acceptance of sewer - estopped. Cooper v. City of Cedar Rapids, 112 Iowa 367, 83 N.W. 1050 (1900).

Various resolutions failed to confer jurisdiction to improve. Starr v. City of Burlington, 45 Iowa 87 (1876).

Paving costs of intersections in area annexed to city but not included in resolution of necessity for municipal paving program cannot be paid

subsequently by the city either paying the contractor directly or indemnifying the subdivider. O.A.G. March 25, 1968.

7. Clarity of resolution.

Resolution providing that cost of acquiring ground for street that is to be assessed against adjacent property is valid. Guenther v. City of Des Moines, 197 Iowa 414, 197 N.W. 326 (1924).

8. Operation and effect of resolution.

Resolution was insufficient to authorize levy of special tax. Wardens and Vestry of Christ Church v. City of Burlington, 39 Iowa 224 (1874).

9. Conforming to resolution.

Resolution need state materials to be used and method of construction only in a general way. Richardson v. City of Denison, 189 Iowa 426, 178 N.W. 332 (1920).

Where resolution ordered patching and part of work was reconstruction, the assessment could not be enjoined. Ellyson v. City of Des Moines, 179 Iowa 882, 162 N.W. 212 (1917).

Assessment was not invalid because final order changed width after adoption of resolution. In re: Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

10. Finality.

When duly and legally adopted the action of council is final. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

11. Materials, selection of.

Resolution ordering construction of sidewalk not void because specifically designated material and mixture to be used. Perrott v. Balkema, 211 Iowa 764, 234 N.W. 240 (1931).

Within discretion of council. Swan v. City of Indianola, 142 Iowa 731, 121 N.W. 547 (1909).

Resolution and advertisement did not restrict competition in violation of the statutes. Saunders v. Iowa City, 134 Iowa 132, 111 N.W. 529 (1907).

12. Contracts.

Generally, see Notes of Decisions under § 391.28 et seq.

Where resolution was held void contract for payment of contractor was void. Lytle v. City of Ames, 225 Iowa 199, 297 N.W. 453 (1938).

Flushcoating streets with oil and repairing defects held not "oiling". Jackson v. City of Creston, 206 Iowa 244, 220 N.W. 92 (1928).

Construction of primary road extension by Highway Commission. O.A.G. 1938, p. 769.

13. Assessments.

City paying expense from general fund may build sewers without formalities necessary, where cost is assessed against property. Dunn v. Sioux City, 206 Iowa 908, 221 N.W. 571 (1928).

Assessments pursuant to intent of council will be sustained. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Construction of sewer beyond point fixed by resolution. Williams v. City of Cherokee, 184 Iowa 899, 169 N.W. 110 (1918).

Must be statutory authority to levy special assessments. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

Council held to have levied tax without jurisdiction. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

Proportion of cost to be assessed against any particular property. Millan v. City of Chariton, 145 Iowa 648, 124 N.W. 766 (1910).

14. Record.

Failure to put resolutions on ordinance record held not to invalidate them. Jones v. City of Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

Impeachment of record of council. Bailey v. City of Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

Omission of name of owner in record of resolution from names of parties assessed did not invalidate it. Edwards & Walsh Const. Co. v. Jasper County, 117 Iowa 365, 90 N.W. 1006, 94 Am. St. Rep. 301 (1902).

15. Presumptions.

Adoption of resolution of necessity providing for construction of sewer created conclusive presumption that benefit resulted from improvement. Moss v. Incorporated Town of Hull, 249 Iowa 1178, 91 N.W.2d 599 (1958).

Where proper resolution of necessity adopted in sewer proceeding, presumption that of new sewer and property served would be benefitted. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

16. Validity of resolution.

Resolution of necessity, for pavement of certain width, held valid though in conflict with existing ordinance fixing curb line. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

Contract for paving must substantially conform to resolution of necessity. Richardson v. City of Denison, 189 Iowa 426, 178 N.W. 332 (1920).

Failure to put resolutions on ordinance record held not to invalidate them. Jones v. City of Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

17. Sufficiency of resolution - in general.

Resolution levying assessments on all property in town sufficient to authorize assessment against property of defendant. Chicago, R. I. & P. Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Resolution advising owners of improvement contemplated is sufficient. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

Resolution for paving held proper. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Resolution providing that cost of acquiring ground for street is to be assessed against adjacent property is valid. Guenther v. City of Des Moines, 197 Iowa 414, 197 N.W. 326 (1924).

Resolution held to declare the necessity or advisability of grading street. Royal v. City of Des Moines, 195 Iowa 23, 191 N.W. 377 (1923).

Resolution held sufficient. Manning v. City of Ames, 192 Iowa 998, 184 N.W. 347 (1921).

A distinctly separate resolution need not be adopted by itself. Meader v. Incorporated Town of Sibley, 191 Iowa 1139, 183 N.W. 610 (1921).

Resolution need state materials to be used and method of construction only in a general way. Richardson v. City of Denison, 189 Iowa 426, 178 N.W. 332 (1920).

Resolution stating that construction to be in accord with plans and specifications therein referred to is valid. City of Bloomfield v. Stanley, 174 Iowa 114, 156 N.W. 307 (1916).

That clerk changed numbers of resolutions did not invalidate them. Jones v. City of Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

Need not specify particular kind of blocks or detail method of construction. In re: Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

Resolution providing for assesssment of abutting and adjacent property was valid. Dunker v. City of Des Moines, 160 Iowa 567, 142 N.W. 207 (1913).

Resolution held valid though it did not expressly state material to be used in paving. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

Resolution held invalid, failed to describe property adequately. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536 (1912).

Resolution failed to comply with statute. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

Resolution and advertisement did not restrict competition in violation of the statutes. Saunders v. Iowa City, 134 Iowa 132, 111 N.W. 529, 9 L. R. A. N. S., 392 (1907).

Resolution was not invalid because not mentioning curbing and guttering. Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

Plat of engineer referred to resolution cured irregularities. Dittoe v. City of Davenport, 74 Iowa 66, 36 N.W. 895 (1888).

18. Location, sufficiency of resolution.

Resolution held sufficient. Manning v. City of Ames, 192 Iowa 998, 184 N.W. 347 (1921).

Need not specify particular kind of blocks or detail method of construction. In re: Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

19. Specificity, sufficiency of resolution.

Resolution held sufficient. Manning v. City of Ames, 192 Iowa 998, 184 N.W. 347 (1921).

Resolution providing for assessment of abutting and adjacent property was valid. Dunker v. City of Des Moines, 160 Iowa 567, 142 N.W. 207 (1913).

Resolution held valid though it did not expressly state material to be used in paving. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912). Nixon v. Burlington, 141 Iowa 316, 115 N.W. 239.

Resolution was not invalid because not mentioning curbing and guttering. Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

20. Injunction.

Municipal councils exercised large discretion in improving streets, but unreasonable and arbitrary exercise thereof may be restrained. Des Moines City Ry. Co. v. City of Des Moines, 205 Iowa 495, 216 N.W. 284 (1927).

21. Repeal of resolution.

Majority vote. City of Chariton v. Holliday, 60 Iowa 391, 14 N.W. 775 (1883).

22. Review.

Supreme Court presumed pavement bid, resolution of necessity, and notice to bidders were in form consistent with district court's decree. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

384.50 Notice of Hearing

1. Validity.

For validity, statute must provide for notice. Trustees of Griswold College v. City of Davenport, 65 Iowa 633, 22 N.W. 904 (1885).

2. Construction and application.

Property owner's constitutional rights not violated by lack of due process. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

This section intended to cover errors arising out of exercise of jurisdiction acquired. Comstock v. Eagle Grove City, 113 Iowa 589, 111 N.W. 51 (1907).

3. Purpose.

Assessment could not be enforced until owners were given notice of hearing. Gilcrest & Co. v. City of Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912).

4. Prior laws.

Code section 810 was mandatory. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

Code 1897, section 971, did not contravene the state or United States Constitutions prohibiting the taking of property without due process of law. Reed v. City of Cedar Rapids, 137 Iowa 107, 111 N.W. 1013 (1907).

Procedure for cities under special charter. Diver v. Keokuk Savings Bank, 126 Iowa 691, 102 N.W. 542 (1905).

5. Jurisdiction.

Jurisdiction exists for public improvement as to property owner taking part in initial proceedings irrespective of legal notice. Chicago & N. W. Ry. Co. v. Sedgwick, 203 Iowa 726, 213 N.W. 435 (1927).

6. Necessity of notice.

Assessment on abutting owners without notice is unlawful. Gatch v. City of Des Moines, 63 Iowa 718, 18 N.W. 310 (1884). Trustees of Griswold College v. City of Davenport, 18 N.W. 314 (Iowa 1884).

Statutory requirements as to notice must be strictly observed, or proceedings involving special assessments will be held void. Roznos v. Town of Slater, 254 Iowa 77, 116 N.W.2d 471 (1962).

Jurisdiction to improve exists as to owner taking part in initial proceedings irrespective of legal notice. Chicago & N. W. Ry. Co. v. Sedgwick, 203 Iowa 726, 213 N.W. 435 (1927).

Adoption of resolution of necessity and publication of notice of intention required for validity. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Where work done is reconstruction, cost could not be assessed for lack of notice. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

Notice is jurisdictional. Benshoff v. City of Iowa Falls, 175 Iowa 30, 156 N.W. 898 (1916).

Owner may be estopped from objecting to jurisdiction. Gilcrest & Co. v. City of Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912).

Where notice of hearing not given, owners not liable for assessment. Gilcrest & Co. v. City of Des Moines, 131 N.W. 776 (1911).

Resolution which failed to provide for notice or mode of determining amount was invalid. Zelie v. City of Webster City, 94 Iowa 393, 62 N.W. 796 (1895).

Where it appears that notice would have been of no advantage to owner, lack of notice is not a defense against collection of the tax. Dittoe v. City of Davenport, 74 Iowa 66, 36 N.W. 895 (1888).

Payment on grounds of no notice of the equalizing and assessment; determination of his share being matter of calculation, not discretion. Amery v. City of Keokuk, 72 Iowa 701, 30 N.W. 780 (1887).

Where tax is levied without notice, party claiming validity must show notice would have been unavailing. Auer v. City of Dubuque, 65 Iowa 650, 22 N.W. 914 (1885).

Notice and opportunity to be heard is necessary. Trustees of Griswold College v. City of Davenport, 65 Iowa 633, 22 N.W. 904 (1885).

Where assessments are not equal, notice necessary. Gatch v. City of Des Moines, 63 Iowa 718, 18 N.W. 310 (1884).

Publication provided for in ordinance held mandatory. City of Dubuque v. Wooten, 28 Iowa 571 (1870).

Party being assessed for permanent sidewalk improvement should be given notice of time when question of amount of assessment against his property is to be heard and an opportunity to be present and make any showing that he would in justice be entitled to make. O.A.G. 1911-12, p. 831.

7. Personal service.

Publication of notice as prescribed is jurisdictional, and personal service of notice invalid. Zalesky v. City of Cedar Rapids, 118 Iowa 714, 92 N.W. 657 (1902).

Resident who has been personally served cannot complain that no publication of notice was made. City of Chariton v. Holliday, 6 Iowa 391, 14 N.W. 775 (1882).

8. Conforming to ordinance and resolution.

Entire resolution need not be included in notice. Spalti v. Town of Oakland, 179 Iowa 59, 161 N.W. 17 (1917).

Notice of hearing on resolution need not be given more specific than a resolution sufficiently specific. Gilcrest & Co. v. City of Des Moines, 131 N.W. 776 (1911).

Notice not valid because last publication was on Sunday. Gallaher v. Garland, 126 Iowa 206, 101 N.W. 867 (1904).

9. Sufficiency of notice.

Notice of hearing of proposed resolution of necessity to construct sewer system in town complied with due process where it advised those whose property was subject to assessment as to the nature of improvement and afforded them opportunity to be heard. Roznos v. Town of Slater, 254 Iowa 77, 116 N.W.2d 471 (1962).

Statute held to have been sufficiently complied with. Anderson - Deering Co. v. City of Boone, 201 Iowa 1129, 205 N.W. 984 (1925).

Notice need not state amount of assessment when owner may ascertain such by mere mathmetical calculation. Ford v. Incorporated Town of North Des Moines, 80 Iowa 626, 45 N.W. 1031 (1890).

Notice prescribed in ordinance held sufficient. Lyman v. Plummer, 75 Iowa 353, 39 N.W. 527 (1888).

10. Ordinances.

Valid assessment may be made if due notice and due opportunity to be heard are provided by local ordinances. Trustees of Griswold College v. City of Davenport, 18 N.W. 314 (Iowa 1884); Gatch v. City of Des Moines, 63 Iowa 718, 18 N.W. 310 (1884).

Assessments under code of 1897. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905).

Notice as required by ordinance not complied with. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Publication of notice as prescribed is jurisdictional. Zalesky v. City of Cedar Rapids, 118 Iowa 714, 92 N.W. 657 (1902).

City ordinance requiring notice must be complied with. Starr v. City of Burlington, 45 Iowa 87 (1876).

Notice held mandatory. Roche v. City of Dubuque, 42 Iow 250 (1875).

11. Property included.

Resolution of necessity for construction of sewer failed to sufficiently inform property owners of land that would be included in district for assessment. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536 (1912).

12. Description of property.

Immaterial that realty was incorrectly described in resolution of necessity and in notices of preliminary proceedings. Sunset Golf Club v. Sioux City, 242 Iowa 739, 46 N.W.2d 548 (1951).

13. Location.

Where notice of intention to improve did not describe location of improvement and materials to be used, the city council was without power to order improvement at expense of the city. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Notice sufficient where it specified actual location and terminals of proposed pavement though the width of the pavement was not given. In re Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

14. Materials used.

Unnecessary for notice of proposed resolution of necessity to describe method of construction detail. Wigodsky v. Town of Holstein, 195 Iowa 910, 192 N.W. 916 (1923).

Notice sufficient though it did not specify particular kinds of blocks or detail method of construction of pavement. In re Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

15. Combined notice.

Contents of resolution. O.A.G. 1928, p. 190.

Different municipal improvements may be legally noticed in the same notice of assessment. Iowa Pipe & Tile Co. v. Callanan, 125 Iowa 358, 101 N.W. 141 (1904).

16. Contractor's rights.

May recover cost from city if owners not estopped. Gilcrest & Co. v. City of Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912).

17. Time.

Multiple publications sufficient compliance with statute. Durst v. City of Des Moines, 150 Iowa 370, 130 N.W. 168 (1911).

18. Sundays.

Notice not insufficient because last publication occurred on Sunday. Nixon v. City of Burlington, 141 Iowa 316, 115 N.W. 239 (1908).

19. Defects in notice.

Since city council has jurisdiction to improve street, any error or irregularity in procedure cannot cause council to lose jurisdiction or render proceedings invalid. People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1932).

Owner who petitioned for improvement or filed objections prior to date of hearing cannot object to defects in notice. Gilchrest & Co. v. City of Des Moines, 131 N.W. 776 (Iowa 1911).

20. Objections.

Point raised that notice was not published sufficient number of times. Gilcrest & Co. v. City of Des Moines, 131 N.W. 776 (1911).

Fact of void assessment not waived by failure to object. Chicago, R.I. & P.Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Requirement of two publications in each of two newspapers published in city of proposed public improvements held not to apply to city operating under special charter. Miller v. City of Glenwood, 188 Iowa 514, 176 N.W. 373 (1920).

Not necessary for notice to specify time when objections will be heard. Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

Where a general city ordinance provided that the cost of street improvement should be assessed against the abutting property, on objection by the plaintiff that she had no notice that the cost of guttering and curbing in front of her lots was to be assessed against her was unavailable. Arnold v. City of Ft. Dodge, 111 Iowa 152, 82 N.W. 495 (1900).

21. Estoppel or waiver.

Defective description by city of realty in resolution of necessity and in notice of preliminary proceedings. Mere errors or irregularities waived by failure to object. Sunset Golf Club v. Sioux City, 242 Iowa 739, 46 N.W.2d 548 (1951).

If no notice was given, there was no waiver of objections. Western Asphalt Paving Corporation v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

Owners estopped. Gilcrest & Co. v. City of Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912).

Appearance waives defects in notice. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

Objection that notice of intention was defective waived. Reed v. City of Cedar Rapids, 137 Iowa 107, 111 N.W. 1013 (1907).

Property owner who made no objection to contract for improvement until after work was done could not complain of contract, after having received benefits thereof, on grounds rendering it merely voidable. Diver v. Keokuk Sav. Bank, 126 Iowa 691, 102 N.W. 542 (1905).

Objection of no opportunity to be heard in opposition to assessment was untenable. Arnold v. City of Ft. Dodge, 111 Iowa 152, 82 N.W. 495 (1900).

22. Meeting and hearing.

Adjourned meeting was continuation of original meeting. McMurray v. City of Pella, 246 Iowa 313, 67 N.W.2d 620 (1955).

23. Evidence.

Affidavit of publication made four months after publication was competent proof of publication. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).

Contention that notice not properly published not sustained. Miller v. City of Glenwood, 188 Iowa 514, 176 N.W. 373 (1920).

24. Injunction.

If notice of hearing is so defective as to render assessments thereunder absolutely, court of equity has power to enjoin further proceedings in the matter. Roznos v. Town of Slater, 254 Iowa 77, 116 N.W.2d 471 (1962).

384.51 Adoption of Resolution

1. In general.

Authority of city to make special assessment against abutting property for cost of work done. Allen v. City of Davenport, 132 F. 209 (1904).

Cities and towns are not required to provide sewers and drains. Elledge v. City of Des Moines, 259 Iowa 284, 144 N.W.2d 283 (1966).

Adoption of resolution of necessity and publication of notice of intention to improve are conditions precedent to ordering or making the improvement. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Were the proceedings void because of any fundamental defects? And is there any fraud shown? Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

Special charter cities. Diver v. Keokuk Sav. Bank, 126 Iowa 691, 102 N.W. 542 (1905).

No ordinance or resolution was necessary to authorize a city to construct a temporary open sewer for surface drainage. Cooper v. City of Cedar Rapids, 112 Iowa 367, 83 N.W. 1050.

For additional annotations, see I.C.A.

2. Jurisdiction.

Where council had jurisdiction, failure to establish a street grade could not cause loss of jurisdiction. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932).

For additional annotations, see I.C.A.

3. Validity of proceedings.

Town's void contract for lift station rendered assessment based thereon invalid and subject to challenge at any step in proceeding. Chicago R.I. & P.Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

4. Necessity of petition.

Majority of resident owners upon particular street to be improved must petition therefor before city can authorize. French v. City of Burlington, 42 Iowa 614 (1876).

5. Necessity and propriety of improvement.

Resolution of necessity is for city council to decide whether improvement is expedient and that property assessed will be specially benefited. Slater v. Incorporated Town of Adel, 324 N.W.2d 482 (Iowa 1982).

Legislative determination by city council that public improvement is expedient and proper creates presumption that property abutting on improvement will be benefited thereby and such determination cannot be set aside in judicial proceeding. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Interference by the courts. Husson v. City of Oskaloosa, 37 N.W.2d 310 (194).

Absent fraud, council's determination as to necessity for improvements is not reviewable. Brush v. Incorporated Town of Liscomb, 202 Iowa 1155, 211 N.W. 856 (1927).

If, after entering upon street paving improvement, city council became convinced that public necessity or convenience required pavement to be wider than first contemplated, it could take necessary measures to do so. Nixon v. City of Burlington, 141 Iowa 316, 115 N.W. 239 (1908).

For additional annotations, see I.C.A.

6. Resolution of necessity.

Statement presented to town council that assessment levy was excessive did not constitute attack on resolution of necessity. Chicago, R.I. & P.Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Resolution of necessity for special assessment of street improvements did not require unanimous city council vote. Slater v. Incorporated Town of Adel, 324 N.W.2d 482 (Iowa 1982).

Resolution of necessity for paving can be amended at time fixed for consideration and passage. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Resolution of necessity failed to sufficiently inform owners of lands to be included in assessment. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536 (1912).

Where city established street grade by ordinance, the work of bringing the street to such grade might be commenced without ordinance or resolution. Collins v. City of Iowa Falls, 146 Iowa 305, 125 N.W. 226 (1910).

City may include more than one project in resolution of necessity. O.A.G. April 9, 1976.

For additional annotations, see I.C.A.

7. Notice of hearing.

Second notice not required if size of project is reduced by amendment therefore no increase in assessment against lot for added public improvements. Slater v. Incorporated Town of Adel, 324 N.W.2d 482 (Iowa 1982).

Sufficiency of. Roznes v. Town of Slater, 254 Iowa 77, 116 N.W.2d 471 (1962).

8. Objections - in general.

Tabulation of objections not necessary in absence of statutory requirement therefor. McMurray v. City of Pella, 246 Iowa 313, 67 N.W.2d 620 (1955).

Where property owner appears before city council pursuant to notice, and files objections, he is limited, both on his appeal to the district court and the Supreme Court, to such objections, except in case of fraud. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

For additional annotations, see I.C.A.

9. Necessity of objection.

Matters objected to which render special assessment void may be raised on appeal or by independent action. Chicago, R.I. & P.Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Objection to street improvement assessment because two assessments were made against corner lot and because assessments exceeded one-fourth the value of the lot should have been raised before the city council and on appeal. Harris v. Evans, 196 Iowa 799, 195 N.W. 178 (1923).

Objection to be interposed previously to the order that improvement be made. Davenport Locomotive Works v. City of Davenport, 185 Iowa 151, 169 N.W. 106 (1918).

Variance between improvement as constructed and that planned is not jurisdictional. Cheney v. City of Ft. Dodge, 157 Iowa 250, 138 N.W. 549 (1912).

Objection to proceeding to improve a street may be required to be made before the city council. Shaver v. J.W. Turner Improvement Co., 133 N.W. 770 (Iowa 1911).

Objections could not be made the basis of a suit to enjoin assessment of the cost of the work after it has been completed. Collins v. City of Keokuk, 147 Iowa 233, 124 N.W. 601 (1910).

Irregularities in levy of an assessment for street paving. Marshalltown Light, Power & Ry. Co. v. City of Marshalltown, 127 Iowa 637, 103 N.W. 1005 (1905).

Where municipal assessment for grading street was void, property owner not bond to object thereto in order to contest alledged tax lien. Carter v. Cemansky, 126 Iowa 506, 102 N.W. 438 (1905).

10. Grounds of objection.

No insufficient filing where city engineer took plat and schedule into his office where it was accessible to recorder's office. Reed v. City of Cedar Rapids, 137 Iowa 107, 111 N.W. 1013 (1907).

Where bidder did not enlarge bid to cover additional expense, no ground for objection. Comstock v. Eagle Grove City, 133 Iowa 589, 111 N.W. 51 (1907).

Grounds of objection raised by petition on appeal from assessment were properly stricken out where they were not previously made before the city council. Higman v. Sioux City, 129 Iowa 291, 105 N.W. 524 (1906).

11. Sufficiency of objections.

Written objection that assessment against tract was in excess of twenty-five percent of its value deemed sufficient. In re Paving Assessments Levied in town of Odebolt, 193 Iowa 1234, 188 N.W. 780 (1922).

Objections made to assessment for pavement held sufficiently definite and specific. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Objection sufficient to put in issue whether assessment was equitable and was in proportion to benefits rather than to frontage. Benshoof v. City of Iowa Falls, 175 Iowa 30, 156 N.W. 898 (1916).

Objection not stating wherein the law was violated could be disregarded by the council. Koontz v. City of Centerville, 161 Iowa 627, 143 N.W. 490 (1913).

Objection did not go to the validity of the whole tax. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

12. Amended or additional objections.

Discovery that concrete foundation was not up to specifications. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

For additional annotations, see I.C.A.

13. Persons entitled to object.

Owners of property not subject to special assessment for street improvement had not statutory right to appear and object. Husson v. City of Oskaloosa, 37 N.W.2d 310 (Iowa 1949).

Abutting and adjacent owners should have been assessed. Burroughs v. City of Keokuk, 181 Iowa 660, 165 N.W. 83 (1917).

Plaintiff not precluded from attacking a void municipal assessment. Carter v. Cemansky, 126 Iowa 506, 102 N.W. 438 (1905).

Grantee charged with actual knowledge of assessments cannot complain of their injustice. Farwel v. Des Moines Mfg. Co., 97 Iowa 286, 66 N.W. 176 (1896).

14. Time for objection.

For annotations, see I.C.A.

15. Waiver of objections.
For annotations, see I.C.A.

16. Waiver, generally.
For annotations, see I.C.A.

17. Particular defects, waiver of.
For annotations, see I.C.A.

18. Estoppel.
Resolution of necessity for street paving ordered on motion of city council without petition of property owners passed by less than required three-fourths vote - owners not estopped to raise voting question after completion of work. Seymour v. City of Ames, 218 Iowa 615, 255 N.W. 874 (1934).

Where city council's record showed improvement was ordered on motion of council, city cannot urge property owners' estoppel to object to assessment because of waiver of statutory limitation in petition. Nelson v. Sioux City, 208 Iowa 709, 226 N.W. 41 (1929).

Lot owners, having notice of resolution of necessity for construction, and who knew of the letting of the contract for construction, and that work was entered upon and prosecuted to completion, were not precluded from attacking a special assessment. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

For additional annotations, see I.C.A.

19. Fraud.
Fraud in assessment for pavement is not waived by failure to object or to appeal, and abutting owner may subsequently enjoin sale of property for assessment. Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924).

Property owner should have objected to city council that assessment for paving improvement exceeded twenty-five percent of property's value. Evans v. City of Des Moines, 184 Iowa 945, 169 N.W. 336 (1918).

20. Hearing.
For annotations, see I.C.A.

21. Vote required.
For annotations, see I.C.A.

22. Contracts and contractors.
City council could not lawfully enter into contract for payment of major portion of cost of street paving by issuance of special assessment certificates without compliance with statutory provisions relating to making of special assessments. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Contract for street paving could not be held invalid because contract price exceeded the estimate which the engineer was under this statute required to furnish. Miller v. City of Glenwood, 188 Iowa 514, 176 N.W. 373 (1920).

23. Record.
For annotations, see I.C.A.

24. Actions.
If procedure for street improvement renders assessments therefor absolutely void, or if council lacks jurisdiction, invalidity may be raised by

independent action. People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1932).

Where special assessment made for street paving was illegal, but the work was done, and the city subsequently paid the claim of the contractor therefor, it could maintain a suit in equity against an abutting property owner to recover for the improvement in front of his property on a quantum meruit theory. City of Davenport v. Allen, 120 F. 172 (1903).

25. Appeal to district court.
For annotations, see I.C.A.

26. Injunction.
For annotations, see I.C.A.

27. Evidence.
For annotations, see I.C.A.

28. Presumptions.
For annotations, see I.C.A.

29. Review.
For annotations, see I.C.A.

384.52 Detailed Plans and Specifications

1. Construction and application.

Plans and specifications for paving, designating asphalt filler, and at council's option, coal tar pitch filler, giving specifications therefor, were not so misleading as to nullify council's action in adopting them. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

Town engineer did not file specifications for the vibrolithic paving before the notice to bidders was published. Wigodsky v. Town of Holstein, 195 Iowa 910, 192 N.W. 916 (1923).

Time of completion of paving, bids for which are advertised for, is a material part of the specifications, which cannot be changed by bidder. Urbany v. City of Carroll, 176 Iowa 217, 157 N.W. 852 (1916).

It is not necessary that the plans and specifications for a street improvement should be on file for the information of the property owners prior to the time of advertising for bids. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

2. Bids.

Bidders on municipal construction work owe duty to base their bids on plans and specifications on file. Brutsche v. Incorporated Town of Coon Rapids, 220 Iowa 1295, 264 N.W. 696 (1936).

Specifications of company granted contract to construct electric light plant for town varied so materially from town's specifications as to invalidate contract for want of competitive bidding. Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction, 216 Iowa 1301, 250 N.W. 136 (1933).

3. Amended specifications.

City council, after having named various kinds of paving material, and published resolution of necessity for paving, may at hearing, amend resolution by specifying new material, and adopt resolution as amended, in absence of fraud. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

A street paving assessment was not invalid because unwashed gravel was used with the city engineer's approval instead of washed gravel, as called for in the specifications, where an "after word" to the specifications reserved to the city engineer be discretion to permit the use of unwashed gravel. In re Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

4. Compliance.

Bid for public works contract must substantially conform to specification and proposal. Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction, 216 Iowa 1301, 250 N.W. 136 (1933).

Substantial compliance with plans and specifications in paving construction held sufficient to support assessment. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

384.53 Procedures to Let Contract

Index to Notes

1. Construction and application.

Municipality must see that there is no unlawful overreaching where interests of owners are involved. Sioux City v. Western Asphalt Paving Corporation, 223 Iowa 279, 271 N.W. 624, 109 A.L.R. 608 (1937).

Contract of more than $5000 held not within budget law. Schumacher v. City of Clear Lake, 177 Iowa 659, 158 N.W. 473 (1931).

Statutes authorizing contracts strictly construed. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Failure of clerk to file contract prior to commencement of work does not alone void contract. Collins v. City of Keokuk, 147 Iowa 233, 124 N.W. 601 (1910).

Board of public works in cities of first class - approval of contracts. Dewey v. City of Des Moines, 101 Iowa 416, 70 N.W. 605 (1897), reversed on other grounds, 19 S.Ct. 379, 173 U.S. 193, 43 L. Ed. 665

Determination of amount of assessment. Gilcrest v. Macartney, 97 Iowa 138, 66 N.W. 103 (1890).

Contract for work to be done in sections - assessments. Tuttle v. Polk, 92 Iowa 433, 60 N.W. 733 (1894).

Storm sewer - construction of. O.A.G. 1928, p. 46.

2. Curative acts.

McCain v. City of Des Moines, 128 Iowa 331, 103 N.W. 979 (1905).

Windsor v. City of Des Moines, 101 Iowa 343, 70 N.W. 214 (1897).

3. Jurisdiction.

Sewer construction. Lundberg v. Lake City, 194 Iowa 136, 187 N.W. 438 (1922).

Resolutions and contract were for repair of paving by patching, and part of work done was more in nature of resurfacing. Noble v. City of Des Moines, 191 Iowa 12, 174 N.W. 44 (1919).

4. Requisites and validity of contract.

Valid contract necessary to assessment of costs to owners. Allen v. City of Davenport, 132 F. 209 (1904), 65 C.C.A. 641, certiorari denied, 25 S.Ct. 794, 196 U.S. 639.

Contract entered into by town must be authorized by governing body. Poor v. Incorporated Town of Duncombe, 231 Iowa 907, 2 N.W.2d 294 (1942).

Contract was a nullity where proceedings were void. Lytle v. City of Ames, 225 Iowa 199, 270 N.W. 453 (1938).

Provision giving city right to complete work at contractor's expense not compulsory. Charles City v. Rasmussen, 210 Iowa 841, 232 N.W. 137 (1930), 72 A.L.R. 638.

Contract need not be in writing. Wayman v. City of Cherokee, 204 Iowa 675, 215 N.W. 655 (1927).

Indebtedness in excess of constitutional limitation. Waller v. Pritchard, 201 Iowa 1364, 202 N.W. 770 (1925).

Contract must substantially conform to resolution of necessity. Richardson v. City of Denison, 189 Iowa 426, 178 N.W. 332 (1920).

Contract held severable. North View Land Co. v. City of Cedar Rapids, 185 Iowa 1032, 169 N.W. 644 (1918).

Contracts from general fund are binding on successors of officers of city. First Nat. Bank v. City of Emmetsburg, 157 Iowa 555, 138 N.W. 451 (1912).

Presumption that city will provide outlet for sewer. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536 (1912).

Contract for grading and paving valid where grading cost is paid from grading fund. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

Failure of clerk to file improvement contract does not render contract void. Collins v. City of Keokuk, 147 Iowa 233, 124 N.W. 601 (1910).

Contract must correspond to conditions laid down as basis for competitive bidding. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

Provisions for claims for extra work and for waiver of such held valid. Capital City Brick & Pipe Co. v. City of Des Moines, 136 Iowa 243, 113 N.W. 835 (1907).

Contracts to be paid by assessment certificates do not raise or create indebtedness. Corey v. City of Fort Dodge, 133 Iowa 666, 111 N.W. 6 (1907).

Contract may not raise indebtedness of city beyond constitutional limit. Citizen's Bank of Des Moines v. City of Spencer, 126 Iowa 101, 101 N.W. 643 (1904).

Contract let without knowledge of council could be rejected by council. O.A.G. 1932, p. 44.

5. Construction of contract.

If contract can be construed to be enforceable it will be so construed. Corey v. City of Fort Dodge, 133 Iowa 666, 111 N.W 6 (1907).

Contract held to not contemplate expenses for grading. McCain v. City of Des Moines, 128 Iowa 331, 103 N.W. 979 (1905).

Sewer construction - excavation. McCauley v. City of Des Moines, 83 Iowa 212, 48 N.W. 1028 (1891).

6. Performance of contract.

No recovery for defective work where city was enjoined from levying assessment because of defects. Snouffer & Ford v. Grove, 139 Iowa 466, 116 N.W. 1056 (1908); Snouffer & Ford v. Rowell, 116 N.W. 1058 (Iowa 1908); Barber Asphalt Paving Co. v. Brown, 117 N.W. 765 (Iowa 1908); Des Moines Brick Mfg. Co. v. Mason, 118 N.W. 464 (Iowa 1908); Des Moines Brick Mfg. Co. v. Foster, 118 N.W. 465 (Iowa 1908); Des Moines Brick Mfg. Co. v. McCain, 118 N.W. 465 (Iowa 1908).

Deficiency in thickness of paving so great as to constitute fraud. Sioux City v. Western Asphalt Paving Corporation, 233 Iowa 279, 271 N.W. 624, (1937).

Counterclaim for failure to complete work could not be urged where defendants' default justified abandonment by plaintiff. Goben v. Des Moines Asphalt Paving Co., 218 Iowa 829, 252 N.W. 262 (1934).

Contractor liable for negligence. Newton Auto Salvage Co. v. Herrick, 203 Iowa 424, 212 N.W. 680 (1927).

Contracts for municipal improvements to be strictly complied with. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Departure from contract not fraud in validating assessments. Lundberg v. Lake City, 194 Iowa 136, 187 N.W. 438 (1922).

Penalty provision held to not work forfeiture. O'Shonessy v. City of Sioux City, 192 Iowa 396, 184 N.W. 728 (1921).

Council could expend time for completion where contract so provided. Messer v. Marsh, 191 Iowa 1144, 183 N.W. 602 (1921).

How paving was laid in prior years does not show substantial compliance with present contract of more stringent terms. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Minor variations may not void special assessments. In re. Apple, 161 Iowa 314, 142 N.W. 1021 (1913).

Where city and owners did not accept pavement for lack of compliance neither was obligated to reject or offer to return it. Snouffer & Ford v. City of Tipton, 161 Iowa 223, 142 N.W. 97 (1913).

Neither city nor owners can be made to pay where work fails to substantially comply with the contract. Snouffer & Ford v. City of Tipton, 150 Iowa 73, 129 N.W. (1911) 345, Ann. Cas. 1912D, 414.

Trivial deviations in good faith cannot defeat recovery under contract. Ford v. City of Manchester, 136 Iowa 213, 113 N.W. 846 (1907).

Facts showed failure to substantially comply with contract. McCain v. City of Des Moines, 128 Iowa 331, 103 N.W. 979 (1905).

Facts held to not warrant rejection of whole lot of blocks where defective ones would be replaced. Loftus v. Riley, 83 Iowa 503, 50 N.W. 17 (1891).

7. Extension of time.

City's power to extend the time could be exercised after the expiration of the time fixed for performance. O'Shonessy v. City of Sioux City, 192 Iowa 396, 184 N.W. 728 (1921).

Where street-paving contract in its specifications provided that the council might extend the time of completing the work for a reasonable cause, the council had power to extend the time of completing the work. Messer v. Marsh, 191 Iowa 1144, 183 N.W. 602 (1921).

Extension of time by council not so unreasonable as to invalidate assessments. F.M. Hubbell, Son & Co. v. City of Des Moines, 168 Iowa 418, 150 N.W. 701 (1915).

8. Estoppel.

Contractor estopped to claim there was no opportunity to remedy defects in the work. Snouffer & Ford v. City of Tipton, 150 Iowa 73, 129 N.W. 345 (1911).

9. Fraud.

No recovery by contractor under quantum meruit where guilty of a fraud. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

Substitution of materials not such departure from the contract as to constitute fraud invalidating the assessment. Lundberg v. Lake City, 194 Iowa 136, 187 N.W. 438 (1922).

10. Liability of contractor.

Contractor for construction of sewer is liable only for negligence, not for result of work. Newton Auto Salvage Co. v. Herrick, 203 Iowa 424, 212 N.W. 680 (1927).

11. Payment of contractor.

Contractor could not recover loss or damages for breach of written contract where assessment was void. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Contractor could not sustain claim for additional compensation. Love v. City of Des Moines, 210 Iowa 90, 230 N.W. 373 (1930).

Liability of city for negligent and improper assessments. Gilchrest & Co. v. City of Des Moines, 131 N.W. 776 (Iowa 1911).

12. Assessment certificates, payment of contractor.

City liable to contractor for loss due to delay levying assessments. J.W. Turner Imp. Co. v. City of Des Moines, 155 Iowa 592, 136 N.W. 656 (1912).

Where assessments were illegal, city liable for the amount of certificates. Younker v. City of Des Moines, 101 N.W. 1129 (Iowa 1905). Iowa Pipe & Tile Co. v. Callanan, 125 Iowa 358, 101 N.W. 141 (1904). Ft. Dodge Electric Light & Power Co. v. City of Ft. Dodge, 115 Iowa 568, 89 N.W. 7 (1902). Polk County Sav. Bank v. State, 69 Iowa 24, 28 N.W. 416 (1886). Scofield v. City of Council Bluffs, 68 Iowa 695, 28 N.W. 20 (1886). Becroft v. City of Council Bluffs, 63 Iowa 646, 19 N.W. 807 (1884).

13. Quantum meruit.

Where a city has been enjoined from levying an assessment to pay the cost of street improvements on the ground that the work was defectively performed, no recovery can be had by the contractor against the abutting property owner on a quantum meruit. Des Moines Brick Mfg Co. v. McCain, 118 N.W. 465 (Iowa 1908).

No recover under quantum meruit where guilty of a fraud. Sioux City v. Western Asphalt Paving Corporation, 223 Iowa 279, 271 N.W. 624 (1937).

City was not obligated to make restitution to contractor. Horrabin Paving Co. v. City of Creston, 21 Iowa 1237, 262 N.W. 480 (1935).

Where work did not comply with contract, there was no recovery in quantum meruit. Snouffer & Ford v. City of Tipton, 161 Iowa 223, 142 N.W. 97 (1913).

14. Extra work.

Caused by error or deceit on part of city. Capital City Brick & Pipe Co. v. City of Des Moines, 172 N.W. 66 (Iowa 1910).

Under terms of contract laying of concrete held not extra work. Fullerton v. City of Des Moines, 147 Iowa 254, 126 N.W. 159 (1910).

Factors not contemplated by the parties. McCauley v. City of Des Moines, 83 Iowa 212, 48 N.W. 1028 (1891).

City held liable for extra work resulting from change in grade. Slusser, Taylor & Co. v. City of Burlington, 47 Iowa 378 (Iowa 1876).

Contract held to promise additional compensation. Slusser, Taylor & Co. v. City of Burlington, 42 Iowa 378 (Iowa 1876).

15. Subcontractor.

Subcontractor entitled to payment for estimated work done though he had not worked a full two weeks. Goben v. Des Moines Asphalt Paving Co., 218 Iowa 829, 252 N.W. 262 (1934).

16. Liability of city - in general.

City was not morally obligated to pay loss to contractor. Love v. City of Des Moines, 210 Iowa 90, 230 N.W. 373 (1930).

Fraudulent failure to defend appeals from assessments may make city liable. Western Asphalt Paving Corporation v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

Town must pay if lawfully can do so. Humboldt County v. Incorportated Town of Dakota City, 197 Iowa 457, 196 N.W. 53 (1923).

City liable to contractor for loss due to delay in levying assessments. J.W. Turner Imp. Co. v. City of Des Moines, 155 Iowa 592, 136 N.W. 656 (1912).

City not release from liability merely because no authority exists to pay judgments out of general revenue. Slusser, Taylor & Co. v. City of Burlington, 42 Iowa 378 (1876).

City liable for neglect to lay, confirm and collect assessments for cost of work. Morgan v. City of Dubuque, 28 Iowa 575 (1870).

17. Torts, liability of city.

Reservation of right to supervise and inspect for purpose of seeing that work conforms to contract specifications does not make municipality liable for contractors negligence. Walker v. City of Cedar Rapids, 251 Iowa 1032, 103 N.W.2d 727 (1960).

18. Priority of payment.

Assignment of contract - priority of claims. Reynolds v. City of Onawa, 192 Iowa 398, 184 N.W. 729 (1921).

19. Compromise and settlement.

City was authorized to make supplemental contract constituting settlement and discharge of controversy with paving contractor by paying additional compensation. City of Des Moines v. Horrabin, 204 Iowa 683, 215 N.W. 967 (1927).

Compromise and accord and satisfaction binding. First Nat. Bank v. City of Emmetsburg, 157 Iowa 555, 138 N.W. 451 (1912).

20. Removal of materials.

City was not entitled to materials in walk where it refused to accept the walk. Guthrie v. M'Murren, 167 Iowa 154, 149 N.W. 71 (1914).

Forfeiture provision did not prevent removal of materials by contractor. Snouffer & Ford v. City of Tipton, 161 Iowa 223, 142 N.W. 97 (1913).

21. Equipment, purchase of.

May be purchased from street construction fund for maintenance purposes. O.A.G. 1946, p. 63.

22. Assignment of contract.

Assignment of paving contract invalid without consent of city. Sioux City v. Western Asphalt Paving Corporation, 223 Iowa 279, 271 N.W. 624 (1937).

23. Modification of contract.

Where contract is modified the modification must be impeached before it can be claimed the original contract was not performed. In re Mayden, 156 Iowa 157, 135 N.W. 571 (1912).

24. Reformation of contract.

City may treat contract as reformed to conform to the real agreement. Fullerton v. City of Des Moines, 147 Iowa 254, 126 N.W. 159 (1910).

25. Cancellation or rescission of contract.

Contractor holding assessment certificates could not rescind on grounds that assessments were excessive. Anderson-Deering Co. v. City of Boone, 201 Iowa 1129, 205 N.W. 984 (1925).

Facts held to show illegality not cured. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

26. Pleading.

Invalid assessment enjoined. Allen v. City of Davenport, 132 F. 209 (1904).

27. Injunction.

Fraud justifying injunction not shown. Swan v. City of Indianola, 142 Iowa 731, 121 N.W. 547 (1909).

Injunction would lie where there was a substantial departure from the contract. McCain v. City of Des Moines, 128 Iowa 331, 103 N.W. 979 (1905).

28. Evidence.

Extension of time. Miller v. Incorporated Town of Milford, 224 Iowa 753, 276 N.W. 826, 114 A.L.R. 1423 (1938).

Expert opinion in regard to substantial compliance. Sioux City v. Western Asphalt Paving Corporation, 223 Iowa 279, 271 N.W. 624, 109 A.L.R. 608 (1937).

Testimony held incompetent to establish claim. Love v. City of Des Moines, 210 Iowa 90, 230 N.W. 373 (1930).

Evidence of usual compensation bears on contention of what agreed price really was. Goben v. Akin, 208 Iowa 1354, 227 N.W. 400 (1929).

Evidence showed substantial compliance. Vail v. City of Chariton, 181 Iowa 296, 164 N.W. 597 (1917). Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916). Gilchrest & Co. v. City of Des Moines, 131 N.W. 776 (Iowa 1911).

Evidence showed contractor failed to substantially comply with contract. Wingert v. Snouffer & Ford, 134 Iowa 98, 108 N.W. 1035 (1906), rehearing denied, 134 Iowa 97, 111 N.W. 432.

Evidence admissable to show acts of city engineer indicating grade. Slusser, Taylor & Co. v. City of Burlington, 47 Iowa 300 (1877).

29. Questions for jury.

Amount and time of payment. Goben v. Des Moines Asphalt Paving Co., 218 Iowa 829, 252 N.W. 262 (1934).

Whether compensation claimed was unreasonable. Goben v. Des Moines Asphalt Paving Co., 214 Iowa 834, 239 N.W. 62.

Issue of substantial compliance. Central Trust Co. v. City of Des Moines, 204 Iowa 678, 216 N.W. 41 (1927).

Authority of councilman in charge of improvements to let contract. Wayman v. City of Cherokee, 204 Iowa 675, 215 N.W. 655.

Whether settlement constituted on accord and satisfaction. Goben v. Des Moines Asphalt Paving Co., 204 Iowa 466, 215 N.W. 508 (1927).

Amount of grading done - dispute due to inaccuracy of bench mark. Guthrie v. City of Dubuque, 105 Iowa 653, 75 N.W. 500.

30. Instructions.

As to negligent performance of work. Goben v. Des Moines Asphalt Paving Co., 218 Iowa 829, 252 N.W. 262 (1934).

Contract may be established by evidence other than record of proceedings of council. Collins v. City of Dubuque, 29 Iowa 597 (1870).

31. Review.

Injunction would not lie where taxpayer did not serve notice of appeal til city and contractor had settled claims. Horrabin v. Iowa City, 160 Iowa 650, 142 N.W. 212 (1913).

384.54 Confirmation by Decree

1. Validity.

Grant to district court of power to find that benefited properties had been omitted and to order their inclusion in assessment district. In re Bowdoin St., City of Des Moines, 35 N.W.2d 571 (Iowa 1949).

2. Construction and application.

Statute did not authorize trial court to determine whether piece of property within assessment district was not specially benefited. City of Clive v. Iowa Concrete Block & Material Co., 298 N.W.2d 585 (Iowa 1980).

Deficiencies between cost of improving gravel road and permissable amount of assessments against property within special assessment district. Id.

Provision of former § 391.90, requiring trial court in equity to make public improvement assessment that should have been made or to direct city council to do so. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Court shall order or require the inclusion of any benefited property found to have been omitted. In re Bowdoin St., City of Des Moines, 35 N.W.2d 571 (Iowa 1949).

Rights of party not in court could not be adjudicated. Bradley v. City of Centerville, 139 Iowa 599, 117 N.W. 968 (1908).

3. Review.

Supreme Court's review was de novo in proceeding on taxpayer's appeal from confirmation of evaluations as assessments in connection with city sanitary sewer project. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Supreme Court order and fixing assessment at reduced amount. Kuhlmann v. Persinger, 261 Iowa 461, 154 N.W.2d 860 (1967).

384.55 Notice of Paving to Waterboard (No Annotations)

384.56 State Lands

1. Construction and application.

The last paragraph of § 307A.5 which sets a monetary limit on assessments upon State property, is ambiguous and a single, reasonable interpretation cannot be ascertained. O.A.G. May 3, 1976.

Where a municipality levies special assessments against state-owned land, such assessment should be paid by the executive council from the state general fund. O.A.G. January 28, 1971.

Board of social welfare could pay out of its funds special assessments upon property to which state had taken title, and special assessments against such property for financing of certain primary or secondary roads were to be paid from any funds in state treasury not otherwise appropriated. O.A.G. 1938, p. 794.

384.57 Monthly Payments

1. In general.

A governmental unit may collect interest on funds retained pursuant to a contract or public improvement. O.A.G., July 17, 1980.

384.58 Inspection of Work

1. Validity.

Held constitutional. Burlington Sav. Bank v. City of Clinton, Iowa 106 F. 269 (1901).

The area method of special assessment is not invalid. Dunn v. City of Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

2. Construction and application.

Improvement conclusive on owner when contract substantially complied with. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Extension of time for completion of street paving as authorized by contract does not invalidate assessments therefor. Id.

Extension by council of time fixed by contract for completion of street paving not unreasonable as to invalidate assessments. F.M. Hubbell, Son & Co. v. City of Des Moines, 168 Iowa 418, 150 N.W. 701 (1915).

Resolution failed to inform owners of lands to be assessed. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536 (1912).

3. Selection of engineers.

Duty of city to select competent engineers. Hemminger v. City of Des Moines, 199 Iowa 1302, 203 N.W. 822 (1925).

4. Amount of assessment.

Storm sewer properly included in amount of assessment for paving. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

State property exempt from special assessment for storm sewer. O.A.G. 1922, p. 159.

5. Acceptance of work.

Acceptance of work may estop city. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Assessment not void where resolutions and contract were for repair of paving by patching and part of the work done was more in nature of resurfacing. Noble v. City of Des Moines, 191 Iowa 12, 174 N.W. 44 (1919).

Improvement conclusive on owner when contract substantially complied with. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Facts showed acceptance. Gilchrest & Co. v. City of Des Moines, 131 N.W. 776 (1911).

City held to not have accepted. Wingert v. City of Tipton, 134 Iowa 97, 111 N.W. 432 (1907).

6. Time for levy of assessment.

Duty of city to promptly levy assessments. J.W. Turner Imp. Co. v. City of Des Moines, 155 Iowa 592, 136 N.W. 656 (1912).

Assessment for sewer not to be levied and collected prior to completion. Sanborn v. City of Mason City, 114 Iowa 189, 86 N.W. 286 (1901).

7. Operation and effect of order.

Resolution ordering assessment not conclusive where records showed lack of jurisdiction to assess. Comstock v. Eagle Grove City, 133 Iowa 589, 111 N.W. 51 (1907).

8. Evidence.

Evidence sustained finding city had not accepted. Atkinson v. City of Davenport, 117 Iowa 687, 84 N.W. 689 (1900).

384.59 Assessment Schedule

1. Construction and application.

City could not assess entire quarter section platted and subdivided into lots the cost of building sidewalk on side thereof. Cavanaugh v. City of Des Moines, 179 Iowa 739, 162 N.W. 17 (1917).

"Abutting property" is that between which and street is no intervening land. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

Lots are to be assessed separately though used as one tract. Stutsman v. City of Burlington, 127 Iowa 563, 103 N.W. 800 (1905).

Assessing lots in pairs was a violation of statute. Gill v. Patton, 118 Iowa 88, 91 N.W. 904 (1902).

2. Resolution.

Resolution of necessity must adequately inform owners of the lands to be included in district for assessment. Dunker v. City of Des Moines, 156 Iowa 292, 136 N.W. 536.

Assessment valid though resolution failed t list lots and owners. Higman v. Sioux City, 129 Iowa 291, 105 N.W. 524 (1906).

3. Description of property.

Description sufficient as against owner if it accords with boundaries as agreed on by contract between city and owner. City of Muscatine v. Chicago, R.I. & P.R. Co., 79 Iowa 645, 44 N.W. 909 (1890).
Sufficiency of description of property considered and determined. Buell v. Ball, 20 Iowa 282 (1866).

4. Errors and irregularities.

Errors and irregularities in improvements can be corrected only by appeal to district court. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932).

Where irregularity appeared in proceedings to gravel street because grade had not been established owner's remedy was by appeal. People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1898).

If property is properly described error in name of owner is immaterial. Smith v. City of Des Moines, 106 Iowa 590, 76 N.W. 836 (1898).

5. Objections.

Failure to appear and file objections in proceedings after statutory notice waives right to object. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1898).

Where property owner failed to file objections for resolution of necessity was adopted but did file objection at time of final assessment, property owner was limited to the issue of excessive assessment. Moss v. Incorporated Town of Hull, 249 Iowa 1178, 91 N.W.2d 599 (1958).

Supreme Court cannot consider objections to increase in special assessment not made before city council not included in petition in district court. Schumacher v. City of Clear Lake, 214 Iowa 34, 239 N.W. 71 (1931).

6. Actions.

Invalidity may be raised by independent action where assessment is void. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1898).

7. Evidence.

Failures of valuation committee to properly assess sewer project sufficient to overcome presumption that property assessments were correct. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Evidence showed this section complied with. Illinois Cent R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).

384.60 Adoption of Schedule

1. Construction and application.

Property owner may pay assessment in full after starting payment by installment. O.A.G., December 24, 1980.

County treasurer - statutory duty to proceed with collection of special assessments by same proceedings used in collection of ordinary taxes. Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722 (1939).

"Abutting property" defined. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

2. Amendment.

City council may not alter or amend a final schedule of special assessments unless such assessments are invalid or illegal. O.A.G. November 4, 1973.

3. Ordinance.

Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905).

4. Manner of Assessment.

Assessment en masse against several lot owners was proper. Clark v. Martin, 182 Iowa 811, 166 N.W. 276 (1918).

5. Requisites and validity of levy.

Authority of city to levy special assessments derived from statute. Des Moines City Ry. Co. v. City of Des Moines, 183 Iowa 1261, 159 N.W. 450 (1916), L.R.A. 1918D, 839, modified on motion for rehearing 183 Iowa 1261, 165 N.W. 398, L.R.A. 1918D, 839.

Assessment against parcel separated from street by another was improper. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

Levy held valid though resolution failed to list lots and owners. Higman v. Sioux City, 129 Iowa 291, 105 N.W. 524 (1906).

Levy held to have been made by council though auditor ascertained amount to be collected from each owner. City of Burlington v. Quick, 47 Iowa 222 (1877).

6. Entry of assessment.

Special assessment levied by city for street improvements need not be entered in book containing regular taxes. O.A.G. 1922, p. 128.

7. Tax list.

Special assessments sufficiently placed upon tax list. O.A.G. 1922, p. 128.

8. Time for certification.

City council may certify special assessments to county auditor at any time. O.A.G. February 25, 1955.

9. Delay in certification.

Did not relieve tax payer of liability for penalty. O.A.G. 1932, p. 65.

10. Record.

Record held to show assessment against owner though owner's name was omitted in record of resolution. Edwards & Walsh Const. Co. v. Jasper County, 117 Iowa 365, 90 N.W. 1006 (1902).

County treasurer had no authority to change or modify a record of special assessment. O.A.G. July 31, 1964.

County treasurer had no power to change record of special assessment certified to him under this section. O.A.G. 1930, p. 369.

11. Notice of records.

Purchaser of assessment certificate is charged with notice of the records. Talcott v. Noel, 107 Iowa 470, 78 N.W. 39 (1899).

12. Liability of city.

Over assessment not fraud. Inter-Ocean Reinsurance Co. v. Sioux City, 219 Iowa 998, 258 N.W. 907 (1935).

City was held bound by written paving contract as well as implied contract to make valid assessment. Barber Asphalt Paving Co. v. City of Des Moines, 191 Iowa 762, 183 N.W. 456 (1921).

13. Liens.

Loss by party of property by tax sale did not require ratable reduction of lien of assessment certificates. Hawkeye Life Ins. Co. v. Munn, 223 Iowa 302, 272 N.W. 85 (1937).

Lien of delinquent special assessment not brought forward on tax list, lost. Wallace v. Gilmore, 216 Iowa 1070, 250 N.W. 105 (1933).

For additional annotations, see I.C.A.

14. Foreclosure of lien.

Purchaser of certificates held not entitled to sue in equity for foreclosure of assessment land. Hawkeye Life Ins. Co. v. Valley Des Moines, 220 Iowa 556, 260 N.W. 669 (1935).

15. Covenant, breach of.

Right of city to make assessment a lien by filing certificate with auditor was not "incumbrance" violating convenant in lease. Frankel v. Blank, 205 Iowa 1, 213 N.W. 597 (1927).

16. Payment of tax.

Assessment not payable to treasurer until it is certified and reaches him for collection. F.M. Hubbel, Son & Co. v. Hammill, 187 Iowa 1083, 175 N.W. 41 (1919).

17. Interest and penalties.

Time when penalty becomes due. O.A.G. 1928, p. 400.

Interest. Ankeny v. Henningsen, 54 Iowa 29, 6 N.W. 65 (1880).

18. Receipts.

County must furnish and pay for receipts given in collection of special assessments. O.A.G. December 11, 1963.

19. Evidence.

Paper purporting to be a resolution endorsed "Adopted" in handwriting of record was not competent evidence of the levy. Hintrager v. Kiene, 62 Iowa 605, 15 N.W. 568 (1883).

20. Appeal.

Notice of appeals sufficient where handed to clerk who endorsed written acknowledgment. Collinson v. City of Dubuque, 242 Iowa 986, 46 N.W.2d 839 (1951).

Paper filed stated "I object" held insufficient to perfect appeal. Downing v. City of Independence, 203 Iowa 216, 212 N.W. 549 (1927).

On appeal owner limited to same objections urged before council. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

384.61 Assessment of Benefits

Index to Notes

1. Construction and application.

Fact that property owner was fuel company was irrelevant as to whether special assessment for street improvement should have been deferred. City of Clive v. Iowa Concrete Block and Material Co., 298 N.W.2d 585 (Iowa 1980).

Meaning of "assessment." Shurtz's Will, 242 Iowa 448, 46 N.W.2d 559 (1951).

City proceeding to establish street without jurisdiction was without power to exercise taxing power for cost of improvement. Beim v. Carlson, 209 Iowa 1001, 227 N.W. 421 (1929).

Method of assessment. Dickinson v. Incorporated Town of Guthrie Center, 185 Iowa 541, 170 N.W. 759 (1919).

A city is without inherent power to levy special assessments for street improvements: such authority must have its origin in some statute providing therefor. Des Moines City Ry. Co. v. City of Des Moines, 183 Iowa 1261, 159 N.W. 450 (1916).

Act held not curative or retroactive. Benshoof v. City of Iowa Falls, 175 Iowa 30, 156 N.W. 898 (1916).

This section effective and definite without aid of ordinance. Stutsman v. City of Burlington, 127 Iowa 563, 103 N.W. 800 (1905).

The legislature has power to authorize municipalities to require the streets to be paved, and the cost assessed on the abutting lot owners. Warren v. Henly, 31 Iowa 31, (1871).

Power to levy special assessment as well as power to levy general taxes can be granted only by the legislature. City of Fairfield v. Ratcliff, 20 Iowa 396 (1866).

While city street intersections with other roads and local-service street facilities may be established or constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the state highway commission incorporating one with the other. O.A.G. April 4, 1969.

County treasurer has no authority to change or modify a record of special assessment of property as certified to the county auditor by the city clerk. O.A.G. July 31, 1964.

Division of property under this section is made by owner of the property or his agent, and approved by city council. O.A.G. 1930, p. 369.

Construed in favor of property owners. O.A.G. 1919-20, p. 252.

2. Due process.

City council, in assessing special benefits, may, without notice to the landowner, determine the value of the property benefited. Durst v. City of Des Moines, 164 Iowa 82, 145 N.W. 528 (1914).

3. Ordinance.

Need not provide that assessments will be proportioned to benefits. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856 (1927).

Ordinance defining "adjacent property" was not superseded by statute. Dunker v. City of Des Moines, 160 Iowa 567, 142 N.W. 207 (1913).

4. Property subject to assessment, generally.

Where lot extended so as to abut on each of two parallel streets, special assessments for improvement of one street could be imposed only on value of that half of the lot which abutted on the improved street. Dunn v. City of Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

Effect of possibility that another street at other end of block might eventually be opened. In re Bowdoin St., City of Des Moines, 35 N.W.2d 571 (1949).

Railway corporation's property was subject to assessment for sewer purposes. Chicago, M. & St. P. Ry. Co. v. Town of Churdan, 196 Iowa 1057, 195 N.W. 996 (1923).

Assessment for street improvements against "parcel" of land separated from street by another parcel of the original lot was not warranted. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

Authority to assess remote property indirectly benefited from sewer. Gray v. City of Des Moines, 150 Iowa 299, 130 N.W. 582 (1911).

For additional annotations, see I.C.A.

5. Necessity of benefits.

Assessment cannot exceed twenty-five percent of the assessed value of the property. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Property not benefited by new sewer, not liable for assessment. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

Benefit to owner necessarily follows paving improvement. Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924).

Judgment cancelling benefit because of lack of "any benefit" reserved. Dickinson v. City of Waterloo, 179 Iowa 946, 162 N.W. 242 (1917).

Only benefited property may be assessed. Chicago, Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

6. Nature of benefits.

New sewer benefited property served by septic tanks. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

In construction of storm sewer, mere fact that lot has adequate drainage does not alone determine liability to assessment. Diesing v. City of Marshalltown, 199 Iowa 1270, 203 N.W. 693 (1925).

Special benefit derived from construction of sewer where it is so situated that connection can be made. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

7. Determination of benefits - in general.

Method used by city council in determining the benefits conferred on plaintiffs' property from sanitary sewer improvement. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

An elevation factor is a proper consideration in ascertaining benefits from a storm sewer, for special assessment purposes. Spencer Shopping Center, Inc. v. City of Spencer, 200 N.W.2d 513 (1972).

Where there is no evidence to support finding contrary to legislative determination by city council as to assessments for public improvement and as to value of benefits conferred upon subject property, that determination must stand. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Special benefits conferred on property assessed for public improvement need not be reflected in immediate enhancement of market value. In re Hume, 202 Iowa 969, 208 N.W. 285 (1926).

Though statutes fix property that may be assessed, duty of determining what property is benefited and quantum of benefit is vested in municipality with right of appeal to aggrieved party. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Benefits need not be effected by immediate enhancement of market value. In re Paving Streets in Floyd Park Addition, Sioux City, 197 Iowa 915, 196 N.W. 597 (1924).

Benefit need not be a present benefit. In re Jefferson St. Sewer, 179 Iowa 975, 162 N.W. 239 (1917).

In assessing benefits, general relations of property apart from its particular use, as well as its present use, held to be considered. Chicago, R. I. & P. Ry. Co. v. City of Centerville, 172 Iowa 444, 153 N.W. 106 (1915).

In the assessment of benefits for a public improvement, the test is not necessarily whether the market value has been increased, but whether the improvement has enhanced the actual value or worth of the property. Camp v. City of Davenport, 151 Iowa 33, 130 N.W. 137 (1911).

8. Future uses, determination of benefits.

Future potential use of property should be considered in deciding benefits accruing to land. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Consideration of future uses, reasonably to be anticipated, may be considered in determining benefit to property assessed. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Proper to consider future uses and expectations as well as present use to which property is put. Goodell v. City of Clinton, 193 N.W.2d 91 (Iowa 1971).

Future uses may be considered. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Future uses and reasonably anticipated prospects may be considered. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

Amount of assessments for benefit from special improvements not necessarily limited by present use to which owner of abutting property devotes property. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 227 (1953).

Amount of benefits not necessarily limited by present use. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

Municipality, in assessing agricultural land for pavement, may consider future prospect and reasonable anticipation as to future use and value of property. Gronbech v. Town of Jewell Junction, 213 Iowa 358, 239 N.W. 26 (1931).

Rented value or income considered in fixing actual value. Finkle v. City of Marshalltown, 205 Iowa 918, 218 N.W. 618 (1928).

Consideration of future prospects and reasonable anticipation as to future use. Fred Riepe Estate v. City of Burlington, 199 Iowa 373, 202 N.W. 78 (1925).

Benefits need not be effected by immediate enhancement of market value. Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924).

In construction of storm sewer, mere fact that lot has adequate drainage does not alone determine liability to assessment. Diesing v. City of Marshalltown, 199 Iowa 1270, 203 N.W. 693 (1925).

Consideration of future prospects and reasonable anticipations proper. Tjaden v. Town of Wellsburg, 197 Iowa 1292, 198 N.W. 772 (1924). Hahn v. City of Le Mars, 197 Iowa 292, 197 N.W. 8 (1924).

Benefits need not be effected by immediate enhancement of market value. In re Paving Streets in Floyd Park Addition, Sioux City, 197 Iowa 915, 196 N.W. 597 (1924).

Consideration of future prospects and reasonable anticipations proper. Bell v. Burlington, 154 Iowa 607, 134 N.W. 1082 (1912).

Availability of pavement for future use in connection with abutting property may be considered in determining whether amount of assessment exceeds benefits. Cheny v. City of Ft. Dodge, 157 Iowa 250, 138 N.W. 549 (1912).

9. Amount of assessment - in general.

Equality is not obtainable in special assessments, proximation is reasonable. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

In special property value determination, city must give at least initial consideration to value listed on preceding assessment role. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Ultimate question is whether the amount levied on a tract constitutes its fair proportion of the total cost. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Where street with commercial and residential properties on one side and dairy farm on the other side was paved, that assessment of dairy farm was disproportionately higher than that of residential properties did not invalidate assessment. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

Test to determine reasonableness of special assessments against property for construction of storm sewer is not whether assessment exceeds benefits derived, but whether it represents fair proportionate part of total cost. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 327 (1953).

Cost of paving intersection was properly taxed to entire property abutting on the part of street improved. Perry v. City of Albia, 155 Iowa 550, 136 N.W. 681 (1912).

Costs to be assessed against any particular property determined by proportion of the entire cost which each parcel of property should bear. Millan v. City of Chariton, 145 Iowa 648, 124 N.W. 766 (1910).

10. Proportion to value, amount of assessment.

Various assessments in relation to property value are not required to be proportionate to each other, and assessments against unimproved property may be higher in relation to total value than assessment against improved property. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

Paving assessment must represent a fair proportional part of total cost, but fairness in proportional cost of paving assessment is not determined by the percentage ratio of assessment to property value. Id.

Speculative matters not proper in considering benefits. Fred Riepe Estate v. City of Burlington, 199 Iowa 373, 202 N.W. 78 (1925).

11. Proportion to benefits, amount of assessment.

Property assessed for construction of storm sewer benefitted only so far as is conferred by removal of surface water from district generally. Diesing v. City of Marshalltown, 199 Iowa 1270, 203 N.W. 693 (1925).

High property should bear lesser cost of storm sewer than lower land. Smith v. City of Marshalltown, 197 Iowa 85, 196 N.W. 734 (1924).

Depth of lot a factor in determining assessment. Benshoof v. City of Iowa Falls, 175 Iowa 30, 156 N.W. 898 (1916).

That assessment reaches same result as front foot rule does not impeach statement that it is made according to benefits. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

Assessment held not made according to benefits. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

12. Area factor, amount of assessment.

Percentage to be assigned the area factor in determining special assessment for a storm sewer is a matter of judgment to be exercised by the city's engineers and city council. Spencer Shopping Center, Inc. v. City of Spencer, 200 N.W.2d 513 (Iowa 1972).

Area or frontage methods cannot be made sole or exclusive basis of determining assessments without regard to other factors. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 227 (1953).

Assessment for street improvement benefits according to area not invalid. In re Resurfacing Fourth St. in City of Davenport, 203 Iowa 298, 211 N.W. 375 (1926). Andre v. City of Burlington, 141 Iowa 605, 117 N.W. 1082 (1908).

13. Frontage factor, amount of assessment.

If factors other than frontage affect benefits, they must be given weight. Spencer Shopping Center, Inc. v. City of Spencer, 200 N.W.2d 513 (Iowa 1972).

Whether assessment was made in proportion to benefit, rather than solely in proportion to frontage. Jones v. Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

In the absence of any other consideration affecting benefits, frontage might properly be considered as basis for determining benefits. Des Moines Union Ry. Co. v. City of Des Moines, 140 Iowa 218, 118 N.W. 293 (1908).

Assessment for construction of sewer not rendered invalid by considering, in determining amount of benefits conferred, frontage of property. Reed v. City of Cedar Rapids, 137 Iowa 107, 111 N.W. 1013 (1907).

Front-foot rule applied to the assessment of land abutting a street for paving the street will be sustained, though the assessment exceeds the benefits conferred. Allen v. City of Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

14. Excessive assessments.

Assessment may fail the "just and equitable" test even though it is not excessive when measured against the benefits conferred. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Evidence sufficient to overcome presumption of validity of assessments computed only on straight charge per benefitted front-foot. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Evidence sufficient to show reduction in assessments justified on theory that assessments were in excess of benefits conferred on property by the paving. Dickey v. City of Burlington, 247 Iowa 116, 73 N.W.2d 96 (1956).

Reduction of paving assessment on property suitable for factory site was proper, in view of want of demand for factory sites. Finkle v. City of Marshalltown, 205 Iowa 918, 218 N.W. 618 (1928).

Objections before council, petition on appeal, and evidence held not to warrant finding paving assessments exceeded benefits. Walter v. City of Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927).

Individual excessive assessments do not warrant finding that method of assessment was unconstitutional. In re Resurfacing Fourth St. in City of Davenport, 203 Iowa 298, 211 N.W. 375 (1926).

Ample evidence of special benefits - assessments not excessive. In re Hume, 202 Iowa 969, 208 N.W. 285 (1926).

City council, in levying special assessments for public improvements upon abutting property must not levy amount in excess of special benefits conferred, nor in any event exceeding 25 percent of the value of property. Snyder v. City of Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).

Assessment may not exceed special benefits nor it may exceed one-fourth of the value of the property assessed. Camp v. City of Davenport, 151 Iowa 33, 130 N.W. 137 (1911).

Assessment in substantial excess of benefits. Iowa Pipe & Tile Co. v. Callahan, 125 Iowa 358, 101 N.W. 141 (1904).

15. Separate assessments.

Paving under two separate contracts and two separate resolutions held to be separate improvements. Curtis v. Town of Dunlap, 202 Iowa 588, 210 N.W. 800 (1926).

Improvement of intersecting streets at same time under separate resolutions and assessments. Miller v. City of Sheldon, 198 Iowa 855, 200 N.W. 341 (1924).

Where curbing and paving are part of same general improvement prior assessment for curbing should be subtracted from paving assessment. Chicago, Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

"Paving" includes curbing, guttering and paving and these should not be assessed separately. Bailey v. City of Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

Lots should be assessed separately. Stutsman v. City of Burlington, 127 Iowa 563, 103 N.W. 800 (1905).

16. Objections.

Statute which allows city council to provide that property owners will be deemed to have waived all objections to amount of proposed assessment if they

do not file those objections with the clerk, does not apply to assessments for sewer projects. Petition of City of Des Moines, 245 N.W.2d 533 (1976).

Where property owner failed to file objections before resolution of necessity was adopted, but did file objections at time of final assessment, property owner was limited to issue of excessive assessment. Moss v. Incorporated Town of Hull, 249 Iowa 1178, 91 N.W.2d 599 (1958).

Owner's failure to object prior to adoption of resolution of necessity did not validate excessive assessment. Smith, Lichty & Hillman Co. v. Mason City, 210 Iowa 700, 231 N.W. 370 (1930).

Owner's complaint of inequitable assessment to city council put in issue whether it was equitable. Benshoof v. City of Iowa Falls, 175 Iowa 30, 156 N.W. 898 (1916).

17. Collection of assessments.

To pay cost of improvement, city became trustee charged with duty of levying, collecting, and properly applying assessments. Farson v. Sioux City, 106 F. 278 (1901).

City charged with duty of collecting and applying assessments on property. Vickrey v. City of Sioux City, 104 F. 164 (1900).

Failure to exercise statutory power in collecting assessments constituted breach of pledge in improvement bond requiring city to exercise full faith and diligence. Hauge v. City of Des Moines, 207 Iowa 1209, 224 N.W. 520 (1929).

18. Liability of city.

Meaning of "deficiency" where city promised to pay deficiency from consolidated budget fund. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Where city contracted to pay costs if lawful assessment was impossible, it was bound by such provision. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

19. Actions.

Equity had jurisdiction of a suit by a bond holder to require an accounting in respect to trust funds from assessment and for the enforcement of the same. Farson v. City of Sioux City, 106 F. 278 (1901).

Court of equity had jurisdiction to compel city to perform its duty, as trustee, to collect and properly apply assessments. Vickrey v. City of Sioux City, 104 F. 164 (1900).

Action against city on contract for paving - action at law. Ford v. City of Manchester, 136 Iowa 213, 113 N.W. 846 (1907).

20. Pleading.

A demurrer to the petition in a suit to set aside an assessment for street improvements admitted the allegations of the petition as to the value of the assessed property. Durst v. City of Des Moines, 150 Iowa 370, 130 N.W. 168 (1911).

21. Issues, proof and variance.

For annotations, see I.C.A.

22. Presumptions - in general.

Included in the presumption that assessments made by a city for improvements are correct is a presumption that there is some benefit and that the assessment does not exceed the special benefit accruing from the improvement. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Once a city council has properly ordered a special improvement, there is a presumption of necessity and a presumption that some benefit results to assessed property owners. Goodell v. City of Clinton, 193 N.W.2d 91 (Iowa 1971).

Presumption existed that assessments levied for public improvement did not exceed benefits conferred. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Presumption exists that all real estate receives some degree of benefit from permanent improvement of street adjoining it. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

Presumption that assessment as made by city council was correct. Gingles v. City of Onawa, 241 Iowa 492, 41 N.W.2d 717 (1950).

Where resolution of necessity was adopted, it is presumed construction was necessary and property would be benefitted. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

Property abutting on paving improvement presumptively acquires benefit therefrom. Johnson v. City of Waterloo, 202 Iowa 617, 210 N.W. 755 (1926).

Presumed that all property in tax district was assessed for full benefit conferred. Floyd Park Addition to Sioux City, 197 Iowa 922, 196 N.W. 60 (1923).

Presumed that drainage benefits were equal to the cost. Appeal of McLain, 189 Iowa 264, 176 N.W. 817 (1920).

Presumed that statute was followed in assessing cost. Dickinson v. Incorporated Town of Guthrie Center, 185 Iowa 541, 170 N.W. 759 (1919).

Presumed that where tract was valued at a certain sum per acre, the value was applicable to each acre. Gray v. City of Des Moines, 150 Iowa 299, 130 N.W. 582 (1911).

Presumed that council levied assessment according to benefits. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

23. Burden to overcome presumption.

Burden is on objectors to overcome presumption that special assessment against their property is correct as made. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Presumption that improvement authorized by city was necessary, that some benefit accrued to the assessed property and that the assessment was correct as made and burden is on objector to overcome these presumptions. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Landowners carry burden of overcoming presumption that assessment made by council was correct and did not exceed special benefits accruing from the improvement. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Ultimate question is whether amount levied on tract constitutes its fair proportion of total cost. Spencer Shopping Center, Inc. v. City of Spencer, 200 N.W.2d 513 (Iowa 1972).

Burden is on protesting property owner to show that his assessment is excessive by evidence which includes proof of the actual benefit to his property. Goodell v. City of Clinton, 193 N.W.2d 91 (Iowa 1971).

Assessments made by city for public improvement are presumed to be correct, and burden is on property owner to prove otherwise. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Presumption obtains that street improvement assessment made by council is in proportion to benefits received, and burden is placed upon property owner to overcome such presumption. Chicago & N. W. Ry. Co. v. Webster City, 256 Iowa 201, 127 N.W.2d 115 (1964).

Where resolution of necessity was adopted, it was presumed construction was necessary and property would be benefitted. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

Council's special assessment is presumed correct. Finkle v. City of Marshalltown, 205 Iowa 918, 218 N.W. 618 (1928).

Presumption that assessments are correct. Tjaden v. Town of Wellsburg, 197 Iowa 1292, 198 N.W. 772 (1924).

Findings of council as to benefit presumed correct. Vail v. City of Chariton, 181 Iowa 296, 164 N.W. 597 (1917).

24. Evidence to overcome presumptions.

Special assessment presumes benefit on property assessed. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Testimony of experts as to dollar value of benefits accruing to assessed properties. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Mere fact that assessment was substantially in accordance with cost of improvement in front of each tract is not conclusive that assessment was not according to special benefits conferred. Snyder v. City of Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).

25. Burden of proof, generally.

Owner has burden of showing assessment was in excess of benefits. Hume, 202 Iowa 969, 208 N.W. 285 (1926).

Railway had burden of showing depreciation of the value of property. Waterloo, C. F. & N. Ry. Co. v. Incorporated Town of Cedar Heights, 198 Iowa 350, 199 N.W. 313 (1924).

Owner must negative presumption of benefit. Chicago, R. I. & P. Ry. Co. v. City of Centerville, 172 Iowa 444, 153 N.W. 106 (1915).

26. Evidence - in general.

Assessment cases cannot be determined with mathematical certainty; the evidence is necessarily based on opinion. Goodell v. City of Clinton, 193 N.W.2d 91 (Iowa 1971).

Court could consider its own physical inspection of properties involved in sewer assessment litigation as evidence. Wharton v. City of Oskaloosa, 158 N.W.2d 834 (Iowa 1968).

Evidence held to show assessment not in excess of benefits. Curtis v. Town of Dunlap, 202 Iowa 588, 210 N.W. 800 (1926).

Market price not conclusive evidence of actual value. Id.

Testimony of property owner's expert witness held not controlling where owner admitted in a letter that cost was not in excess of benefits. North View Land Co. v. City of Cedar Rapids, 185 Iowa 1032, 169 N.W. 644 (1918).

27. Sufficiency of evidence.

Evidence held to show assessment not in excess of benefits. Curtis v. Town of Dunlap, 202 Iowa 588, 210 N.W. 800 (1926). Baily v. Town of Dunlap, 210 N.W. 803 (Iowa 1926). Jordan v. Town of Dunlap, 210 N.W. 804 (Iowa 1926).

Evidence and action by landowner objecting to assessments for street paving project with respect to parcels on which apartment buildings were situated supported finding of trial court that only benefit to the assessed land was a second access to the parking area at rear of apartment buildings. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Evidence fully supported reduction of assessment. Id.

Where there is no evidence to support a finding contrary to that of the city council in respect to the benefit to property stemming from a public improvement, its determination must stand. Mulford v. City of Iowa Falls, 221 N.W.2d 261 (Iowa 1974).

Evidence held to authorize decree fixing lower value of lot. Lee v. City of Ames, 225 Iowa 1061, 283 N.W. 427 (1939).

Evidence held to show special benefit from sidwalk improvements. Brush v. Incorporated Town of Liscomb, Marshall County, 202 Iowa 1155, 211 N.W. 856 (1927).

Evidence showed assessment not in excess of benefits. In re Hume, 202 Iowa 969, 208 N.W. 285 (1926).

Evidence held insufficient to show benefit found to accrue was excessive. Appeal of McLain, 189 Iowa 264, 176 N.W. 817 (1920).

Evidence showed abutting owners received benefits from paving. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

Evidence held to sustain reduction of assessment by trial court. Early v. City of Ft. Dodge, 136 Iowa 187, 113 N.W. 766 (1907).

28. Judgment or decree.

Assessment in conjunction with city sanitary sewer project was not just and city must pay amount assessment reduced, city allocation of federal funds not disturbed. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

In an action by a city to collect a tax for constructing a sidewalk, a personal judgment cannot be rendered against a defendant who is not the owner of the land assessed at the time the order for the construction of the sidewalk was made and the work done. City of Des Moines v. Casady, 21 Iowa 570 (1866).

29. Appeals.

Supreme Court's review was de novo in proceeding on tax payers appeal from assessment in connection with city sewer project. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Review by Supreme Court in case involving reduction of pavement assessment was de novo. Goodell v. City of Clinton, 193 N.W.2d 91 (1971).

Supreme Court will affirm judgment sustaining paving assessments, in absence of showing assessments were in excess of benefits. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Authority of district court on appeal from assessment by council. Smith v. City of Marshalltown, 197 Iowa 85, 196 N.W. 734 (1924).

384.62 Limit

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Lot was subject to assessment for paving improvement on basis of actual market value, though owner might sometime deem it to his interest to donate lot to city for widening street. Johnson v. City of Waterloo, 202 Iowa 617, 210 N.W. 755 (1926).

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Cost of improvements essential factor in reaching amount of assessment. Diesing v. City of Marshalltown, 199 Iowa 1270, 203 N.W. 693 (1925).

Assessment against railroad right-of-way cannot exceed 25 percent. Chicago Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Two sets of pavement did not constitute a single improvement. Durst v. City of Des Moines, 164 Iowa 82, 145 N.W. 528 (1914).

4. Excessive assessment.

Assessments levied against objectors' property in connection with city sanitary sewer project were not "just and equitable" in light of various factors. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Landowner not entitled to have excessive sidewalk assessment declared void. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

City may not levy special assessments in excess of cost of improvement in order to provide a margin of safety in case of shortage. Bankers Life Co. v. City of Emmetsburg, 224 Iowa 1287, 278 N.W. 311 (1938).

Overassessment of property by city for improvement does not constitute fraud. Inter-Ocean Reinsurance Co. v. Sioux City, 219 Iowa 998, 258 N.W. 907 (1935).

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Assessment may, within the limits of the statute, exceed the cost of improvement in front of a particular lot. Carpenter v. City of Hamburg, 179 Iowa 1168, 162 N.W. 602 (1917).

Assessment according to area of abutting property per square foot is proper. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

Reduction of assessment by trial court held proper. Baily v. Sioux City, 133 Iowa 276, 110 N.W. 839 (1907).

5. Benefits.

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9. Factors considered, determination of value.

City, in determining property value for special assessment purposes, must give at least initial consideration to value listed on the last preceding assessment rolls. Petition of City of Des Moines, 245 N.W.2d 533 (1976).

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Rented value or income considered in fixing actual value. Finkle v. City of Marshalltown, 205 Iowa 918, 218 N.W. 618 (1928).

Evidence of best offer at auction and owner's sale price proper to consider. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

Difference between contract price of house and actual cost of building not proper method of ascertaining value of lot. Johnson v. City of Waterloo, 202 Iowa 617, 210 N.W. 755 (1926).

Factors involved in determination of value of lot. Belknap v. City of Onawa, 192 Iowa 1383, 186 N.W. 452 (1922).

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10. Assessment roll, determination of value.

In determining actual value of property assessed for improvement, due regard must be given to assessment as fixed by council. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

Last preceding assessment roll must be considered in determining value of lots assessed for improvement. Id.

Factors involved in determination of value of lot. Belknap v. City of Onawa, 192 Iowa 1383, 186 N.W. 452 (1922).

Absent evidence of higher value, assessment for taxation controls. Jones v. City of Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

11. Future use and prospects, determination of value.

Future potential use of property should be considered in deciding benefits accruing to land from paving improvement for which assessment is made. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Probable future growth of a town and uses to which abutting property may reasonably be put. Gingles v. City of Onawa, 241 Iowa 492, 41 N.W.2d 717 (1950).

Consideration of future prospects of the property. Nash v. City of Ames, 282 N.W. 340 (Iowa 1938).

Probable future growth of town and uses of property are proper to consider in determining value for special assessment. Turley v. Incorporated Town of Dyersville, 202 Iowa 1221, 211 N.W. 723 (1927).

12. Agricultural land, determination of value.

Property owners, whose special assessments had been deferred because their land was subject to assessment and was used and assessed agriculturally, were not liable for interest during period of deferment. City of Clive v. Iowa Concrete Block & Material Co., 298 N.W.2d 585 (Iowa 1980).

Agricultural land not to be valued at sum it would bring if converted into lots. Toben v. Town of Manson, 193 Iowa 750, 187 N.W. 599 (1922).

13. Objections.

Statute requiring filing of objections to proposed assessment does not apply to assessments for sewer projects. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Objection that assessment exceeded twenty-five percent limit should have been urged before the council. Harris v. Evans, 196 Iowa 799, 195 N.W. 178 (1923).

Written objection to assessment on two tracts stating that assessment against each was in excess of twenty-five percent of value was sufficiently specific. In re Paving Assessments Levied in Town of Odebolt, 193 Iowa 1234, 188 N.W. 780 (1922).

Erroneous determination of value by city council does not deprive it of jurisdiction and render assessment void. Durst v. City of Des Moines, 164 Iowa 82, 145 N.W. 528 (1914).

14. Waiver of limitation of amount of assessment.

Statutory limitation assessment not waived by failure to object prior to adoption of resolution of necessity. Smith, Lichty & Hillman Co. v. Mason City, 210 Iowa 700, 231 N.W. 370 (1930).

Where record showed improvement ordered on motion of council, city would not urge owner's estoppel to raise question of waiver of limitation in petition. Nelson v. Sioux City, 208 Iowa 709, 226 N.W. 41 (1929).

Failure to appear before council and object may waive statutory limitation. Anderson-Deering Co. v. City of Boone, 201 Iowa 1129, 205 N.W. 984 (1926).

Owner petitioning for improvement and expressly waiving the limitation held to have agreed to accept proportionate cost though it may be in excess. In re Paving Streets in Floyd Park Addition, 197 Iowa 915, 196 N.W. 597 (1924).

Where owner waived limitation he was not precluded from claiming assessment was unreasonably excessive. In re Floyd Park Addition to Sioux City, 197 Iowa 922, 196 N.W. 597 (1924).

Where owners agreed to pay entire cost council had right to assess entire cost proportionately against the property involved. Dayton-Oldham Granit Works v. Mason City, 196 Iowa 77, 194 N.W. 200 (1923).

Where owner agreed to use of front-foot rule city could so assess though assessment might exceed benefits. Stodola v. City of Cedar Rapids, 192 Iowa 1025, 183 N.E. 607 (1921).

Owner's letter that it would consent to usual assessment held in nature of admission that it would regard fair cost as not in excess of special benefits. North View Land Co. v. City of Cedar Rapids, 185 Iowa 1032, 169 N.W. 644 (1918).

Council must order improvement in reliance on owner's agreement to waive limitation if it would assess beyond limitations. Bailey v. City of Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

15. Liability of city.

City was not liable to holders of refunding street and sewer bonds because of alleged excessive assessment of properties. Bankers Life Co. v. City of Emmetsburg, 224 Iowa 1287, 278 N.W. 311 (1938). Inter-Ocean Reinsurance Co. v. Sioux City, 219 Iowa 998, 258 N.W. 907 (1935).

That city allegedly levied assessment in excess of limitation did not make it liable to holder of certificates for amounts unpaid. Stockholders Inv. Co. v. Town of Brooklyn, 216 Iowa 693, 246 N.W. 826 (1933).

16. Evidence - in general.

Failure of property subject to special assessment to sell at tax sale is no evidence of property's value relative to assessment. Morrison v. Culver's Estate, 216 Iowa 676, 248 N.W. 237 (1933).

Loss of business not substantive evidence to negative presumptive benefits. Waterloo, C. F. & N. Ry. Co. v. Incorporated Town of Cedar Heights, 198 Iowa 350, 199 N.W. 313 (1924).

Evidence held to show assessment as reduced by district court was fair. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).

17. Prima facie evidence.

Last preceding assessment is prima facie evidence of value, but it may be overcome. Chicago & N. W. Ry. Co. v. Webster City, 256 Iowa 102, 127 N.W.2d 115 (1964).

18. Sufficiency of evidence.

Evidence supported reduction of assessment. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

Amount placed upon property value by trial court was beyond support of evidence. Beh v. City of West Des Moines, 257 Iowa 211, 131 N.W.2d 488 (1965).

Evidence established that special assessment against railroad right-of-way for street improvement exceeded twenty-five percent of actual value of property. Chicago & N. W. Ry. Co. v. Webster City, 256 Iowa 102, 127 N.W.2d 115 (1964).

Evidence held to justify reduction of judgment. Nash v. City of Ames, 282 N.W. 340 (Iowa 1938).

Evidence established land value as regards basis for imposing pavement assessment. Gronbach v. Town of Jewell Junction, 213 Iowa 358, 239 N.W. 26 (1931).

Evidence showing value of property. Verlinden v. Sioux City, 208 Iowa 892, 226 N.W. 42 (1929). Nelson v. Sioux City, 208 Iowa 709, 226 N.W. 41 (1929).

Evidence of value of houses being rented held insufficient to warrant reduction. Finkle v. City of Marshalltown, 205 Iowa 918, 218 N.W. 618 (1928).

Evidence sustained valuation of corner lot one-half mile from business district. Adams v. Incorporated Town of West Liberty, 205 Iowa 456, 218 N.W. 468 (1928).

Evidence showed assessment exceeded statutory limit. Chicago, R. I. & P. Ry. Co. v. Town of Reinbeck, 201 Iowa 126, 206 N.W. 664 (1926).

Loss of business not substantive evidence to negative presumptive benefits. Waterloo C. F. & N. Ry. Co. v. Incorporated Town of Cedar Heights, 198 Iowa 350, 199 N.W. 313 (1924).

Evidence held to show assessment as reduced by district court was fair. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).

Evidence showed assessment to be in excess of statutory limitations. Belknap v. City of Onawa, 192 Iowa 1383, 186 N.W. 452 (1922).

19. Presumptions and burden of proof.

Burden on protesting property owner to establish that benefit is not as great as assigned by the taxing authority. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Burden is on objectors to overcome presumption that special assessment against their properties is correct as made. Petition of City of Des Moines, 245 N.W.2d 533 (Iowa 1976).

Presumption that improvement authorized by city was necessary. Spring Valley Apartments, Inc. v. City of Cedar Falls, 225 N.W.2d 129 (Iowa 1975).

City seeking to assess property in excess of statutory limitation, has burden of showing ground entitling it. Bailey v. City of Des Moines, 158 Iowa 747, 138 N.W. 853 (1912).

20. Pleading.

Demurrer to count in petition to recover on improvement bonds alleging deficiency due to excess levy was properly overruled. Hauge v. City of Des Moines, 207 Iowa 1209, 224 N.W. 520 (1929).

21. Review.

Supreme Court's review was de novo in proceeding on taxpayer's appeal from confirmation of valuations and assessments in connection with city sanitary sewer project. Knudsen v. City of Des Moines, 254 N.W.2d 1 (Iowa 1977).

Supreme Court review of property assessment for municipal improvement is de novo. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Weight should be given to trial court's finding that railroad had shown the assessment exceeded substantially twenty-five percent of disclosed actual value. Chicago & N. W. Ry. Co. v. Webster City, 256 Iowa 102, 127 N.W.2d 115 (1964).

Reviewing court should give consideration to trial court's finding of value. Lee v. City of Ames, 225 Iowa 1061, 283 N.W. 427 (1939).

384.63 Insufficiency - Certification to County Auditor - Deficiency Assessment

1. Construction and application.

Test to determine reasonableness of special assessments against property is whether it represents fair proportionate part of total cost. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 227 (1953).

Area or frontage methods cannot be made sole or exclusive basis of determining assessments without regard to other factors. Id.

Funds derived from special assessments insufficient to pay in full street improvement bonds. Shaw, McDermott & Sparks v. Town of Danbury, 227 Iowa 415, 288 N.W. 435 (1939).

City not liable to holders of refunding street improvement bonds and refunding sewer bonds. Bankers Life Co. v. City of Emmetsburg, 224 Iowa 1287, 278 N.W. 311 (1938).

City may improve from general fund and incur debts for such to statutory limit. Waller v. Pritchard, 201 Iowa 14364, 202 N.W. 770 (1925).

This section limited to special assessments on abutting property. Grunewald v. City of Cedar Rapids, 118 Iowa 222, 91 N.W. 1059 (1902).

2. Ordinance.

City by general ordinanance provides for assessing expense of paving street intersections and spaces in front of government property on private property owners abutting improvement. Corey v, City of Ft. Dodge, 133 Iowa 666, 111 N.W. 6 (1907).

May control fund from which payment is to be made. O.A.G. 1925-26, p. 366.

3. Contracts.

Recovery of contract price. Lytle v. City of Ames, 225 Iowa 199, 279 N.W. 453 (1938).

Provision for payment by city if assessments could not lawfully be made. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

384.64 Assessment to Railway Company

1. Construction and application.

Party having no interest in property not entitled to relief against assessment. Interurban Ry. Co. v. City of Valley Junction, 190 Iowa 189, 180 N.W. 288 (1920).

Where benefit to railroad is only nominal it is not assessable. Chicago, B. & Q. R. Co. v. City of Chariton, 169 N.W. 337 (1918).

Assessment may be made on right-of-way abutting on a street. Chicago Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Where right-of-way is mere easement it is not subject to assessment. O.A.G. 1919-20, p. 302.

Railway property is chargeable with its share of cost of improvement. O.A.G. 1911-12, p. 681.

2. Separate assessments.

Separate assessment of two sides of a lot divided by railway belonging to it. Minneapolis & St. L. R. Co. v. Lindquist, 119 Iowa 144, 93 N.W. 103 (1903).

3. Amount of assessment.

The face of easement should be considered as tending to reduce benefits. Waterloo, C. F. & N. Ry. Co. v. Incorporated Town of Cedar Heights, 198 Iowa 350, 199 N.W. 313 (1924).

4. Valuation.

Assessment not to exceed 24 percent of value of land assessed. Chicago Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

5. Evidence.

Fact that part of tracks assessed were for railroad purposes did not overcome presumption in favor of assessment. In re Resurfacing Fourth St. in City of Davenport, 203 Iowa 298, 211 N.W. 375 (1926).

Evidence held insufficient to negative presumptive benefits. Waterloo, C. F. & N. Ry. Co. v. Incorporated Town of Cedar Heights, 198 Iowa 350, 199 N.W. 313 (1924).

Testimony of real estate values should not be entirely disregarded. Illinois Cent. R. Co. v. Incorporated Town of Pomeroy, 196 Iowa 504, 194 N.W. 913 (1923).

Objecting owner has burden of showing non-compliance with plans and specifications. Gilcrest & Co. v. City of Des Moines, 161 N.W. 645 (1917).

Railroad did not sustain burden of showing lack of benefit. Chicago, R. I. & P. Ry. v. City of Centerville, 172 Iowa 444, 153 N.W. 106 (1915), modified on other grounds, 172 Iowa 444, 154 N.W. 596.

Party resisting payment of assessment certificate must show invalidity. Tuttle v. Polk, 92 Iowa 433, 60 N.W. 733 (1894).

6. Prior law.

Power of cities to assess railroad right-of-way prior to this statute. Chicago Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Charter provisions. City of Davenport v. Mississippi & M. R. Co., 16 Iowa 348 (1864).

384.65 Installments Due

1. Construction and application.

A property owner may pay the assessment in full at any time after starting payment by installment. If paid in full after July 1, the interest accrues to December 1 of the following year. A property owner may not make payments of more than one installment at a time if less than full payment. A property owner is not entitled, by statute, to a refund of any excess payments. There's no difference in special assessments if a city pays for improvement from existing funds rather than by issuance of bonds. O.A.G. Dec. 24, 1980.

Code 1897 in regard to extension of time for payment, related to certificates issued against property assessed. F. N. Hubbell, Son & Co. v. Hammill, 187 Iowa 1083, 175 N.W. 41 (1919).

"Abutting property" - defined. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

"Commencement of the work" - defined. Eagle Mfg. Co. v. City of Davenport, 101 Iowa 493, 70 N.W. 707 (1897).

Right to lay special assessments for sidewalks, etc., chargeable to particular lots, cannot be exercised by a municipal corporation, without special grant of authority from legislature. City of Fairfield v. Ratcliff, 20 Iowa 396 (1866).

Penalties on unpaid installments would be three-fourths of one percent per month. On certificates, delinquent as to both principal and interest, Treasurer is required to collect a penalty on delinquent interest as well as principal. O.A.G. 1934, p. 412.

2. Repeals.

For annotations, see I.C.A.

3. Validity of assessment.

Assessment was not warranted where parcel was separated from street by another parcel of original lot. Kneebs v. Sioux City, 156 Iowa 607, 137 N.W. 944 (1912).

For additional annotations, see I.C.A.

4. Time for payment.

"Annually" means each year after first installment is due and payable. O.A.G. Feb. 25, 1955. O.A.G. 1930, p. 50.

Time when installments become due. O.A.G. 1925-26, p. 295.

Taxes not delinquent till first day of March next after maturity. O.A.G. 1918, p. 221.

5. Interest.

Six percent interest rate contemplated by assessment statutes rather than five percent contemplated by § 535.3 relating to interest on ordinary judgments was applicable to judgment, on remand. Kuhlmann v. Persinger, 261 Iowa 461, 154 N.W.2d 800 (1967).

Proper for court, in deciding controversy over assessments, to allow interest. Madison County v. City of Winterset, 164 Iowa 223, 145 N.W. 492 (1914).

In computation of interest on special assessments under this section, a June to June basis must be used. O.A.G. June, 1961.

Delinquent installments carry interest at six percent after delinquency as well as penalty. O.A.G. 1930, p. 145.

Time for payment of interest for unpaid installments. O.A.G. 1925-26, p. 222.

Charges for underground water connection under section 391.8 are special assessments and draw interest under this section. O.A.G. 1923-24, p. 403.

Time when installments become due. O.A.G. 1925-26, p. 295.

6. Interest and penalties.

Time when installment becomes delinquent. O.A.G. 1928, p. 400.

Where owner waives objections to proceedings, he is liable for interest on assessments only. O.A.G. 1925-26, p. 27.

Method of computing interest or penalty on assessments when divided in installments. O.A.G. 1919-20, p. 374.

Duty of Treasurer to collect interest on paving certificates up to time of payment, including penalties from time of delinquency. O.A.G. 1919-20, p. 271.

Delinquent payments should bear some interest or penalty as ordinary taxes. O.A.G. 1911-12, p. 366.

7. Penalties.

Contractor was entitled to penalty collected; the penalty being incident to the tax, and not being interest. Barber Asphalt Paving Co. v. Webster County, 143 Iowa 255, 121 N.W. 1072 (1909).

Limit on penalties fixed by statute and no larger sum was collectable. Ankeny v. Henningsen, 54 Iowa 29, 6 N.W. 65 (1880).

Collection of penalty on delinquent assessment was limited to four years. O.A.G. 1938, p. 851.

County treasurer required to collect penalty on interest which is delinquent the same as on delinquent principal. O.A.G. 1934, p. 554.

Penalties on unpaid installments would be three-fourths of one percent per month. On certificates delinquent as to both principal and interest, Treasurer is required to collect penalty on delinquent interest as well as principal. O.A.G. 1934, p. 412.

Failure of clerk to certify assessment levy promptly did not relieve taxpayer of liability for penalty. O.A.G. 1932, p. 65.

Time when installment becomes delinquent. O.A.G. 1928, p. 400.

Where owner waives objections to proceedings, he is liable for interest on assessments only. O.A.G. 1925-26, p. 27.

Assessments draw penalties on first day of March after maturity. O.A.G. 1922, p. 131.

Special assessments not a lien in absence of strict compliance with statutes. Halvorson v. Mullin, 179 Iowa 293, 161 N.W. 309 (1917).

Procedure required to create lien. Id.

Assessments not levied on front-foot rule were not lien. Fitzgerald v. Sioux City, 125 Iowa 396, 101 N.W. 268 (1904).

Lien attaches at time of filing of papers. Cemansky v. Fitch, 121 Iowa 186, 96 N.W. 754 (1903).

9. Notice of lien.

Records and ordinances put purchaser on inquiry. Talcott v. Noel, 107 Iowa 470, 78 N.W. 39 (1899).

10. Loss of lien.

Lien for unpaid future installments of special assessments cut off by sale for general taxes. Fergason v. Aitken, 220 Iowa 1154, 263 N.W. 850 (1936).

Lien of delinquent special assessments for street improvements not brought forward on tax list held lost. Wallace v. Gilmore, 216 Iowa 1070, 250 N.W. 105 (1933).

Purchaser at tax sale taking treasurer's deed takes free from unpaid installments of special assessments which were a lien at time of tax sale. O.A.G. 1932, p. 267.

11. Enforcement of lien.

Purchaser of certificates could not secure foreclosure of lien if city followed statutory method of collection and payment of certificates by sale. Hawkeye Life Ins. Co. v. Valley-Des Moines Co., 220 Iowa 556, 260 N.W. 669, 105 A. L. R. 1018 (1935).

12. Priorities.

Tax deed for regular taxes displaces lien of special assessment which attached after sale and before issuance of deed. Means v. City of Boone, 214 Iowa 948, 241 N.W. 671 (1932). Montgomery v. City of Des Moines, 190 Iowa 705, 180 N.W. 723 (1921). Harrington v. Valley Sav. Bank, 119 Iowa 312, 93 N.W. 347 (1903).

Assessment for sewer held prior to drainage assessment. Anderson-Deering Co. v. City of Boone, 201 Iowa 1129, 205 N.W. 984 (1925).

Lien for paving assessment does not displace prior lien for curbing street. Des Moines Brick Mfg. Co. v. Smith, 108 Iowa 307, 79 N.W. 77 (1899).

This section makes special assessment liens equal in precedence with general tax liens. O.A.G. March 2, 1970.

13. Sale.

Property sold for delinquent taxes at either a regular or scavenger tax sale should be sold subject to special assessment liens. O.A.G. March 2, 1970.

Where sale of incumbered realty by board of supervisors is for less than total amount stated in tax sale certificate, the sale should be approved by the tax-levying and tax-certifying bodies having majority interest in said taxes, but where public auction sale of such property by board has not been completed, the board may reject any bid taken and hold another sale by public auction. O.A.G. August 9, 1968 (No. 68-8-5).

14. Redemption from tax sale.

Holder of certificates had prior right to assignment of certificate of tax sale on tender of sum necessary to redeem. Inter-Ocean Reinsurance Co. v. Dickey, 222 Iowa 995, 270 N.W. 29 (1937).

15. Covenants and conveyances.

Assessment not lien within lessor's covenant till certificate filed with auditor. Frankel v. Blank, 205 Iowa 1, 213 N.W. 597 (1927).

Lien for sewer improvement not affected by sale of the property. Dayton-Oldham Granite Works v. Mason City, 196 Iowa 77, 194 N.W. 200 (1923).

Effect of lien on contract to give "perfect title." Waterman v. Wood, 185 Iowa 897, 171 N.W. 171 (1919).

Amount of special assessments not recoverable in action to recover damages for breach of contract to convey. Johnstone v. Robertson, 179 Iowa 838, 162 N.W. 66 (1917).

Covenant to defend against "lawful claims" does not include street assessment where lien has not attached. Cemansky v. Fitch, 121 Iowa 186, 96 N.W. 754 (1903).

16. Injunction or equitable relief.

Suit to enjoin paving and levy of assessment. Allen v. City of Davenport, 132 F. 209, 65 C.C.A. 641, certiorari denied, 25 S.Ct. 794, 196 U.S. 639, 49 L.Ed. 630 (1904).

Decree cancelling assessment lien not binding on one acquiring assessment certificate before entry or decree and not made a party. Hawkeye Life Ins. Co. v. Valley-Des Moines Co., 220 Iowa 556, 260 N.W. 669, 105 A.L.R. 1018 (1935).

Party having no interest in the property not entitled to relief against the assessment. Interurban Ry. Co. v. City of Valley Junction, 190 Iowa 189, 180 N.W. 288 (1920).

17. Personal liability.

No personal obligation increases of assessed property. Morrison v. Culver's Estate, 217 Iowa 676, 248 N.W. 237 (1933).

18. Actions.

For annotations, see I.C.A.

19. Limitations.

Liens for assessments are perpetual. Fisk v. City of Keokuk, 144 Iowa 187, 122 N.W. 896 (1909).

20. Pleading and proof.

For annotations, see I.C.A.

21. Evidence.

Burden of proving lien rests on party claiming lien. Halvorson v. Mullin, 179 Iowa 293, 161 N.W. 309 (1917).

384.66 Test of Regularity

Index to Notes

I. IN GENERAL

Subdivision Index

1. Construction and application.

This section mandatory, and not permissive, and appeal is perfected by notice and by bond and by petition. Baker v. City of Cedar Falls, 185 N.W.2d 810 (Iowa 1971).

City or town council could acquire jurisdiction to defray only that part of cost attendant upon acquisition or construction of a parking facility which

was created or incurred subsequent to passage of the requisite resolution of necessity. H. L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813 (Iowa 1970).

Error or irregularity in procedure could not cause council to lose jurisdiction or render proceedings invalid. People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1932).

Whether a particular city can be properly taxed as a whole, or whether particular property is properly included, cannot be determined in a collateral proceedings. Dubuque & S. C. R. Co. v. Mitchell, 152 Iowa 187, 131 N.W. 25 (1911).

Code 1897, sections 823, 824, and 839 had no relation to cases involving a want of jurisdiction. Comstock v. Eagle Grove City, 133 Iowa 589, 111 N.W. 51 (1907).

Code 1873, section 478, did not require that the city should institute its action against abutting owner before it paid the contractor. City of Burlington v. Quick, 47 Iowa 222 (1877).

For additional annotations, see I.C.A.

2. Remedies, generally.

Statutory remedy must be followed except for void proceedings. Husson v. City of Oskaloosa, 37 N.W.2d 310 (Iowa 1949).

3. Fraud.

No showing of fraud or discrimination as would render proceedings for improvements subject to injunction. Husson v. City of Oskaloosa, 37 N.W.2d 310 (Iowa 1949).

Excessive assessment held not fraudulent. Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924).

Poor quality of paving does not give owner cause to enjoin collection of assessment on grounds of fraud. Plagman v. City of Davenport, 181 Iowa 1212, 165 N.W. 393 (1917).

Attempt to assess amounted to a fraud. Kaynor v. City of Cedar Falls, 156 Iowa 161, 135 N.W. 564 (1912).

Acceptance of work known by city to be defective was fraudulent. Robertson v. City of Des Moines, 123 N.W. 331 (Iowa 1909).

Adequate remedy at law exists where there is fraud. Swan v. City of Indianola, 142 Iowa 731, 121 N.W. 547 (1909).

4. Objections - in general.

Matters rendering assessment void may be raised on appeal or by independent action. Chicago, R. I. & P. Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Too technical an objection to vitiate the assessment in equity. Monroe v. Pearson, 176 Iowa 283, 157 N.W. 849 (1916).

5. Waiver of objections.

Failure to appear and file objections after notice waives right to object. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932).

Reduction of assessment not disturbed on appeal in view of evidence. Toben v. Town of Manson, 193 Iowa 750, 187 N.W. 599 (1922).

6. Removal to federal court.

Appellant, which nominally plaintiff is in effect defendant, and should be considered such for removal purposes. Chicago, M. & St. P. Ry. Co. v. City of Spencer, Iowa, 283 F. 824 (1922).

7. Review by Supreme Court - in general.

Supreme Court review of property assessment for municipal improvement is de novo. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Failure to appeal taken as admission of benefit conferred. Diesing v. City of Marshalltown, 199 Iowa 1270, 203 N.W. 693 (1925).

Proper for Supreme Court to look into reasons and data upon which council fixed sum total of benefits. Appeal of McClain, 189 Iowa 264, 176 N.W. 817 (1920).

Where two separate tracts of materially different area are assessed same amount, it is not presumed that assessment is inequitable or unjust. Snyder v. City of Belle Plaine, 180 Iowa 679, 163 N.W. 594 (1917).

Assessments not interferred with except on convincing proof of inequitableness. Thielen v. Bd. of Sup'rs of Wright County, 179 Iowa 248, 160 N.W. 915 (1917).

Action of court reaching figures was presumptively equitable. Jones v. City of Sheldon, 172 Iowa 406, 154 N.W. 592 (1915).

That street was made less convenient to taxpayer cannot be first raised on appeal. Cheney v. City of Ft. Dodge, 157 Iowa 250, 138 N.W. 549 (1912).

On appeal, question of whether change in paving contract was authorized cannot be first raised. In re Mayden, 156 Iowa 157, 135 N.W. 571 (1912).

Equity will grant relief against assessment void for lack of jurisdiction. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

Where pending appeal assessment is vacated, its validity will not be determined. Berry v. City of Des Moines, 115 Iowa 44, 87 N.W. 747 (1901).

New objections will not be heard on appeal. Chicago, R. I. & P. Ry. Co. v. City of Ottumwa, 112 Iowa 300, 83 N.W. 1074 (1900). Mason v. City of Des Moines, 108 Iowa 658, 79 N.W. 389 (1899).

8. Record, review by Supreme Court.

Where record had no evidence on benefits conferred by improvement, it was presumed council's determination was correct. Brenton v. City of Des Moines, 219 Iowa 267, 257 N.W. 794 (1935).

That assessment exceeded statutory limit should be urged before council. In re Audubon and Ninth Streets, 198 Iowa 1103, 199 N.W. 983 (1924).

Appeal cannot be heard where no transcript and certificate are made within six months after decree. McClelland v. City of Cedar Rapids, 107 N.W. 428 (Iowa 1906).

9. Theory of parties, review by Supreme Court.

Case accepted as appeal rather than suit to cancel assessment. Walter v. City of Ida Grove, 203 Iowa 1068, 213 N.W. 935 (1927).

10. Disposition on review by Supreme Court.

Supreme Court order fixing assessment at reduced amount. Kuhlmann v. Persinger, 261 Iowa 461, 154 N.W.2d 860 (1967).

Judgment sustaining assessment affirmed where failure to comply with specifications applied to small portion to which there was no evidence of cost. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

Assessment reduced where evidence showed it exceeded statutory limit. Chicago, R. I. & P. Ry. Co. v. Town of Reinbeck, 201 Iowa 126, 206 N.W. 664 (1926).

Reduction of assessment not disturbed on appeal in view of evidence. Toben v. Town of Manson, 193 Iowa 750, 187 N.W. 599 (1922).

With no basis in evidence for assessment in other amount than made, Supreme Court could not make different assessment. Noble v. City of Des Moines, 191 Iowa 12, 174 N.W. 44 (1919).

Value of property is largely matter of opinion, and determination of trial court will not be disturbed. Hansen v. City of Missouri Valley, 178 Iowa 859, 160 N.W. 340 (1916).

Where city admitted improper assessment and court failed to take this into account, opinion was modified. Chicago, R. I. & P. Ry. Co. v. City of Centerville, 172 Iowa 444, 154 N.W. 596 (1915).

Findings of trial court will not be disturbed where it assumed apportionment was approximately correct. Madison County v. Winterset, 164 Iowa 223, 145 N.W. 492 (1914).

II. EQUITY

Subdivision Index

31. In general.

Lack of jurisdiction can be raised by independent action. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932).

Bill to vacate assessment including officials compensation will not lie. Meijerink's Estate v. Lindsay, 203 Iowa 1031, 213 N.W. 934 (1927).

32. Regularity or legality of proceedings, generally.

Assessment invalid where untimely hearing and resolution of necessity relative to acquisition and improvement. H. L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813 (1970).

Where lot extended so as to abut on each of two parallel streets, special assessment for improvement of one street could be imposed only on value of that half of lot which abutted on the improved street. Dunn v. City of Sioux City, 251 Iowa 1279, 104 N.W.2d 830 (1960).

Assessment could not be cancelled to one lot owner and sustained as to another where both were equally liable. Cavanaugh v. City of Des Moines, 179 Iowa 739, 162 N.W. 17 (1917).

33. Right to relief.

Assessment in excess of value of improvements for pavement did not warrant injunction against sale, where owner did not object to assessment or appeal. Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924).

Failure to appeal bars independent action. Lundberg v. Lake City, 194 Iowa 136, 187 N.W. 438 (1922).

Where assessment is void, independent action may be brought. Brown v. City of Creston, 174 N.W. 380 (Iowa 1919).

Assessment enjoined for lack of jurisdiction. F. M. Hubbell, Son & Co. v. Bennett Bros., 130 Iowa 66, 106 N.W. 375 (1906).

Equity will grant relief against assessment void for lack of jurisdiction. Diver v. Keokuk Sav. Bank, 126 Iowa 691, 102 N.W. 542 (1905).

Equity will enjoin the collection of a void local assessment, and taxpayers are not relegated to an appeal from the assessment. Chicago, M. & St. P. R. Co. v. Phillips, 111 Iowa 377, 82 N.W. 787 (1900).

34. Tender.

Where assessment is void, tender thereof not necessary to maintain suit. Gallaher v. Garland, 126 Iowa 206, 101 N.W. 867 (1904). Iowa Pipe & Tile Co. v. Callanan, 125 Iowa 358, 101 N.W. 141 (1904).

Where party is clearly liable for assessment, he must tender or pay same before equity will hear his complaint. Grimmell v. City of Des Moines, 57 Iowa 144, 10 N.W. 330 (1881).

Where assessment as to one lot was unauthorized, equity would not hear complaint till tender was made. Morrison v. Hershire, 32 Iowa 271 (1871).

35. Injunction, generally.

Injunction will not lie except if proceedings were void. Meader v. Incorporated of Sibley, 191 Iowa 1139, 183 N.W. 610 (1921).

Where city lacks power to assess, such may be enjoined. Northern Light Lodge No. 156, I.O.O.F. of Iowa v. Town of Monona, 180 Iowa 62, 161 N.W. 78 (1917).

Equity will grant relief against assessment void for lack of jurisdiction. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

36. Issues.

Issue whether contractor had performed was not properly raised in action by contractor's assignee to set aside decrees holding assessments invalid. Western Asphalt Paving Corp. v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

Irregularities cannot be questioned in suit to enjoin collection of assessments. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

37. Parties.

In action to enjoin assessment collection, contractor was not necessary party. Chicago, M. & St. P. Ry. Co. v. Phillips, 111 Iowa 377, 82 N.W. 787 (1900).

38. Pleadings.

Allegation held insufficient to raise question of taking without due process. Dewey v. City of Des Moines, 173 U.S. 193 (1899).

Supreme Court cannot consider objections not made to council and not included in petition to district court. Schumacher v. City of Clear Lake, 214 Iowa 34, 239 N.W. 71 (1931).

39. Evidence.

In proceeding to cancel special assessment for sidewalks, written protest of one owner against assessment against another piece of property was inadmissable to show objection to assessment. Cavanaugh v. City of Des Moines, 179 Iowa 739, 162 N.W. 17 (1917).

40. Presumptions and burden of proof.

Proceeding and resolutions of city council not in record presumed to be regular. Franquemont v. Munn, 208 Iowa 528, 224 N.W. 39 (1929).

41. Relief granted.

Provision of this section requires trial court in equity to make public improvement assessment that should have been made or to direct city council to do so. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Decree enjoining improvement and assessment held not broader than relief sought. Jackson v. City of Creston, 206 Iowa 244, 220 N.W. 92 (1928).

Assessment held cured by correction in trial court. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

Assessment could not be cancelled to one lot owner and sustained as to another where both were equally liable. Cavanaugh v. City of Des Moines, 179 Iowa 739, 162 N.W. 17 (1917).

42. Conclusiveness and effect of adjudication.

For annotations, see I.C.A.

III. APPEALS TO DISTRICT COURT

Subdivision Index

71. In general.

Appeal must be in strict compliance with statute. Van Meter v. City of Tipton, 178 Iowa 1201, 159 N.W. 171 (1916). City of Fairfield v. Jefferson County, 168 Iowa 623, 151 N.W. 53 (1915).

Statutory provisions for appeal are mandatory. Woodard v. Iowa City, 212 Iowa 326, 232 N.W. 806 (1930).

72. Amount of assessment, generally.

Landowner not entitled to have excessive sidewalk assessment declared void, but only to relief for assessment exceeding permissible amount. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Fact that owners of property subject to assessment for soil cement paving project as general taxpayers, would have to pay part of cost of paving other streets with reinforced concrete because cost of such pavement would exceed amount that could be assessed against benefitted property, did not invalidate proceedings.

73. Appeal as proper or exclusive remedy.

Procedure to contest irregularity is by statutory remedy. People's Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464 (1932). People's Inv. Co. v. City of Des Moines, 241 N.W. 468 (Iowa 1932).

Excessive assessment must be raised before council. Myrah v. Dana, 199 Iowa 801, 202 N.W. 748 (1925).

Where assessment is void, independent action may be brought. Brown v. City of Creston, 174 N.W. 380 (Iowa 1919).

Variance from established grade held an irregularity. Shaver v. J. W. Turner Improvement Co., 133 N.W. 770 (Iowa 1911).

Special statutory remedy. Owens v. Marion, 127 Iowa 469, 103 N.W. 383 (1905).

Excessive assessment must be raised before council. Durst v. City of Des Moines, 150 Iowa 370, 130 N.W. 168 (1911).

Procedure to contest irregularity is by statutory remedy. Collins v. City of Keokuk, 147 Iowa 233, 124 N.W. 601 (1910).

Quality of work done, except for fraud, is an irregularity. Clifton Land Co. v. City of Des Moines, 144 Iowa 625, 123 N.W. 340 (1909).

Matters not going to jurisdiction may not be contested by independent action. Nixon v. City of Burlington, 141 Iowa 316, 115 N.W. 239 (1908).

Failure to appear before council or to appeal waives objection to assessment on ground of no benefit received. Minneapolis & St. L. R. Co. v. Lindquist, 119 Iowa 144, 93 N.W. 103 (1903).

Where city council lacks authority to assess, enforcement may be enjoined by independent. Ft. Dodge Electric Light & Power Co. v. City of Ft. Dodge, 115 Iowa 568, 89 N.W. 7 (1902).

74. Right to appeal.

Right to appeal from town council's special assessment or levy is purely statutory. Fuller v. Incorporated Town of Rolfe, 249 Iowa 80, 86 N.W.2d 249 (1957).

Only property owners affected may appeal. Wright Const. Co. v. City of Des Moines, 202 Iowa 661, 210 N.W. 809 (1926).

75. Time for appeal.

Failure to file petitions stating grounds of complaint against special assessments - appeal not timely perfected. Baker v. City of Cedar Falls, 185 N.W.2d 810 (Iowa 1971).

Appeal taken prior to time levy became effective was premature. Fuller v. Incorporated Town of Rolfe, 249 Iowa 80, 86 N.W.2d 249 (1957).

76. Notice of appeal.

Must be given in susbstantial compliance with statutory provisions. Fuller v. Incorporated Town of Rolfe, 249 Iowa 80, 86 N.W.2d 249 (1957).

Failure of property owners to direct or address notice of appeal from special assessment to town rendered notice of appeal invalid. Harrington v. Town of Salix, 248 Iowa 1359, 85 N.W.2d 527 (1957).

Notice of appeal proper where city clerk was handed notice and signed acknowledgement of service endorsed on original notice. Collinson v. City of Dubuque, 242 Iowa 986, 47 N.W.2d 839 (1951).

Notice of appeal was insufficient because not directed to city or town. Fuller v. Incorporated Town of Rolfe, 226 Iowa 604, 284 N.W. 455 (1939).

Notice of appeal addressed to city and served on mayor sufficient. Western Asphalt Paving Corp. v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

Notice of appeal addressed to mayor and council without naming them was insufficient. In re Paving Assessments Levied in Town of Odebolt, 193 Iowa 1234, 188 N.W. 780 (1922).

77. Bond - in general.

Bond approved by clerk without endorsement supports appeal. Rivers v. City of Des Moines, 202 Iowa 940, 211 N.W. 415 (1926). Dickinson v. City of Des Moines, 202 Iowa 782, 211 N.W. 417 (1926).

Presumption of approval of bond resulting from its filing overcome. Buttolph v. Town of Postville, 230 Iowa 89, 296 N.W. 817 (1941).

Where bond was not filed on time, there was no bond that could be amended after time limit. Woodard v. Iowa City, 212 Iowa 326, 232 N.W. 806 (1930).

Requirements as to appeal bond mandatory. Dickinson v. City of Des Moines, 202 Iowa 782, 211 N.W. 417 (1926).

Bond accepted and filed by clerk gives jurisdiction. Bates v. City of Des Moines, 201 Iowa 1233, 207 N.W. 793 (1926).

Neither mayor nor clerk could waive approval by agreeing in advance to accept surety. St. Mary's Church v. City of Pella, 197 Iowa 205, 196 N.W. 949 (1924).

Leaving bond with clerk for less than sum fixed without approval of clerk was not sufficient compliance. In re Paving Assessments Levied in Town of Odebolt, 193 Iowa 1234, 188 N.W. 780 (1922).

Appeal bond had to be approved by clerk or mayor. McCord v. City of Cherokee, 180 Iowa 448, 161 N.W. 440 (1917).

Bond tendered after dismissal of appeal insufficient. City of Fairfield v. Jefferson County, 168 Iowa 623, 151 N.W. 53 (1915).

78. Sureties on bond.

Taxpayers did not qualify as sureties on petitioner's appeal bond, and trial court lacked jurisdiction of appeal. Oldenkamp v. Incorporated Town of Hull, 249 Iowa 471, 87 N.W.2d 444 (1958).

Presumption of approval of bond resulting from its filing overcome. Buttolph v. Town of Postville, 230 Iowa 89, 296 N.W. 817 (1941).

79. Scope of hearing or determination.

Determination should be made whether assessment exceeds twenty-five percent of actual value of property properly to be assessed. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Ordering of pavement and assessment are legislative determination. Gingles v. City of Onawa, 241 Iowa 492, 41 N.W.2d 717 (1950).

On appeal, court has broad power of review. Cardell v. City of Perry, 201 Iowa 628, 207 N.W. 775 (1926).

On appeal, district court authorized to determine what assessments should be made against the properties. Smith v. City of Marshalltown, 197 Iowa 85, 197 N.W. 734, (1924).

On appeal, owner entitled to be heard on whether her land was adjacent to improvement. Hauge v. City of Des Moines, 197 Iowa 907, 196 N.W. 68 (1923).

Action of council in ordering improvement and declaring it a benefit held a legislative determination. In re Jefferson St. Sewer, 179 Iowa 975, 162 N.W. 239 (1917).

Court may inquire both as to validity and amount of assessment. Early v. City of Ft. Dodge, 136 Iowa 187, 113 N.W. 766 (1907).

On appeal, no orders may be made which affect persons who have not appealed. Berry v. City of Des Moines, 115 Iowa 44, 87 N.W. 747 (1901).

80. Objections - in general.

Void assessment may be annulled on appeal without prior filing of objections. Rivers v. City of Des Moines, 202 Iowa 940, 211 N.W. 415 (1926). Bates v. City of Des Moines, 201 Iowa 1233, 207 N.W. 793 (1926).

Objections not made before council cannot be raised on appeal. Tjaden v. Town of Wellsburg, 197 Iowa 1292, 198 N.W. 772 (1924).

Remedies and availabilities to taxpayer. Owens v. City of Marion, 127 Iowa 469, 173 N.W. 381; Clifton v. City of Des Moines, 144 Iowa 625, 123 N.W. 340; Durst v. City of Des Moines, 164 Iowa 82, 145 N.W. 528; Ellyson v. City of Des Moines, 179 Iowa 882, 162 N.W. 212; Manning v. City of Ames, 192 Iowa 998, 184 N.W. 347.

Excessive assessment objection must first be made before council. Harris v. Evans, 196 Iowa 799, 195 N.W. 78 (1923).

On appeal, owner limited to consideration of objections filed before council, except for fraud. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

81. Consideration on appeal, objections.

Lack of benefit must be raised before council. Hansen v. City of Missouri Valley, 178 Iowa 859, 160 N.W. 340 (1916).

Matters rendering assessment void may be raised on appeal or by independent action. Chicago, R. I. & P. Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

Variance between improvement as constructed and that planned is not jurisdictional. Cheney v. City of Ft. Dodge, 157 Iowa 250, 138 N.W. 549 (1912).

On appeal, only objections made before council may be heard. Chicago, R. I. & P. Ry. Co. v. City of Centerville, 172 Iowa 444, 153 N.W. 106 (1915). Gilchrest & Co. v. City of Des Moines, 131 N.W. 776 (Iowa 1911).

On appeal, owner limited to consideration of objections filed before council, except for fraud. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

82. Excluded issues.

Damages for interference with access not an issue in appeal from assessment. Ashman v. City of Des Moines, 209 Iowa 1247, 228 N.W. 316 (1929).

Objections not made before council cannot be raised on appeal. Tjaden v. Town of Wellsburg, 197 Iowa 1292, 198 N.W. 772 (1924).

On appeal, only objections made before council may be heard. Chicago, R. I. & P. Ry. Co. v. City of Centerville, 172 Iowa 444, 153 N.W. 106 (1915).

Failure to object on appearance waives defects of notice. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

Person affected by assessment who has not appealed cannot appear in district court taking advantage of appeal by another. Berry v. City of Des Moines, 115 Iowa 44, 87 N.W. 747 (1901).

83. Evidence.

Presumption of benefit received. Gingles v. City of Onawa, 241 Iowa 492, 41 N.W.2d 717 (1950).

Absent evidence, it was assumed that improvement commenced at point fixed by resolution. Williams v. City of Cherokee, 184 Iowa 899, 169 N.W. 110 (1918).

It could not be assumed that a resolution was duly passed where city, on appeal, pleaded work was done under invalid ordinance. Cook v. City of Independence, 133 Iowa 582, 110 N.W. 1029 (1907).

84. Presumptions and burden of proof.

Landowner appealing from assessment for public improvement has burden of showing extent of benefit conferred. Persinger v. Sioux City, 257 Iowa 727, 133 N.W.2d 110 (1965).

Assessment against property for improvements is presumed to be just and equitable, and burden is on property owner to prove contrary. Rood v. City of Ames, 244 Iowa 1138, 60 N.W.2d 227 (1953).

85. Suspension of proceedings.

Appeal suspends collection of assessment till determination. Fidelity Inv. Co. v. White, 208 Iowa 519, 223 N.W. 884 (1929).

86. Relief granted.

Cause remanded to determine amount to be assessed against property where from record appellate court could not determine what assessment should be. In re Jefferson St. Sewer, 179 Iowa 975, 162 N.W. 239 (1917).

When appeal only involves amount of assessment, court may not annul assessment and make another on different property. Chicago, Great Western Ry. Co. v. City of Council Bluffs, 176 Iowa 247, 157 N.W. 947 (1916).

Held error to reduce assessment where evidence on benefit conflicted. Camp v. City of Davenport, 151 Iowa 33, 139 N.W. 137 (1911).

Even if assessment were arbitrary, entire assessment should not be declared void, but should be corrected. Andre v. City of Burlington, 141 Iowa 65, 117 N.W. 1082 (1908).

87. Conclusiveness and effect of adjudication.

Right to damages for interference with access not adjudicated in appeal from assessment. Ashman v. City of Des Moines, 209 Iowa 1247, 228 N.W. 316 (1929), modified on other grounds, 229 N.W. 907.

Adjudication that contract was improperly performed is not binding on contractor as against city. Western Asphalt Paving Corporation v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

Where council had no jurisdiction to make assessment court could only declare it void. Landis v. City of Marion, 178 Iowa 1396, 161 N.W. 26 (1917).

Where appeal attacking assessment was dismissed, assessment was treated as valid. Fish v. City of Keokuk, 144 Iowa 187, 122 N.W. 896 (1909).

384.67 Payment to County Treasurer

1. Construction and application.

Assessments not payable to treasurer until it is certified and reaches him for collection. F. M. Hubbell, Son & Co. v. Hammill, 187 Iowa 1083, 175 N.W. 41 (1919).

2. Payment.

Expense of collecting assessment cannot be included in assessment. Higman v. Sioux City, 129 Iowa 291, 105 N.W. 524 (1906).

Obligation of owner to pay tax begins on date of assessment. O.A.G. 1918, p. 221.

Owner had right to pay assessment anytime prior to certification to County Treasurer. F. M. Hubbell, Son & Co. v. Hammill, 187 Iowa 1083, 175 N.W. 41 (1919).

3. Checks.

Where official held check in payment of assessment for two weeks, and was personally unable to collect through bank failure, he was personally liable. O.A.G. 1925-26, p. 84.

4. Interest.

Kuhlmann v. Persinger, 261 Iowa 461, 154 N.W.2d 860 (1967).

Entitlement of plaintiff, in action on tax certificate which was refused payment, to interest. Edward & Walsh Const. Co. v. Jasper County, 117 Iowa 365, 90 N.W. 1006 (1902).

Entitlement of private person, suing to recover assessment, to interest. Des Moines Brick Mfg. Co. v. Smith, 108 Iowa 307, 79 N.W. 77 (1899).

Entitlement of private person, suing to recover assessment to interest. Tuttle v. Polk, 92 Iowa 433, 60 N.W. 733 (1894).

Where owner pays full balance due, interest is figured to the time of such payment. O.A.G. 1930, p. 262.

Interest on unpaid installments payable each year when first semi-annual payment of ordinary taxes was due, though no installment thereof was to be paid at that time. O.A.G. 1925-26, p. 222.

Owner paying unpaid installments in advance pays interest only to date of payment. O.A.G. 1911-12, p. 463.

5. Penalties.

Assessment is not delinquent while its validity is being litigated. Barber Asphalt Paving Co. v. District Court, Polk County, 181 Iowa 1265, 163 N.W. 214 (1917).

In case of special assessments, only such penalties can be collected as are authorized by statute. Ankeny v. Henningsen, 54 Iowa 29, 6 N.W. 65 (1880).

Failure of clerk to certify assessment levy promptly, did not relieve owner of liability for penalty. O.A.G. 1932, p. 65.

6. Landlord and tenant.

Lessee and lessor could not extend time of payment by executing such promise in writing. Vorse v. Des Moines, Marble Mantle Co., 104 Iowa 541, 73 N.W. 1064 (1898).

7. Limitation.

Special assessments levied may be barred by limitations. Fitzgerald v. Sioux City, 125 Iowa 396, 101 N.W. 268 (1904).

8. Recovery of assessments paid.

Taxpayers held not entitled to intervene to recover assessments paid in an action by assignee of contractor's certificates against county treasurer. First Nat. Bank v. Kelly, 159 Iowa 312, 139 N.W. 564 (1913).

It was error to order judgment for plaintiff in action against city to recover assessment paid on ground that assessment was illegal where nothing showed assessment was void. Hawkeye Loan & Brokerage Co. v. City of Marion, 110 Iowa 468, 81 N.W. 718 (1900).

Where owner paid assessment he could not recover though he received no notice. Newcomb v. City of Davenport, 86 Iowa 291, 53 N.W. 232 (1892).

Where owner paid tax owed to city he could not recover same on grounds city used illegal method of collection. Dittoe v. City of Davenport, 74 Iowa 66, 36 N.W. 895 (1888).

384.68 Bonds Issued

For annotations, see I.C.A.

384.69 Property Sold at Tax Sale

1. Construction and application.

At scavenger tax sale, County Treasurer should attempt to sell property for delinquent taxes and special assessments. City may bid at such sale to protect interest. O.A.G., July 16, 1979.

When property at scavenger sale receives no bids sufficient to satisfy special assessments, and no general taxes are owed, city is not required to bid for property. O.A.G., November 20, 1978.

Statutory duty of County Treasurer to collect special assessments by same proceedings as used in collecting ordinary taxes. Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722 (1939).

Purchaser of certificates not entitled to sue in equity to foreclose special assessment lien. Hawkeye Life Ins. Co. v. Valley - Des Moines Co., 220 Iowa 556, 260 N.W. 669 (1935).

Treasurer empowered in case of nonpayment, to see such lots as other property was sold for taxes. Morrison v. Hershire, 32 Iowa 271 (1871).

Notice to be given. O.A.G. March 2, 1970.

Installments not delinquent not computed in determining amount to be collected at tax sales. O.A.G. 1919-20, p. 369.

2. Power to enforce assessment by sale.

Tax sale can be made for unpaid special assessments. Campbell v. Bruce, 231 Iowa 1150, 3 N.W.2d 521 (1942).

Tax sale in December following listing of taxes in January preceding does not necessarily depend on existence of prior lien. Halvorson v. Mullin, 179 Iowa 293, 161 N.W. 309 (1917).

Provision charter authorizing city to levy and collect special tax does not include power to sell and convey in case of nonpayment. Merriam v. Moody's Ex'rs, 25 Iowa 163 (1868).

Power to levy and collect special tax did not give power to collect it by sale. McInerny v. Reed, 23 Iowa 410 (1867).

3. Time for sale.

Sale of realty pending appeal was not warranted. Fidelity Inv. Co. v. White, 208 Iowa 519, 223 N.W. 884 (1929), modified on other grounds, 208 Iowa 519, 225 N.W. 868.

4. Property subject to sale.

Section 446.7 did not affect right of holder of assessment certificates to have the property sold. Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722 (1939).

Railroad property could not be sold as ordinary property where its loss would dismember road as line of travel. Minneapolis & St. L. R. Co. v. Lindquist, 119 Iowa 144, 93 N.W. 103 (1903).

Assessment did not create lien on personal property of owner of lot. Buell v. Ball, 20 Iowa 282 (1866).

5. Interest and penalties.

Where assessment was in litigation it was not delinquent till final determination. O.A.G. 1919-20, p. 374.

Correct method of computing interest or penalty. O.A.G. 1919-20, p. 373.

6. Validity of sale.

Not affected by failure to carry forward and enter unpaid general taxes or tax list. Campbell v. Bruce, 231 Iowa 1160, 3 N.W.2d 521 (1942).

Tax sale was not void because an installment on a special assessment bond was included in sale where county bid only taxes, interest, penalty and cost. Fleck v. Duro, 227 Iowa 356, 288 N.W. 426 (1939).

Unless there is prejudice mere delay in issuing certificates of purchase does not invalidate the sale. Fisk v. City of Keokuk, 144 Iowa 187, 122 N.W. 896 (1909).

7. Installments for which sold.

Installments not due or delinquent should not be computed in determining amount of tax to be collected at tax sale. O.A.G. 1919-20, p. 369.

8. Purchase by city.

Absent statute town was unauthorized to buy property offered at tax sale. Morrison v Culver's Estate, 216 Iowa 676, 248 N.W. 237 (1933).

Council could purchase tax certificates if sale was held under this section or like provision. O.A.G. 1934, p. 144.

City could bid on property offered for sale for delinquent assessment. O.A.G. 1923-24, p. 106.

9. Invalid sale.

Despite invalid sale city could sue in equity to collect tax and enforce lien. McInerny v. Reed, 23 Iowa 410 (1867).

10. Injunction.

In suit to enjoin sale court could not enter decree against persons having property rights in special assessments who were not made defendants. Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722 (1939).

In action by railway to restrain sale of lots where pleadings merely show ownership, purpose of purchase not being shown, it is considered to have the fee. Minneapolis & St. L. R. Co. v. Lindquist, 119 Iowa 144, 93 N.W. 103.

Counterclaim by city as to amount of tax, proper in action to restrain sale. Kendig v. Knight, 60 Iowa 29, 14 N.W. 78 (1882).

11. Setting aside sale.

Owner must offer to pay the assessment plus interest before he may have certificate of purchase set aside. Fisk v. City of Keokuk, 144 Iowa 187, 122 N.W. 896 (1909).

12. Redemption.

Decree permitting owner to redeem held erroneous and inequitable. Warn v Tucker, 236 Iowa 450, 19 N.W.2d 201 (1945).

Court may consider equitable circumstances bearing on question of right to set aside deed. Incorporated Town of Story City v. Hadley, 214 Iowa 132, 241 N.W. 649 (1932).

Owner charged on accounting with interest and penalty. Hintrager v. McElhiney, 112 Iowa 325, 83 N.W. 1063 (1900).

13. Compromise.

Board of supervisors cannot compromise special assessments for public improvements. O.A.G. 1928, p. 226.

14. Deed.

Showing was insufficient to warrant setting aside tax deed. Incorporated Town of Story City v. Hadley, 214 Iowa 132, 241 N.W. 649 (1932).

Entitlement of certificate holder to have deed reformed so as to include entire lot. Harris v. Evans, 196 Iowa 799, 195 N.W. 178 (1923).

Presumption of duly levied tax created by tax deed rebutted by fact there was not record of levy of the tax. Hintrager v. Kiene, 62 Iowa 605, 15 N.W. 568 (1883), rehearing denied, 62 Iowa 605, 17 N.W. 910.

Recitals of tax deed, of fact of sale, are not conclusive thereof. McNamara v. Estes, 22 Iowa 246 (1867).

Acts of 1858 left to city charters to provide for a special officer to execute deed. Street v. Hughes, 20 Iowa 131 (1866).

15. Liability of city.

Town unauthorized to buy property offered at tax sale could not enforce collection and was not liable to assessment certificate holder. Morrison v. Culver's Estate, 216 Iowa 676, 248 N.W. 237 (1933).

16. Tax liens.

County treasurer may advertise and sell property even though there are suspended ordinary taxes on the property, but sale is subject to such lien. O.A.G. 1953, p. 13.

384.70 Redemption by Bondholder

1. Construction and application.

Holder of certificates of special assessments had prior right to assignment of certificates of tax sale on tender of amount necessary to redeem. Inter-Ocean Reinsurance Co. v. Dickey, 222 Iowa 995, 270 N.W. 29 (1937).

City levying assessments cannot protect itself by tender to holder of tax certificate and receiving assignment after certificate holder receives deed. Means v. City of Boone, 214 Iowa 948, 241 N.W. 671 (1932).

Tax levying bodies which puchases at tax sale not prohibited from selling and assigning certificate. O.A.G. 1938, p. 2.

Where city held certificate it had right to assignment of tax sale certificate whether or not territory was in a separate incorporated town. O.A.G. 1936, p. 165.

Under this section person is actually purchasing tax sale certificate with privilege of later acquiring title by tax deed. O.A.G. 1936, p. 56.

How unpaid holder of certificates may protect himself when general taxes are due. O.A.G. 1932, p. 267.

Loss of right to assignment by permitting holder of tax sale certificate to take tax deed. O.A.G. 1932, p. 265.

2. Time for assignment.

Assignment held not premature. Fleck v. Duro, 227 Iowa 356, 288 N.W. 426.

3. Rights of assignees.

Reliance of assignee on statement of clerical employee of city was at his own peril. Carleton D. Beh Co. v. City of Des Moines, 228 Iowa 895, 292 N.W. 69 (1940).

Purchaser of improvement certificate could not sue for foreclosure of assessment lien where city followed statutory method of collection. Hawkeye Life Ins. Co. v. Valley-Des Moines Co., 220 Iowa 556, 260 N.W. 669 (1935).

Assignee held without greater right than assignor had. Western Asphalt Paving Corporation v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927).

4. Redemption.

Holder of assessment certificate - conduct required to protect special assessment lien. Flanders v. Inter-Ocean Reinsurance Co., 228 Iowa 926, 292 N.W. 795 (1940).

Who is entitled to redeem from tax sale. O.A.G. 1938, p. 2.

Holder of tax sale certificate to receive amount entitled in case of redemption. O.A.G. 1930, p. 280.

Holder of assessment certificate of any city or town wherein property is located may redeem from tax sale. O.A.G. 1928, p. 224.

5. Amount required to be paid.

Taxes for which property was sold and all subsequent taxes added to the tax sale. O.A.G. 1938, p. 266.

This section permits holder of certificate to tender sum due on tax sale and become owner of tax sale certificate. O.A.G. 1938, p. 2.

Holder of tax sale certificate at scavenger sale entitled to receive in redemption amount bid for the property, interest and taxes paid. O.A.G. 1936, p. 341.

Purchaser at tax sale entitled to amount he bid plus interest. O.A.G. 1936, p. 267.

6. Liens.

Tax sale purchaser taking free from lien of special assessment. O.A.G. 1932, p. 267.

7. Injunction.

Court could not enter decree in respect to persons having property rights in special assessments, who were not made parties. Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722 (1939).

8. Mandamus.

Mandamus may issue to compel assignment. Inter-Ocean Reinsurance Co. v. Dickey, 222 Iowa 995, 270 N.W. 29 (1937).

9. Evidence.

Defendant was not permitted to urge the fact that there was no assignment of certificate of sale in action to quiet title to lot acquired by tax deed. Hall v. Wallace, 229 Iowa 171, 294 N.W. 283 (1940).

Evidence insufficient to warrant finding that city intended for statements of clerical employee to be relied on by assignee. Carleton v. Beh Co. v. City of Des Moines, 228 Iowa 895, 292 N.W. 69 (1940).

384.71 Costs Paid from Applicable Funds

1. Validity.

Provision authorizing street improvement and assessment of cost against abutting property according to benefits is not violative of const. art. 1, s 18. Hutchins v. Hanna, 179 Iowa 912, 162 N.W. 225 (1917).

Apportionment of cost of street paving on abutting lots according to frontage not unconstitutional. Hackworth v. City of Ottumwa, 114 Iowa 467, 87 N.W. 424 (1901).

2. Constitutional provision.

For annotations, see I.C.A.

3. Construction and application.

Meaning of terms "paving fund" and "general paving fund." Corey v. City of Fort Dodge, 133 Iowa 666, 111 N.W. 6 (1907).

Municipality may extend sewer, gas and water facilities beyond its corporate limits. Payment for same. O.A.G. March 28, 1974.

While city street intersections with other roads and local service-street facilities may be established or constructed or reconstructed by cities acting alone, the work may also be accomplished by both cities and the state highway commission incorporating one with the other. O.A.G. April 4, 1969.

Road use tax funds may be used for payment of street bonds, and cities and towns may allocate fixed portion of street fund for payment of street bonds. O.A.G. December 13, 1961.

4. Contracts.

Contract held to not conform to notice. Hedge v. City of Des Moines, 141 Iowa 4, 119 N.W. 276 (1909).

For additional annotations, see I.C.A.

5. Bids.

Code section requiring notice for bids to state, "the terms of payment fixed" was satisfied by provision in contract. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

6. Repairs.

For annotations, see I.C.A.

7. Funds.

For annotations, see I.C.A.

8. Assessment of benefits - in general.

For annotations, see I.C.A.

9. Basis of assessment.

For annotations, see I.C.A.

10. Property subject to assessment.

For annotations, see I.C.A.

11. Adjacent property, assessment.

For annotations, see I.C.A.

12. Notice, assessment.

For annotations, see I.C.A.

13. Double taxation, assessment.

For annotations, see I.C.A.

14. Tax levies.

Improvement fund and roadway district fund - uses. O.A.G. 1925-26, p. 444.

15. Bondholders, rights of.

For annotations, see I.C.A.

16. Bonds.

For annotations, see I.C.A.

17. Review.
For annotations, see I.C.A.

384.72 Reassessment and Relevy

1. Validity.
This section not provision for "special laws." Tuttle v. Polk, 92 Iowa 433, 60 N.W. 733 (1894).

2. Construction and application.
Absent an inadequacy in original assessment city could not reassess. Morrison v. Culver's estate, 216 Iowa 676, 248 N.W. 237.
Unauthorized assessments may be corrected. Burroughs v. City of Keokuk, 181 Iowa 660, 165 N.W. 83 (1917).
Statute provides method to correct irregular and defective levies. Bradley v. City of Centerville, 139 Iowa 599, 117 N.W. 968 (1908).
Reassessment proper where original adjudged illegal regardless of correctness of adjudication. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905), 3 Ann. Cas. 651.
Ordinance validating void assessment not auathorized. McManus v. Hornaday, 124 Iowa 267, 100 N.W. 33 (1904), 104 Am. St. Rep. 316, 2 Ann. Cas. 237.
Statute not to cure jurisdictional defects. Martin v. City of Oskaloosa, 99 N.W. 557 (Iowa 1904).
Reassessment not authorized on quartum meruit where contractor not entitled to compensation. Crawford v. Mason, 123 Iowa 301, 98 N.W. 795 (1904).
Act 1888 (22 G.A.) not limited to prior assessments. Gill v. Patton, 118 Iowa 88, 91 N.W. 904 (1902).
Fact that contract did not exactly conform to ordinance or advertisement was not jurisdictional. Ottumwa Brick & Construction Co. v. Ainley, 109 Iowa 386, 80 N.W. 510 (1899).
Council may cure defect in contract caused by failure to determine kind and quantity of materials prior to advertising. Tuttle v. Polk, 84 Iowa 12, 50 N.W. 38 (1891).

3. Ordinance, absence of.
Where necessary ordinance is invalid no valid reassessment can be made. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905), 3 Ann. Cas. 651.
Where at time of levy there was no ordinance authorizing assessment, the passage of subsequent ordinance authorizing levy did not authorize reassessment. Martin v. City of Oskaloosa, 99 N.W. 557 (Iowa 1904).

4. Opportunity for reassessment.
Where assessment is invalid and curative act has been passed city to be given opportunity to reassess prior to suit on implied contract for costs. Citizen's Bank of Des Moines v. City of Spencer, 126 Iowa 101, 101 N.W. 643 (1904).

5. Vendor and purchaser.
Where contract allowed purchaser to deduct assessment and reassessment was higher, he could deduct sum of reassessment. Evening Star Lodge, No. 43, A.F. & A.M., v. Robbins, 179 Iowa 537, 161 N.W. 680 (1917).

6. Presumptions.

Presumption of ample notice of reassessment. Martin v. City of Oskaloosa, 126 Iowa 680, 102 N.W. 529 (1905), 3 Ann. Cas. 651.

384.73 Void Tax or Assessment

1. Construction and application.

Unauthorized assessment may be corrected. Burroughs v. City of Keokuk, 181 Iowa 660, 165 N.W. 83 (1917).

2. Vendor and purchaser.

Where contract allowed purchaser to deduct assessment and reassessment was higher, he could deduct sum of reassessment. Evening Star Lodge, No. 43, A.F. & A.M., v. Robbins, 179 Iowa 537, 161 N.W. 680 (1917).

384.74 Correction of Errors (No Annotations)

384.75 Special Provisions (No Annotations)

384.76 Application to Joint Undertakings (No Annotations)

384.77 Assessments along Railways

1. Construction and application.

Street railway company's assessment for repavement of bridge, In re Walnut St. Bridge in City of Des Moines, 220 Iowa 55, 261 N.W. 781 (1935).

Repaving not for peculiar benefit of railway company - assessments therefor legal. Coates v. City of Dubuque, 68 Iowa 550, 27 N.W. 750 (1886).

2. Prior laws, construction and application.

For annotations, see I.C.A.

3. Sewers.

Sewer could just as well be laid on one side of track as in center of street. Des Moines City Ry. Co. v. City of Des Moines, 90 Iowa 770, 58 N.W. 906 (1894).

4. Surface between rails.

Dangerous condition of pavement inside street car tracks. Geers v. Des Moines Ry. Co., 240 Iowa 783, 38 N.W.2d 89 (1949).

384.78 Prior Proceedings

For annotations, see I.C.A.

384.79 Conflicting Provisions

For additional annotations, see I.C.A.

V. REVENUE FINANCING

384.80 Definitions

For annotations, see I.C.A.

384.81 Provisions of City Code Exclusive

For annotations, see I.C.A.

384.82 Procedure for Financing

For annotations, see I.C.A.

384.83 Revenue Bonds

For annotations, see I.C.A.

384.84 Rates for Proprietary Functions

For annotations, see I.C.A.

384.85 Books and Records

For annotations, see I.C.A.

384.86 Pledge Valid and Effective to Others (No Annotations)

384.87 Payable from Revenues

1. In general.

City that assumes revenue bonds for purchasing property may use proceeds of sale to pay off bonds. O.A.G., December 14, 1979.

384.88 Sole Remedy

For annotations, see I.C.A.

384.89 Transfer of Surplus

For annotations, see I.C.A.

384.90 Part Payment from General Revenue (No Annotations)

384.91 Payment to use Services

1. Rates, discrimination.

Municipality may charge special or reduced utility rates for governments, hospitals, charitable institutions, etc. Such rates are not discriminatory. O.A.G., April 21, 1976.

384.92 Statute of Limitation

For annotations, see I.C.A.

384.93 Conflicting Provisions

For annotations, see I.C.A.

384.94 Prior Projects Preserved

For annotations, see I.C.A.

VI. CONTRACT LETTING PROCEDURE

384.95 Definitions

For annotations, see I.C.A.

384.96 Sealed Bids

1. Construction and application.

Public competitive bids not required for solid waste disposal contract under § 455B.76 and a contractor where no public funds are involved. O.A.G., October 23, 1978.

Former § 391.31, requiring contracts for street improvements to be let in name of city to lowest bidder by sealed proposals, was not limited to cases where cost of improvement was to be assessed against adjoining property. Everds Bros. v. Gillespie, 256 Iowa 317, 126 N.W.2d 274 (1964).

This section held not limited to contracts payable by special assessment. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

For additional annotations, see I.C.A.

2. Purpose.

Best work at lowest practical price. Weiss v. Incorporated Town of Woodbine, 228 Iowa 1, 289 N.W. 469 (1940).

Primary purpose of mandatory requirement for competitive bidding on municipal contract is to prevent fraud and collusion and for protection of public funds. Miller v. Incorporated Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

3. Discretion.

For annotations, see I.C.A.

4. Necessity of competitive bidding.

Former § 391.31, requiring competitive bidding for "all contracts for construction or repair of street improvements" constituted prohibition upon letting such contracts in any other mode. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

Construction of sewer from general funds. Dunn v. Sioux City, 206 Iowa 908, 221 N.W. 571 (1928).

Improvement by funds from general or highway or poll tax funds. City of Des Moines v. Horrabin, 204 Iowa 683, 215 N.W. 967 (1927).

No statute required contracts for excavation and grading be let to competitive bidding. Lee v. City of Ames, 199 Iowa 1342, 203 N.W. 790 (1925).

Extensions of primary roads in cities and towns. O.A.G. 1938, p. 769.

5. Void contracts, necessity of competitive bidding.

Alleged oral contract whereby city would pay for twenty-five percent of cost of street paving in new addition was void were no competitive bidding was invited nor opportunity given therefor. Everds Bros. v. Gillespie, 256 Iowa 317, 126 N.W.2d 274 (1964).

Contracts entered into between city and contractor for repairing streets without such work having bids submitted for competitive bidding held void, and not merely voidable. Horrabin Paving Co. v. City of Creston, 221 Iowa 1237, 262 N.W. 480 (1935).

Contract in violation of statute is void. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

Flushcoating streets with oil and repairing defects held not "oiling." Jackson v. City of Creston, 206 Iowa 244, 220 N.W. 92 (1928).

6. Evasion of competitive bidding.

Contract to oil instead of repair let to circumvent statutes. Horrabin Paving Co. v. City of Creston, 221 Iowa 1237, 262 N.W. 480 (1935).

7. Assessments and competitive bidding.

To assess cost of public improvement against private property, former § 391.31, requiring competitive bids, must be respected. City of Des Moines v. Horrabin, 204 Iowa 683, 215 N.W. 967 (1927).

8. Maintenance projects.

Equipment for maintenance can be purchased from construction fund. O.A.G. 1946, p. 63.

9. Supplemental contracts.

Supplemental contract to pay contractor additional amount for paving was not within former section 391.31 requiring competitive bids. City of Des Moines v. Horrabin, 204 Iowa 683, 215 N.W. 967 (1927).

10. Technical defects.

Notice to bidders, though defective, was cured by form of proposal. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1924).

11. Substantial compliance.

Procedure was held to comply with ordinances to repair of pavement. F.M. Hubbell, Son Co. v. City of Des Moines, 168 Iowa 418, 150 N.W. 701 (1915).

12. Constructive knowledge.

City was not obligated to make restitution to contractor. Horrabin Paving Co. v. City of Creston, 221 Iowa 1237, 262 N.W. 480 (1935).

13. Presumptions and burden of proof.

Where call for bids, resolution of necessity and notice were not in abstract, presumption was that they were in form consistent with district court decree. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

14. Curative acts.

Generally, bid must substantially conform to specifications in proposals. Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction, 216 Iowa 1301, 250 N.W. 136 (1933).

384.97 Notice to Bidders

1. Construction and application.

Construction contract entered into by town must be authorized by notice and authority of governing body. Poor v. Incorporated Town of Duncombe, 231 Iowa 907, 2 N.W.2d 294 (1942).

Contractor not required to anticipate failure of city to procure right of way. Newton Auto Salvage Co. v. Herrick, 203 Iowa 424, 212 N.W. 680 (1927).

Bidder's duty to base bid on plans and specifications on file. Brutsche v. Incorporated Town of Coon Rapids, 220 Iowa 1295, 264 N.W. 696 (1936).

2. Necessity of notice.

Notice to bidders should state as nearly as practicable the extent of the work and the kind of material for which bids would be received, when the work should be done, the terms of payment, and the time when proposals would be acted upon. Bennett v. City of Emmetsburg, 138 Iowa 67, 115 N.W. 582 (1908).

3. Definiteness and specificity of notice.

Definiteness of advertisement for bids and specifications. Gjellefald v. Hunt, 202 Iowa 212, 210 N.W. 122 (1926).

Where specification is in general terms a subsequent reference in more specific language qualifies words first used. Urbany v. City of Carroll, 176 Iowa 217, 157 N.W. 852 (1916).

4. Nature of work.

Notice for bids for contract grading of street, stating amount of excavation estimated, held to comply with provision requiring notice to state as nearly as practicable the extent of the work. Royal v. City of Des Moines, 195 Iowa 23, 191 N.W. 377 (1923).

Meaning of "extent of work." Requirement that each bidder submit a detailed plan was to advise city of the interpretation of its plan by bidders. Jenney v. City of Des Moines, 103 Iowa 347, 72 N.W. 550 (1897).

5. Materials to be used.

Conclusion of council as to materials to be used is binding. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

Council must determine, prior to publication, type of material to be used. Coggeshall v. City of Des Moines, 78 Iowa 235, 41 N.W 617 (1889).

6. Payment terms.

Notice must fix forms of payment. Royal v. City of Des Moines, 195 Iowa 23, 191 N.W 377 (1923).

Commencement and completion dates. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

7. Conformity of notice with resolution.

Error or irregularity did not invalidate assessment. Sunset Golf Club v. Sioux City, 242 Iowa 739, 46 N.W.2d 548 (1951).

Commencement and completion dates. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

8. Conformity of bid with notice.

Bid must respond to invitation to bidders, otherwise purported bid would be a counter proposal. Miller v. Incorporated Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

Bidders duty to base bid on plans and specifications on file. Brutsche v. Incorporated Town of Coon Rapids, 220 Iowa 1295, 264 N.W. 696 (1936).

Generally, bid for public works contract must substantially conform to specifications in proposal. Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction, 216 Iowa 1301, 250 N.W. 136 (1933).

Time of completion of paving bids is material part of specifications, and cannot be changed by bidder. Urbany v. City of Carroll, 176 Iowa 217, 157 N.W. 852 (1916).

9. Conformity of contract with notice.

Additional stipulations not in notice, which are material change, invalidate contract. Gjellefald v. Hunt, 202 Iowa 212, 210 N.W. 122 (1926).

Failure to give notice rendered subsequent proceedings void. Comstock v. Eagle Grove City, 133 Iowa 589, 111 N.W 51 (1907).

10. Cost - plus plans.

Cost plus plan proper only if notice is given to bidders. Chicago, R. I. & P. Ry. Co. v. Town of Dysart, 208 Iowa 422, 223 N.W. 371 (1929).

11. Patents.

Patentee could bid on contract calling for use of his own patented pavement. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

That advertisement required certain patented equipment did not restrict competition. Saunders v. Iowa City, 134 Iowa 132, 111 N.W. 529 (1907).

12. Reference to specifications.

Notice to bidders was not defective for reason that it referred to the specifications. Owens v. City of Marion, 127 Iowa 469, 103 N.W. 381 (1905).

13. Union labor.

Question as to whether or not discrimination was made in favor of union printers. Miller v. City of Des Moines, 143 Iowa 409, 122 N.W. 226 (1909).

14. Wages.

Resolution adopted by municipality established minimum wage rates. Iowa Electric Co. v. Town of Cascade, 227 Iowa 480, 228 N.W. 633 (1939).

15. Sufficiency of notice.

City council's notice of reservation to reject all bids, waive formalities and enter public improvement contract should be for best interest of city and violated § 384.99 providing that contract for public improvement must be awarded to lowest bidder, but contract relating to public utility may be awarded in best interest of city, in as much as project did not involve public utility. Dunphy v. City Council of Creston, 256 N.W.2d 913 (Iowa 1977).

Advertisement sufficiently showed what was to be done. Fullerton v. City of Des Moines, 147 Iowa 254, 126 N.W. 159 (1910).

Facts and data given should enable bidder to compute material and amount of it needed. Jenney v. City of Des Moines, 103 Iowa 347, 72 N.W. 550 (1897).

Facts permitted presumption that publication was as required. Arnold v. City of Ft. Dodge, 111 Iowa 152, 82 N.W. 495 (1900).

16. Evidence.

Record of proceedings relative to street improvements established that required statutory notice was given and that contract for such improvement was not void. Husson v. City of Oskaloosa, 37 N.W.2d 310 (Iowa 1949).

17. Presumptions and burden of proof.

Facts permitted presumption that publication was as required. Arnold v. City of Ft. Dodge, 111 Iowa 152, 82 N.W. 495 (1900).

18. Publication of notice.

Failure of notice to specify extent of work and time for work was defective. Polk v. McCartney, 104 Iowa 567, 73 N.W. 1067 (1898).

Publications of notice under former § 391.31 were required to be made on consecutive weeks. O.A.G. June 28, 1955.

19. Time.

Notice to bidders, though defective, was cured by form of proposal. Vowles v. Town of Kenwood Park, 198 Iowa 517, 199 N.W. 1009 (1923).

Time of completion of paving bids is material part of specifications and cannot be changed by bidder. Urbany v. City of Carroll, 176 Iowa 217, 157 N.W 852 (1916).

Commencement and completion dates. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910).

Failure to give notice rendered to subsequent proceedings void. Comstock v. Eagle Grove City, 133 Iowa 589, 111 N.W. 51 (1907).

Facts showed notice to be defective. Osborne v. City of Lyons, 104 Iowa 160, 73 N.W. 650 (1897).

20. Curative acts.

Act curing defects in notice held valid. Windsor v. City of Des Moines, 101 Iowa 343, 70 N.W. 214 (1897).

384.98 Bid Security

1. Recovery of deposit.

Contractor not entitled to recover deposit made when he bid on pavement work by reason of a mistake in calculations, where the matter was discussed and he knew all the facts before his bid was acted upon, and did not choose to withdraw it. Tony Amodeo Co. v. Town of Woodward, 192 Iowa 535, 185 N.W. 94 (1921).

384.99 Award of Contract

1. In general.

City council's discretion to determine lowest bidder not limited by department of housing and urban development's final authorization, city not estopped from denying that contractor was responsible as result of department's qualification that contractor was responsible. Istari Construction Inc. v. City of Muscatine, 330 N.W.2d 798, (Iowa 1983).

City council not compelled to award public improvement contract to lowest bidder. O.A.G., June 23, 1983.

Valid contract prequisite to power to buy special assessment. Allen v. City of Davenport, 132 F. 209 (1904).

Former § 391.31 requiring contracts for street improvements to be let in name of city to lowest bidder by sealed proposals, was not limited to cases where cost of improvement was to be assessed against adjoining property. Everds Bros. v. Gillespie, 256 Iowa 317, 126 N.W.2d 274 (1964).

This section held not limited to contracts payable by special assessment. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

No statute required contracts for excavation and grading be let to competitive bidding. Lee v. City of Ames, 199 Iowa 1342, 203 N.W. 790 (1925).

Contracts for paving must be let to lowest bidder. Wigodsky v. Town of Holstein, 195 Iowa 910, 192 N.W. 916 (1923).

2. Acceptance of bid and award of contract.

Statements held to not be bribe or material inducement. Lee v. City of Ames, 199 Iowa 1342, 203 N.W. 790 (1925).

Acceptance consisted of approval of contract and bond by city council. Capital City Brick & Pipe Co. v. City of Des Moines, 152 Iowa 354, 132 N.W. 188 (1911).

Where work to be done is fully described in specifications referred to in an advertisement, the acceptance of a bid in writing creates a contract. City of Ft. Madison v. Moore, 109 Iowa 476, 80 N.W. 527 (1899).

3. Rejection of bids.

City council's notice of bid rejection and waive of formalities to enter public improvement contract as it should deem to be for best interests of city violated this section because project did not involve public utility. Dunphy v. City Council of Creston, 256 N.W.2d 913 (Iowa 1977).

Where there were two bids, both could have been rejected. Urbany v. Carroll, 176 Iowa 217, 157 N.W. 852 (1916).

Acceptance of higher bid could be enjoined. Miller v. City of Oelwein, 155 Iowa 706, 136 N.W. 1045 (1912).

4. Validity of contract, generally.

Where there was only one bidder and no fraud, contract was valid. Dubbert v. City of Cedar Falls, 149 Iowa 489, 128 N.W. 947 (1910). Ottumwa Brick & Construction Co. v. Ainley, 109 Iowa 386, 80 N.W. 510 (1899).

5. Mistake.

Plans and specifications were not so misleading as to nullify action of council in adopting them. Wigodsky v. Town of Holstein, 195 Iowa 910, 192 N.W. 916 (1923).

6. Discrimination.

Discrimination in favor of union printers is an abuse of councils discretion and unlawful. Miller v. City of Des Moines, 143 Iowa 409, 122 N.W. 226 (1909).

7. Public policy.

That paving contract calling for use of patented paving was given to patentee did not violate public policy. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

8. Irregularities.

Error or irregularity did not invalidate assessment. Sunset Golf Club v. Sioux City, 242 Iowa 739, 46 N.W.2d 548 (1951).

Contracts for paving must be let to the lowest responsible bidder, and mere irregularities will not invalidate the bid. Urbany v. City of Carroll, 176 Iowa 217, 157 N.W. 852 (1916).

9. Severable provisions.

Illegality of contract for sewer improvement held severable, and its extent ascertainable, so that contract was enforceable against property owners as purged of access. North View Land Co. v. City of Cedar Rapids, 185 Iowa 1032, 169 N.W. 644 (1919).

10. Extra compensation, provision for.

Provisions for extra compensation. Capital City Brick & Pipe Co. v. City of Des Moines, 152 Iowa 354, 132 N.W. 188 (1911).

11. Void contracts.

Decree holding contract and assessment void, not a bar to suit by holder of bonds for city to pay cost of improvement. Burlington Sav. Bank v. City of Clinton, Iowa 106 F. 269 (1901).

Where there is substantial difference between material contracted for and that described in plans and specifications, there is no competitive bidding, and contract is invalid. Greaves v. City of Villisca, 221 Iowa 776, 266 N.W. 805 (1936).

Where municipal contract is void because of mandatory statute or public policy, acceptance of benefits thereunder cannot give rise to liability by estoppel. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

12. Evidence.

Burden of proving fraud was on property owner. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

Evidence showed bids made according to notice and specifications were distinct proposals. Lee v. City of Ames, 199 Iowa 1342, 203 N.W. 790 (1925).

13. Review.

Failure of city to observe lowest bidder statute could not be raised for first time on appeal. Carlson v. City of Marshalltown, 212 Iowa 373, 236 N.W. 421 (1931).

Where call for bids, resolution of necessity and notice were not in abstract, presumption was that they were in form consistent with district court decree. Hoffman v. City of Muscatine, 212 Iowa 867, 232 N.W. 430 (1930).

384.100 Opening and Considering Bids

I. IN GENERAL

1. Construction and application.

Municipality authorized to reject all bids on HUD funded project. Istari Construction Inc. v. City of Muscatine, 330 N.W.2d 798 (Iowa 1983).

Language of bid construed against contractor. James Horrabin & Co. v. City of Des Moines, 195 Iowa 712, 190 N.W. 380 (1922).

Board of public works in cities of first class - authority to contract for improvements. Dewey v. City of Des Moines, 101 Iowa 416, 70 N.W. 605 (1897).

2. Power to contract.

Municipal corporations are creatures of legislature, having only such powers to contract as legislature grants. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705 (1930).

3. Variance between contract and bid.

Bid held severable. North View Land Co. v. City of Cedar Rapids, 185 Iowa 1032, 169 N.W. 644 (1919).

After opening of legal bids, council cannot contract at variance with bids by permitting substitution of materials. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

City council cannot substantially vary terms and conditions of contract entered into under competitive bid. Capital City Brick & Pipe Co. v. City of Des Moines, 127 N.W. 66 (1910).

4. Estoppel.

Approval of work by city engineer under whose supervision a contract for public improvement was performed estops city from contesting contractor's right to contract price because of failure to perform work according to

specifications, in absence of fraud or concealment preventing discovery of imperfections discoverable by reasonable attention to engineer's duties of inspection. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

II. PERFORMANCE BONDS

31. In general.

Presence of bond does not obviate completion of work prior to assessment. Atkinson v. Webster City, 177 Iowa 659, 158 N.W. 473 (1916).

Bond construed to secure performance of work contracted for. City of Ft. Madison v. Moore, 109 Iowa 476, 80 N.W. 527 (1899).

32. Application.

Application for bond construed against surety. Iowa Bonding & Casualty Co. v. Frank Cram & Sons, 209 Iowa 424, 228 N.W. 24 (1929).

33. Expiration.

Bond stipulating against suit after date certain estops work after such date. Layne-Bowler Chicago Co. v. City of Glenwood, Iowa, 34 F. 2d 889 (1929).

34. Liability.

Subcontractor may rely on bond without proceeding against city. Hay v. Hassett, 174 Iowa 601, 156 N.W. 734 (1916).

In action on bond, city can attack performance of work though job accepted. City of Ottumwa v. McCarthy Improvement Co., 175 Iowa 233, 150 N.W. 586 (1915). Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 132 N.W. 837 (1911).

35. Personal injuries.

City could not apply money due under contract to satisfy personal injury judgment against contractor. City of Boone v. Gary, 162 Iowa 695, 144 N.W. 709 (1913).

36. Discharge of surety.

Effect of minor variation by city in making repairs. American Bonding Co. of Baltimore v. City of Ottumwa, 137 F. 572 (1905).

Effect of municipal recognition of assignee of paving construction contract. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

37. Parties to actions.

Right of city to bring action on contractor's bond for breach of paving construction contract. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

38. Venue.

Change of venue in discretion of court. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

39. Defenses - in general.

Acceptance of work by city. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

40. Estoppel, defenses.
Approval of work by city engineer. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).
Effect of fraud. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

41. Surety, defenses.
Ultra vires. American Bonding Co. of Baltimore v. City of Ottumwa, 137 F. 572 (1905).

42. Evidence.
Action for failure to construct pavement of required thickness. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

43. Questions of law or fact.
Extent of deficiency in thickness of pavement. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).
In action on bond requiring notice to repair paving issues of notice properly withdrawn from jury. City of Ottumwa v. McCarthy Improvement Co., 175 Iowa 233, 154 N.W. 306 (1915).

44. Instructions.
As to what constitutes fraud sufficient to overcome estoppel. Sioux City v. Western Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624 (1937).

45. Judgment.
Provision in judgment that judgment was no bar to claim for future additional damages was improper. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

384.101 Delegation of Authority (No Annotations)

384.102 When Hearing Necessary

For annotations, see I.C.A.

384.103 Bonds Authorized (No Annotations)

Chapter 409

Plats

409.1 Subdivisions or Additions

1. Construction and application.

Because city's requirements of residential subdivisions fell within home rule powers, such requirements controlled obligations of owners, mortgagor, and mechanic's lienors. Barkers Inc. v. B.D.J. Development Company, 308 N.W.2d 78 (Iowa 1981).

City council's act in administrative capacity to carry out statutes such as this chapter governing plats. Oakes Const. Co. v. City of Iowa City, 304 N.W.2d 797 (Iowa 1981).

Rural landowner who subdivides land for sale as garden plots required to file a plat. O.A.G. May 20, 1980.

Proprietor of rural tract of land of forty acres or less need not file a plat until such time as the proprietor subdivides the tract into three or more parts. O.A.G. Feb. 27, 1980.

Municipal ordinance requiring platting of land within its jurisdiction upon being subdivided into two or parts is not thereby constitutionally inconsistent with this section. O.A.G. Feb. 26, 1980.

Owner shall have a plat made and filed before his subdivided land can be sold. O.A.G. June 11, 1979.

Contract purchaser may not plat land without joinder by record title holder and release of all encumbrances. O.A.G. July 3, 1978.

County recorder could not refuse to record a properly described and acknowledged conveyance on the ground that the original proprietor had failed to file a subdivision plat. O.A.G. Dec. 29, 1977.

The auditor must keep the plat book in his office and in determining whether to require a plat of land to be transferred should follow standards prescribed in § 409.31. The right of appeal from the auditor's determination of need for a plat is to the board of supervisors. O.A.G. May 27, 1976.

Code 1897 relating to plats did not apply to unincorporated villages. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Town could not increase or alter requirements of statute. Burroughs v. City of Cherokee, 134 Iowa 429, 109 N.W. 876 (1906).

Surveyor may set a concrete or iron pin to establish a corner, and such pin constitutes a permanent monument. O.A.G. May 10, 1974.

A tract of land subdivided into three tracts or parcels must be platted; the auditor may require a survey plat to be made by the county engineer or a licensed surveyor. O.A.G. June 8, 1972.

An original proprietor may sell one lot and retain one lot of his original tract, but if he sells two lots and retains one lot, he is required to file plat. O.A.G. Sept. 21, 1970.

Suburban lot - defined. O.A.G. August 19, 1970.

Addition to a city or town - defined. Id.

Original proprietor may sell one or two lots of his original tract before he is required to file a plat. O.A.G. July 14, 1970.

County auditor must comply with provisions of this section when he is required to order a plat prepared. O.A.G. Nov. 2, 1967.

"Original proprietor" - defined. O.A.G. July 24, 1964.

Auditor's plats can be prepared and filed where the original proprietor fails to do so, but only in towns of less than 12,000 population not having a plan commission. O.A.G. Dec. 21, 1962.

2. Incorporation of city and annexations thereto.

Code 1873 did not give owner by execution of plat power to create an incorporated city. Turner v. Cobb, 195 Iowa 831, 192 N.W. 847 (1923).

3. Streets and alleys.

Rule that limitations do not run against city did not apply to street where plat was never accepted. Brewer v. Claypool, 223 Iowa 1235, 275 N.W. 34 (1937).

Roadway existing prior to platting held under evidence not dedicated. Shuler v. Independent Sand & Gravel Co., 203 Iowa 134, 209 N.W. 731 (1926).

Description of street held sufficient on which to base a dedication. Hunter v. City of Des Moines, 144 Iowa 541, 123 N.W. 215 (1909).

Not necessary that there be a dedication of alleys through blocks not subdivided into lots. Giltner v. City Council of Albia, 128 Iowa 658, 105 N.W. 194 (1905).

Plat held to not constitute dedication due to failure to comply with statute. Coe College v. City of Cedar Rapids, 120 Iowa 541, 95 N.W. 267 (1903).

Failure of plat to designate strip as street did not negative intent to dedicate where width was ascertainable. Coe College v. City of Cedar Rapids, 87 N.W. 444 (1901).

Under the facts there was no valid dedication. Minneapolis & St. L. R. R. Co. v. Town of Britt, 105 Iowa 198, 74 N.W. 933 (1898).

Deed held to not include any portion of street on which lot abutted. Brown v. Taber, 103 Iowa 1, 72 N.W. 416 (1897).

Entry on plat that streets were conveyed to county was ineffectual to deprive city of any rights or control. City of Des Moines v. Hall, 24 Iowa 234 (1868).

4. Homesteads.

Plat made prior to extension of city limits, not showing streets or alleys held to not be town plat, thus entitling defendant to 40 acres of homestead. Parrott v. Thiel, 117 Iowa 392, 90 N.W. 745 (1902).

Held to not be a town plat. Truax v. Pool, 46 Iowa 256 (1877).

5. Water courses.

High water mark boundary of lot on river's edge. Wenig v. City of Cedar Rapids, 187 Iowa 40, 173 N.W. 927 (1919).

6. Errors and defects.

Under "legalizing act", recorded plat made in 1905 was accorded validity not withstanding irregularities which attended the filing and recordation thereof. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

In case of discrepancy between plats, the one with respect to which lots have been sold will be deemed to be the true and correct one as far as the rights of the owners of those lots are concerned. Id.

Effect of intent of platter in case of error. Liddle v. Blake, 131 Iowa 165, 105 N.W. 649 (1906).

Defective dedication could be withdrawn prior to acceptance. Minneapolis & St. L. R. Co. v. Town of Britt, 105 Iowa 198, 74 N.W. 933 (1898).

409.2 Covenant of Warranty (No Annotations)

409.3 Conveyances According to Plat

1. Construction and application.

Owners of inland lots seeking to establish easement to beach front property as result of 1905 plat. Maddox v. Katzman, 332 N.W.2d 347 (Iowa Ct. App. 1982).

Grantee of lot designated on plat takes only according to the plat. Willson v. Beck, 160 Iowa 276, 142 N.W. 78 (1913).

Plat referred to in deed considered to furnish true description. Quade v. Pillard, 135 Iowa 359, 112 N.W. 646 (1907).

River constituted an identified monument controlling courses and distances. Board of Park Com'rs v. Taylor, 133 Iowa 453, 108 N.W. 927 (1906).

Deed conveying lot by number does not pass title to any part not numbered as a lot. Young v. Cosgrove, 83 Iowa 682, 49 N.W. 1040 (1891).

2. Survey, effect of.

Boundaries of city lots should not be established in quiet title suit, to vary with survey locating lines in accordance with recorded plat. Jackson v. Snyder, 202 Iowa 262, 208 N.W. 321 (1926).

Occupancy and improvement in accord with lines and corners which may have been marked at time of filing plat held better evidence than survey based on assumed corners. Harris v. Lewis, 156 Iowa 413, 136 N.W. 674 (1912).

Boundaries of lot determined by lines actually run on ground as shown by surveyor's stakes. Thrush v. Graybill, 110 Iowa 585, 81 N.W. 798.

Purchaser of lot by number takes according to lines run rather than as on plat. Root v. Town of Cincinnati, 87 Iowa 202, 54 N.W. 206.

Lot line governed by street as surveyed and marked not by plat. Bradstreet v. Dunham, 65 Iows 248, 21 N.W. 592 (1884).

3. Metes and bounds, description by.

Reservation of mineral rights in plat not conclusive against conveyance containing description normally sufficient to convey entire title. Hyde Park Investment Co. v. Glenwood Coal Co., 170 Iowa 593, 153 N.W. 181 (1915).

Custom of locating division lines by tops of ridges not justified where different line was established by metes and bounds in deed from original owner. Palmer v. Osborne, 115 Iowa 714, 87 N.W. 712 (1901).

Grantors acquired title by descent, and description excluding north half, it was held north half was not conveyed. Waldin v. Smith, 76 Iowa 652, 39 N.W. 82 (1888).

4. Boundary recognized by parties.

Boundary recognized for 10 or more years may be controlling. Dows Real Estate & Trust Co. v. Emerson, 125 Iowa 86, 99 N.W. 724 (1904).

Where original lines of platted tract are lost, fact of claiming and occupying to a certain boundary, acquiesced in by adjoining owner for many years is strong circumstance tending to establish correctness of claim. Corey v. City of Ft. Dodge, 118 Iowa 742, 92 N.W. 704 (1903).

5. Streets and public grounds.

Filing and acceptance of plat dedicating highway in unincorporated village does not convey the fee in the streets. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Evidence supported finding that vendor had not undertaken to dispose of platted street to purchaser. Backman v. City of Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

Acquisition of vested right in adjacent grounds designated on plat as public grounds. Fisher v. Beard, 32 Iowa 346 (1871).

In sale of lots by number ownership is conveyed to center of street unless clearly excluded. City of Dubuque v. Maloney, 9 Iowa 450, 74 Am. Dec. 358 (1859).

409.4 Streets and Blocks

1. Construction and application.

When a submitted plat request meets all state, county and municipal subdivision regulations, the county board of supervisors has a duty to approve the plat. O.A.G. Oct. 30, 1979.

Generally limits of platted block are marked by streets enclosing it. Clear Lake Amusement Corp. v. Lewis, 236 Iowa 132, 18 N.W.2d 192 (1945).

Location of street cannot be determined by mere "sighting," especially where official plats show otherwise. Blakesley v. Standard Oil Co., 193 Iowa 315, 187 N.W. 28 (1922).

Stakes held to constitute monuments controlling boundaries between owners and city as to boundaries of street. Tomlinson v. Golden, 157 Iowa 237, 138 N.W. 448 (1912).

When land is subdivided into three or more parcels, the size of the parcel is irrelevant criterion; rather, it is the location of the land or the intended use to which the land will be put which determines whether or not the land must be platted according to the terms of this chapter. O.A.G. Sept. 11, 1974.

2. Compliance with statutory requirements - in general.

Burden on plaintiff to establish allegations that addition did not substantially conform to existing system of streets, lots and blocks in city. Neilan v. Lytle Inv. Co., 223 Iowa 987, 274 N.W. 103 (1937).

For special assessment purposes tract treated as if platted in streets and alleys to conform to those laid out on either side. Gray v. City of Des Moines, 150 Iowa 299, 130 N.W. 582 (1911).

3. Effect of noncompliance.

No duty on council to approve plat under section 409.7 unless it complies with this section. O.A.G. 1906, p. 346.

4. Encroachments.

Nothing in record to support a finding of estoppel in favor of landowners in suit by town against them for causing nuisance by building and maintaining garage which encroached in public street and alley. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

409.5 Grade of Streets

1. Construction and application.

Duty of city to approve and certify plat. Tuttle Bros. & Bruce v. City of Cedar Rapids, Iowa, 176 F. 86, 99 C.C.A. 606 (1910).

2. Discretion of council.

Council could not withhold approval till bond be furnished indemnifying city against possible expenditures for street improvements. Carter v. City Council of City of Council Bluffs, 180 Iowa 227, 163 N.W. 195 (1917).

409.6 Alleys

1. Construction and application.

"Alley", when referred to in a deed conveying platted land the inference is that an alley platted for public purposes is intended. Talbert v. Mason, 136 Iowa 373, 113 N.W. 918, 14 L. R. A., N. S., 125 Am. St. Rep. 259 (1907).

Not necessary that there be a dedication of alleys through blocks not subdivided into lots. Giltner v. City Council of City of Albia, 128 Iowa 658, 105 N.W. 194 (1905).

Facts showed narrow strips on plat between blocks were intended to be alleys. Taradlson v. Town of Lime Springs, 92 Iowa 187, 60 N.W. 658 (1894).

409.7 Filing - Approval

1. Construction and application.

Substantial compliance with statutory requirements concerning acceptance of plat by city is generally sufficient. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

Duty of city to approve and certify plat. Tuttle Bros. & Bruce v. City of Cedar Rapids, Iowa, 176 F. 86, 99 C.C.A. 606 (1910).

Not necessary that there be a dedication of alleys through blocks not subdivided into lots. Giltner v. City Council of Albia, 128 Iowa 658, 105 N.W. 194 (1905).

Failure of original proprietors and subdividers to follow statutory procedure for filing plat with county recorder did not result in dedication or easement appurtenant to roadway passing to subdivision owners. Farmers and Mechanics Sav. Bank of Minneapolis v. Campbell, 258 Iowa 1238, 141 N.W.2d 917 (1966).

2. Discretion of council.

Council could not withhold till bond be furnished indemnifying city against possible expenditures for street improvements. Carter v. City Council of City of Council Bluffs, 180 Iowa 227, 163 N.W. 195 (1917).

Council must approve plat which conforms to law. Giltner v. City Council of City of Albia, 128 Iowa 658, 105 N.W. 194 (1905).

No duty in council to approve plat unless it complies with section 409.4 O.A.G. 1905, p. 346.

409.8 Acknowledgement

1. Construction and application.

Fact that plat was defectively acknowledged did not avail as against the dedication. Shea v. City of Ottumwa, 67 Iowa 39, 24 N.W. 582 (1885).

Certificate of judge that he was satisfied that the law had been complied with was conclusion that acknowledgement was valid. Scott v. City of Des Moines, 64 Iowa 438, 20 N.W. 752 (1884).

2. Description of land subdivided.

Under the facts there was no valid dedication. Minneapolis & St. L. R. Co. v. Town of Britt, 105 Iowa 198, 74 N.W. 933 (1898).

409.9 Abstract of Title - Opinion - Certificates - Utility Easements

1. Construction and application.

A proprietor of a rural tract of land of 40 acres or less need not file a plat until such time as the proprietor subdivides the tract into three or more parts. The county recorder can accept a deed for a subdivided tract even if the proprietor has failed to file a plat, but the recorder should not accept a subdivision plat unless it meets all the requirements of chapter 409. If a rural subdivider fails to record a plat as required by this chapter, the auditor may order a plat made. O.A.G. Feb. 27, 1980.

Record fee title is a condition precedent to filing and recording a plat. O.A.G. Nov. 21, 1978.

Contract purchaser may not plat land without joinder by record title holder and release of all encumbrances. O.A.G. July 3, 1978.

All subdivision platting must be done in compliance with provisions of section 409.1 et. seq., and if these requirements are met, the recorder must record the plat. O.A.G. Oct. 23, 1969.

Fact that plat was defectively acknowledged did not avail as against the dedication. Shea v. City of Ottumwa, 67 Iowa 39, 24 N.W. 582 (1885).

Certificate of judge that he was satisfied that the law had been complied with was conclusion that acknowledgement was valid. Scott v. City of Des Moines, 64 Iowa 438, 20 N.W. 752 (1884).

409.10 Encumberances - Payment - Creditor's Refusal (No Annotations)

409.11 Encumbrance - Bond

1. Construction and application.

Section 409.13, providing acknowledgement and recording shall be equivalent to a deed in fee simple of such portion of the premises platted as is set apart for streets or other public uses, or as is dedicated to charitable, religious or educational purposes, and this section have no application to plats of rural areas outside cities and towns, and the filing of a plat for such an area dedicates streets to the general public if the facts show that there has been an acceptance of the dedication. O.A.G. May 26, 1964.

409.12 Record - Filing

1. Construction and application.

Recorder's certificate endorsed upon plat is prima facie evidence that plat was properly recorded. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

Failure of original proprietors and subdividers to follow statutory procedure for filing plat with county recorder did not result in dedication or easement appurtenant to roadway passing to subdivision owners. Farmers and Mechanics Sav. Bank of Minneapolis v. Campbell, 258 Iowa 1238, 141 N.W.2d 917 (1966).

County recorder should accept plats and accompanying documents for filing if they conform to law regardless of whether or not the recorder has a preferance for size and type of paper. O.A.G. Nov. 4, 1971.

Platting papers should be recorded in town deed record. O.A.G. 1946, p. 183.

Where plat was filed but not recorded till after death of proprietor it was held as against his heirs that plat took effect from date of filing. Scott v. City of Des Moines, 64 Iowa 438, 20 N.W. 752 (1884).

Plats to be entered in ordinary plat book in auditorium office. O.A.G. 1925-26, p. 240.

2. Abstract.

An abstract of title, not to be recorded as part of the platting under this chapter, remains a public document and may not be destroyed or otherwise disposed of except by legislative authority. O.A.G. Oct. 22, 1962.

Abstract of title attached to plat should be recorded. O.A.G. 1946, p. 183.

Abstract should be treated as part of statement attached to plat. O.A.G. 1904, p. 276.

3. Fees.

No fee may be exacted for filing or entering plat in plat book. O.A.G. 1925-26, p. 240.

4. Estoppel.

Original proprietors not estopped to deny that roadway passed to subdivision owners has appurtenant to their land for proprietors' failure to

comply with statutory procedure for filing of plat. Farmers and Mechanics Sav. Bank of Minneapolis v. Campbell, 258 Iowa 1238, 141 N.W.2d 917 (1966).

Grant considered to have been made with statutory authority of municipalities to control its streets in view. Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).

409.13 Effect of Record

1. Construction and application.

Dedicated land is considered continuing until something done to indicate to the public that tender has been permanently withdrawn. Marksbury v. State, 322 N.W.2d 281 (Iowa 1982).

Under "legalizing act," recorded plat made in 1905 was accorded validity notwithstanding irregularities which attended the filing and recordation thereof. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

Code 1897 relating to plats did not apply to unincorporated villages. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Platting and recording does not change owners title thereto. Hyde Park Inv. Co. v. Glenwood Coal Co., 170 Iowa 593, 153 N.W. 181 (1915).

The person who bought and sold lots held to have recognized the plat and not entitled to question legality of plat. Schultz v. Stringer, 168 Iowa 668, 150 N.W. 1063 (1915).

Where plat was properly recorded and the lots sold by proprietor according to the plat, intent to dedicate was sufficiently established. Shea v. City of Ottumwa, 67 Iowa 39, 24 N.W. 582 (1885).

Town site must have been laid out by one having title. Porter v. Stone, 51 Iowa 373, 1 N.W. 601 (1879).

Section 409.11 requiring a person filing a plat and developing area in a county, to purchase a performance bond, and this section have no application to plats of rural areas outside cities and towns, and the filing of a plat for such an area dedicates streets to the general public if the facts show there has been an acceptance of the dedication. O.A.G. May 26, 1964.

2. Lands for public use, generally.

Elements to establish dedication are appropriation of land for public use, evidenced by positive act or declaration of intent to surrender land, parting with property, and acceptance by public. Marksbury v. State, 322 N.W.2d 281 (Iowa 1982).

When land is dedicated for a public purpose in an unincorporated area, the fee title remains in the grantor, and the public receives an easement. O.A.G. July 3, 1978.

Acknowledgement and recording of plat held equivalent to deed in fee. Incorporated Town of Ackley v. Central States Electric Co., 206 Iowa 533, 220 N.W. 315 (1928).

Filing of acknowledged plat for record operated as deed in fee simple. Burroughs v. City of Cherokee, 134 Iowa 429, 109 N.W. 876 (1906).

Where survey and plat are properly dedicated, it amounts to a deed in fee simple. Coe College v. City of Cedar Rapids, 120 Iowa 541, 95 N.W. 267 (1903).

When property platted and recorded such acts amount to a conveyance of streets, squares, etc. City of Pella v. Scholte, 21 Iowa 463 (1966).

Inclusion in plat of streets or other public use or dedication of part to charitable, religious or educational purposes operates as deed. O.A.G. 1946, p. 183.

3. Depot grounds.

Instrument of vacation of depot grounds properly filed vacated dedication where railway company did not accept dedication. Iowa Cent. Ry. Co. v. Homan, 151 Iowa 404, 131 N.W. 878 (1911).

Mere dedication as depot grounds did not endow entire tract with incidents of public use. Chicago, M. & St. P. Ry. Co. v. Hanken, 140 Iowa 372, 118 N.W. 527, 19 L. R. A., N. S., 216 (1908).

4. Religious purposes.

Where plat showed "church square," it was a grant for church purposes, yet did not confer title on the only church then on the place. Christian Church at Pella v. Scholte, 2 Iowa 27, 2 Clarke 27 (1855).

5. Public squares - in general.

Individual acquired rights in abandoned public square so that it could not be taken without compensation. Independent School District of Marietta, Marshall County v. Timmons, 187 Iowa 1201, 175 N.W. 498 (1919).

Platting of land as public square amounts to dedication for public use. Moore v. Kleppish, 104 Iowa 319, 73 N.W. 830 (1898).

Where square was set aside on condition it be improved by city in reasonable time, equity would give no remedy for failure to improve. Leffler v. City of Burlington, 18 Iowa 361 (1865).

6. Dedication, public squares.

Facts showed dedication. Bayliss v. Pottawattamie County, C. C. 1878, Fed. Cas. No. 1, 142, 5 Dill. 549.

Filing of plat with public square included, followed by its use and improvement, constituted dedication. Lace v. City of Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909).

Facts showed sufficient dedication. Edwards & Walsh Construction Co. v. Jasper County, 117 Iowa 365, 90 N.W. 1006 (1902).

Evidence showed term "public ground" was not intended to include tract designated as "public square." Youngerman v. Bd. of Sup'rs of Polk County, 110 Iowa 731, 81 N.W. 166 (1899).

Platting of land as public square amounts to dedication for public use. Moore v. Kleppish, 104 Iowa 319, 73 N.W. 830 (1898).

Where county platted public square and for 50 years asserted no rights to the square, intent to dedicate was established. Young v. Oskaloosa County, 88 Iowa 681, 56 N.W. 177 (1893).

Designation of parcel of land on plat as "market square" does not necessarily show dedication to public. Scott v. City of Des Moines, 64 Iowa 438, 20 N.W. 752 (1888).

Dedication of square to public use was held sufficiently established. Livermore v. City of Maquoketa, 35 Iowa 358 (1872).

"Garden square" marked on plat insufficient to establish dedication. Extrinsic evidence to fix meaning should be resorted to. City of Pella v. Scholte, 24 Iowa 283 (1868).

7. Parks and playgrounds.

Property dedicated and accepted for public use may not be diverted. Carson v. State, 240 Iowa 1178, 38 N.W.2d 168 (1949).

8. Streets and alleys - in general.

Where lots were sold with reference to recorded plat, accepted by the public, purchasers or public could not be deprived of streets and alleys. Kuehl v. Town of Bettendorf, 179 Iowa 1, 161 N.W. 28 (1917).

Acknowledgement and recording plat were equivalent to deed in fee. Backman v. City of Oskaloosa, 130 Iowa 600, 104 N.W. 347 (1905).

Platting and designation of streets and alleys equivalent to a deed in fee simple. Blennerhassett v. Town of Forest City, 117 Iowa 680, 91 N.W. 1044 (1902).

Mere nonuse by public did not defeat right of city to open street. Chicago, R. I. & P. R. v. City of Council Bluffs, 109 Iowa 425, 80 N.W. 564 (1899).

Land dedicated by acts in pais and accepted by the public, its rights cannot be defeated by subsequent filing of plat of same land. Getchell v. Benedict, 57 Iowa 121, 10 N.W. 321 (1881).

Dedication in plat to county ineffective to deprive city of rights or control in streets. City of Des Moines v. Hall, 24 Iowa 234 (1868).

9. Dedication, streets and alleys.

Where owner platted lots, blocks and streets, he adopted it by reference when selling and such as irrevocable dedication of streets. Wolfe v. Kemler, 228 Iowa 733, 293 N.W. 322 (1940).

Road existing prior to plat and marked thereon as portion of lot held not dedicated. Shuler v. Independent Sand & Gravel Co., 203 Iowa 134, 209 N.W. 731 (1926).

Plat of town filed with petition for incorporation does not show dedication. De Nefe v. Agency City, 143 Iowa 237, 121 N.W. 1049 (1909).

Portion of land was, under the facts, excluded from dedication. Town of Mt. Vernon v. Young, 124 Iowa 517, 100 N.W. 694 (1904).

Strip along river bank adjoining street, too narrow for lots held to be part of street by dedication. Boehler v. City of Des Moines, 111 Iowa 417, 82 N.W. 914 (1900).

Defective statutory dedication may be sustained as a common law dedication. Minneapolis & St. L. R. Co. v. Town of Britt, 105 Iowa 198, 74 N.W. 933 (1898).

Facts showed dedication. City of Dubuque v. Maloney, 9 Iowa 450 (1859).

10. Title, streets and alleys.

On incorporation and acceptance of village streets shown on plat, streets become streets of incorporated town. Kelroy v. City of Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

On acceptance of original plat road becomes street and title vests in city. McKinney v. Rowland, 197 Iowa 180, 197 N.W. 88 (1924).

Dedication though not conveying fee in streets to buyers of lots does convey on easement to use streets. Iowa Loan & Trust Co. v. Bd. of Sup'rs of Polk County, 187 Iowa 160, 174 N.W. 97 (1919).

Dedication of highway in unincorporated village conveys an easement only to public title remaining owner. Kitzman v. Greenhalgh, 164 Iowa 166, 145 N.W. 505 (1914).

Purchasers of lots abutting on street take no title thereto. Lake City v. Fulkerson, 122 Iowa 569, 98 N.W. 505 (1904).

Fee in streets vested in town in trust for the public. Milburn v. City of Cedar Rapids, 12 Iowa 246 (1861).

11. Reservations.

City acquires fee simple title of land dedicated for street use but when land is dedicated with limitations on the dedication and city accepts the plat as dedicated, such action is not void and the limitations have been recognized. Leverton v. Laird, 190 N.W.2d 427 (1971).

Reservation held to have been easement retained. City of Waterloo v. Union Mill Co., 59 Iowa 437, 13 N.W. 433 (1882).

Reservation that a certain street should not be public held repugnant to the grant. Haight v. City of Keokuk, 4 Iowa 199, 4 Clarke 199 (1856).

12. Mineral rights.

City, in land dedicated to public use, could maintain action for mining of coal though there was no interference with public use. City of Des Moines v. Hall, 24 Iowa 234 (1868).

Held fee and mineral rights reserved to dedicator. City of Dubuque v. Benson, 23 Iowa 248 (1867).

13. Reversion.

Where highway was dedicated by plat to unincorporated village the fee reverts to original owner on vacation. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

When vacated by city title in dedicated street does not revert to original owner. Lake City v. Fulkerson, 122 Iowa 569, 98 N.W. 376 (1904).

Title did not revert to dedicator on failure to use portions of land as indicated on plat. Pettingill v. Devin, 35 Iowa 344 (1872).

14. Water frontage.

Strip of land along river held reserved to dedicator. Grant v. City of Davenport, 18 Iowa 179 (1865).

Strip of land along river, not included in plat not dedicated. Cowles v. Gray, 14 Iowa 1 (1862).

15. Estoppel.

For annotations, see I.C.A.

16. Purchasers' rights.

For annotations, see I.C.A.

17. Injunction.

For annotations, see I.C.A.

18. Evidence.

For annotations, see I.C.A.

19. Burden of proof.

For annotations, see I.C.A.

20. Review.

For annotations, see I.C.A.

409.14 Approval Condition to Filing and Recording

1. Construction and application.

City councils may consider access in subdivision plats even though access not enumerated as requirement in chapter governing plats. Oakes Const. Co. v. City of Iowa City, 304 N.W.2d 797 (Iowa 1981).

Substantial compliance with statutory requirements concerning acceptance of plat by city is generally sufficient. Pearson v. City of Guttenberg, 245 N.W.2d 519 (Iowa 1976).

The cities have authority to impose requirements on certain rural subdivisions pursuant to sections 306.21, 409.14 and 558.65. O.A.G. April 20, 1979.

This section prevails over 409.1 for plats within cities over 25,000 population, and within two miles of such cities, and cities which have, by ordinance, adopted this section and within two miles of such cities. O.A.G. Dec. 3, 1976.

Acceptance necessary to make land public property. Kelroy v. City of Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942). Brewer v. Claypool, 223 Iowa 1235, 275 N.W. 34 (1937).

An original proprietor's plat must be prepared by an original owner who subdivides any tract or parcel of land into three or more parts for the purpose of laying out a town or city or a part or addition thereof. O.A.G. Dec. 21, 1962.

3. Effect of sale of lots, right to vacate.

Owner of other lots could not be divested of right to use street. Kelroy v. City of Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

Right or privileges of other proprietors may not be abridged. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Addition cannot be replatted so as to vacate certain streets therein unless all owners of lots in the plat join in vacating. Uptagrafft v. Smith, 106 Iowa 385, 76 N.W. 733 (1898). Yost v. Leonard, 34 Iowa 9 (1871).

4. Requisites and sufficiency of vacation.

Notation by recorder on record of original plat that a certain part had been vacated was sufficient to validate vacation. Kelroy v. City of Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

Vacation of part of plat by filing written instrument held valid. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Conveyance of alley with all reversionary interest did not revoke dedication. Zollinger v. City of Newton, 172 Iowa 352, 154 N.W. 611 (1915).

Conveyance of land prior to acceptance constituted revocation of dedication. Minneapolis & St. L. R. Co. v. Town of Britt, 105 Iowa 198, 74 N.W. 933 (1898).

Where owner vacates streets and alleys council cannot determine, exparte, that vacation is void. Conner v. Iowa City, 66 Iowa 419, 23 N.W. 904 (1885).

5. Effect of vacation.

Action of board of supervisors did not constitute vacation of city streets where town's corporate existence terminated. McKinney v. Rowland, 197 Iowa 180, 197 N.W. 88 (1824).

Vacation of a plat was also vacation of proposed streets in the portion vacated. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Plat, though cancelled, remains on record and descriptions based on it are capable of identification. Chicago Lumber Co. v. Des Moines Driving Park, 97 Iowa 25, 65 N.W. 1017 (1896).

Vacation of plat does not impair liability of plat for its portion of existing debts incurred by the corporation. Deeds v. Sanborn, 26 Iowa 419 (1868).

409.19 Partial Vacation by Proprietor

1. Construction and application.

Where dedication was not accepted owner could vacate by filing instrument removing area from plat. Iowa Cent. R. Co. v. Homan, 151 Iowa 404, 131 N.W. 878 (1911).

Where street had been accepted and town was dissolved, lot owners had no greater right to vacate. Chrisman v. Omaha & C. B. Ry. & Bridge Co. 125 Iowa 133, 100 N.W. 63 (1904).

Where street as platted was vacated a proportionate part thereof did not become a part of each abutting lot. Brown v. Taber, 103 Iowa 1, 72 N.W. 416 (1897).

Where right to vacate was exercised, authority of corporation to take vacated part out of corporation limits was not affected. McGrew v. Town of Lettsville, 71 Iowa 150, 32 N.W. 252 (1887).

Enactments not intended as means of giving owners of lots fee simple to street by election to vacate. O.A.G. 1898, p. 146.

Person owning lot on each side of street has no authority to vacate and become owner of street. O.A.G. 1898, p. 139.

2. Rights of proprietors.

Right to vacate exists provided rights and privileges of other proprietors in such plat are not affected. Brown v. Taber, 103 Iowa 1, 72 N.W. 416 (1897).

"Proprietors" held to be present owners, not merely original platter, and they could exercise right to vacate. McGrew v. Town of Lettsville, 71 Iowa 150, 32 N.W. 252 (1887).

City council could not make ex parte determination that vacation was void. Conner v. Iowa City, 66 Iowa 419, 23 N.W. 904 (1885).

Vacation was valid where there was reasonably convenient access so that no substantial right was abridged. Lorenzen v. Preston, 53 Iowa 580, 5 N.W. 764 (1880).

3. Highways or streets.

Statutes held to refer to traveled street as distinguished from mere space laid out between lots. Chrisman v. Omaha & C. B. Ry. & Bridge Co., 125 Iowa 133, 100 N.W. 63 (1904). Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Partial vacation could not affect right of other lot owners to use street. Kelroy v. City of Clear Lake, 232 Iowa 161, 5 N.W.2d 12 (1942).

Statute held to not inhibit vacation of streets never used nor needed for public use. Town of Kenwood Park v. Leonard, 177 Iowa 337, 158 N.W. 655 (1916).

Facts showed street to be needed for public use. Hunter v. City of Des Moines, 144 Iowa 541, 123 N.W. 215 (1909).

409.20 Streets, Alleys, and Public Grounds

1. Construction and application.

Unopened and unaccepted streets in an unincorporated village plat do not require vacation proceedings by the county. Title to such streets remains in the original platter, his heirs or assigns, unless lost under the doctrine of adverse possession. O.A.G. May 29, 1975.

Provisions as to vacation of plats intended for owner of realty to reconsider his act when it might be done without prejudice to rights of others. O.A.G. 1898, p. 139.

2. Abutting owner's rights.

Owners of lots in village were not entitled to vacation of street which had not been accepted by village as against abutters gaining title to part of street by adverse possession. Brewer v. Claypool, 223 Iowa 1235, 275 N.W. 34 (1937). Where street was vacated a proportionate part thereof did not become part of each of abutting lots. Brown v. Taber, 103 Iowa 1, 72 N.W. 416 (1897).

Statutes on vacation not intended as a means of giving owner a fee simple in street by election to vacate. O.A.G. 1898, p. 146.

Person owning lot on each side of street has no authority to vacate and become owner of street. O.A.G. 1898, p. 139.

3. Abandoned railroad right of way.

Record sustained finding in quiet title action wherein defendants asked that title to abandoned railroad right-of-way be quieted in them in proportion to their abutting holdings, that certain streets had not been established. Jacobs v. Miller, 253 Iowa 213, 111 N.W.2d 673 (1962).

409.21 Correction of Plat (No Annotations)

409.22 Vacation by Lot Owners - Petition - Notice

409.44 Contest - Decree (No Annotations)

409.45 Sale or Lease without Plat

1. Construction and application.

Note given for purchase money of lots sold prior to recordation of plat was not rendered void. Watrous & Snouffer v. Blair, 32 Iowa 58 (1871). Pangborn v. Westlake, 36 Iowa 546 (1973).

A tract of land subdivided into three tracts or parcels must be platted; the auditor may require a survey plat to be made by the county engineer or a licensed surveyor. O.A.G. June 8, 1972.

409.46, 407.47 Repealed by Acts 1970 (63 G.A.) ch. 1025, § § 72, 73

409.48 Assessment of Platted Lots

Where building sites and streets on plat filed by taxpayer had no legal significance, plat was of one area, and thus this section governing assessment of unimproved individual lots in plat was not applicable. K-Line Farms Inc. v. Waterloo Bd. of Review, 275 N.W.2d 424 (Iowa 1979).

Platted lots were "improved" for tax assessment purposes. Builders Land Co. v. Martens, 255 Iowa 231, 122 N.W.2d 189 (1963).

Real estate assessments - adjustment for full taxation - timing. O.A.G. December 26, 1969.

This section applies to all platted ground, no matter when the plat was made, filed and recorded. O.A.G. June 20, 1967.

Procedure for the assessment of platted lots enacted by this section applies not only to plats recorded after July 4, 1965, but also to plats recorded within three year prior to that date. O.A.G. September 22, 1966.

Where an auditor's plat has been prepared because owners of the tracts land involved failed to comply with auditor's request pursuant to section 409.31, total cost of preparing plat is to be prorated over the several subdivisons. O.A.G. August 1, 1963.

Chapter 420

Cities Under Special Charter

420.45 Claims for Personal Injury - Limitation

In all cases of personal injury or damage to property resulting from defective streets or sidewalks, or from any cause originating in the neglect or failure of any municipal corporation or its officers to perform their duties, no suit shall be brought against any such city after three months from the time of the injury or damage, and not then unless a written verified statement of the amount, nature, and cause of such injury or damage, and the time when and the place where such injury occurred, and the particular defect or negligence of the city or its officers which it is claimed caused or contributed to the injury or damage, shall be presented to the council or filed with the clerk within thirty days after said alleged injury or damage was sustained.

For annotations, see I.C.A.

5. Evidence.

Mandamus proper to compel construction of bridge where highway not abandoned. Robinson v. Board of Sup'rs of Davis County, 222 Iowa 663, 269 N.W. 921 (1936).

Chapter 460

Highway Drainage Districts

460.1 Establishment

1. Construction and application.

Paving of former dirt highway, without substantial change of grade did not necessitate establishing highway drainage district. Grimes v. Polk County, 34 N.W.2d 767 (1949).

Joint drainage could not be formed to drain county line highway and land tributary to same drainage area lying in two or more counties. O.A.G. 1918, p. 512.

How cost is payable. O.A.G. 1909, p. 249.

2. Nature of drainage districts.

Drainage district has no rights or powers other than found in the statutes authorizing its existence. Board of Trustees of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Sup'rs of Monona County, Iowa, 232 Iowa 1098, 5 N.W.2d 189 (1942).

Drainage districts have characteristics peculiar to them. Miller v. Monona County, 229 Iowa 165, 294 N.W. 308 (1940).

3. Right to discharge water absent drainage district.

Highway commission and county could discharge surface waters from highways by connecting ditch with private tile where plaintiffs' land was servient estate and prescriptive right had been acquired. Grimes v. Polk County, 34 N.W.2d 767 (Iowa 1949).

4. Attorney, employment of.

Board of supervisors may employ county attorney or other attorney. O.A.G. 1919-20, p. 238.

460.2 Powers

1. Construction and application.

Board of supervisors may employ county attorney or other attorney. O.A.G. 1919-20, p. 328.

460.3 Initiation Without Petition (No Annotations)

460.4 Engineer (No Annotations)

460.5 Survey and Report (No Annotations)

460.6 Assessment - Report

1. Railroads.

Board of supervisors could not include railroad right of way in highway drainage district. Great Northern Ry. Co. v. Board of Sup'rs of Plymouth County, 197 Iowa 903, 196 N.W. 284 (1923).

2. Assessments.

Reduction by court held equitable. Held v. Board of Sup'rs of Plymouth County, 201 Iowa 418, 205 N.W. 529 (1925).

460.7 Advanced Payments

1. Construction and application.

Statute not retroactive in reducing interest rate and warrants stamped "not paid for want of funds" bear interest rate prescribed by law in effect that timely warrants were so stamped. O.A.G. 1944, p. 37.

460.8 Payment from Road Funds (No Annotations)

460.9 Dismissal - Costs (No Annotations)

460.10 Condemnation of Right of Way

1. Railroads, ditches across.

Measure of damages in proceedings to condemn right of way for drainage ditch across railroad right of way. Chicago, B. & Q. R. Co. v. Bd. of Supervisors, 182 F. 291, 104, C.C.A. 573, 31 L.R.A.N.S., 1117 (1910).

2. Instructions.

Meaning of terms "establishment" and "constructions." Larson v. Webster County, 150 Iowa 344, 130 N.W. 165 (1911).

460.11 Laws Applicable (No Annotations)

460.12 Removal of Trees from Highway

1. Construction and application.

Removal of trees on highway necessary in improvement not controlled by provisions of this section. Rabiner v. Humboldt County, 224 Iowa 1190, 278 N.W. 612, 116 A.L.R. 89 (1938).

Depth of ditches within discretion of road authorities. O.A.G. 1938, p. 184.

460.13 Trees Outside of Highways

1. Construction and application.

Removal of trees on highway necessary in improvement not controlled by provisions of this section. Rabiner v. Humboldt County, 224 Iowa 1190, 278 N.W. 612, 116 A.L.R. 89 (1938).

Chapter 465

Individual Drainage Rights

465.1 Drainage Through Land of Others - Application

1. Validity.

Fleming v. Hull, 73 Iowa 598, 35 N.W. 673 (1887).

2. Construction and application.

Failure to mention compensation for attorneys and trial preparation for plaintiff's challenge to state drainage rights does not deprive objectors of due process. Peel v. Burk, 197 N.W.2d 617 (Iowa 1972).

Land owner had no right to dam old ditch to force water along new ditch. Allen v. Berkheimer, 194 Iowa 871, 186 N.W. 683 (1922).

Purpose of this section discussed. Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land. Cowan v. Grant Tp., Monona County, 190 Iowa 1188, 181 N.W. 637 (1921).

Remedies of dominant owner wishing to open drains across adjoining land. Miller v. Hester, 167 Iowa 180, 149 N.W. 93 (1914).

Board of supervisors decides whether a drainage title may be projected across or through a road right of way to a suitable outlet. O.A.G. March 26, 1970.

3. Establishment.

Right of owner to drain water naturally to or over land of another. Dorr v. Simmerson, 127 Iowa 551, 103 N.W. 806 (1905). Sheker v. Machovec, 110 N.W. 1055 (1907).

4. Prescriptive right.

Artificial channel may become natural watercourse after period of prescription has run. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947).

Assent for over 10 years gave prescriptive right of drainage. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

If use is permissive no prescriptive right of drainage. Jones v. Stover, 131 Iowa 119, 108 N.W. 112, 6 L.R.A., N.S., 154 (1906).

Defeat of claim of easement growing from adverse user. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

5. Abandonment of prescriptive right.

Construction of new drain held not abandonment. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

6. Contracts.

Tile line established by agreement has same status as if established by trustees. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947).

Agreement for drainage substantially benefitting property may give interest in nature of easement. Morse v. Rhinehart, 195 Iowa 419, 192 N.W. 142 (1923).

Where contract refers to plans, work must conform. Whitsett v. Griffis, 168 N.W. 878 (Iowa 1918).

Claim for insufficient capacity of drain settled by agreement. Taylor v. Frevert, 183 Iowa 799, 155 N.W. 474 (1918).

Agreement to extend drain not waiver of pre-existing easement. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

Promise to pay part cost for joint outlet supported by consideration. Dugger v. Kelly, 168 Iowa 129, 150 N.W. 27 (1914).

Contract right to discharge water by drain over defendants land subject to extension in accordance with usages of good husbandry. Schlader v. Strever, 158 Iowa 61, 138 N.W. 1105 (1912).

Contract to lay tile to drain both farms supported by sufficient consideration. Fallon v. Amond, 153 Iowa 504, 133 N.W. 771 (1911).

Acquiesence by owner of drain may confer right of maintenance. Hatton v. Cale, 152 Iowa 485, 132 N.W. 1101 (1911).

Easement for drain could not be revoked after grantee has extended money or labor thereon. Robinson v. Luther, 140 Iowa 723, 119 N.W. 146 (1909).

Evidence supported finding that parties intended to make ditch a permanent improvement. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

Right to drain could not arbitrarily be cut off. Thompson v. Normanden, 108 N.W. 315 (Iowa 1906).

7. Easements.

Owner of dominant estate has legal and natural easement in lower or servient estate for drainage of surface waters, and natural flow cannot be interrupted or prevented by servient owner to detriment or injury of estate of dominant owner. Witthauer v. City of Council Bluffs, 257 Iowa 493, 133 N.W.2d 71 (1965).

Evidence held not to warrant inference of agreement granting easement. Lehfeldt v. Bachmann, 175 Iowa 202, 157 N.W. 456 (1916).

Easement of permanent nature passes with grant of the adjacent lands. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

8. License.

Right to forfeit or revoke license to extend drain not inferred unless agreement was without consideration. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

Assent to construction of ditch once accepted cannot be disregarded. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

License held revocable under its term. Thompson v. Normanden, 134 Iowa 720, 112 N.W. 188 (1907).

License without consideration is revocable at pleasure of licensor. Jones v. Stover, 131 Iowa 119, 108 N.W. 112 (1906).

Evidence showed license to conduct waters was for terms of lease. Hansen v. Farmer's Coop. Creamery, 106 Iowa 167, 76 N.W. 652 (1898).

9. Abandonment, neglect, obstruction.

Where two owners had participated in expense and work of construction of ditch neither could disregard it without consent of the other. Vanneat v. Fleming, 79 Iowa 638, 44 N.W. 906 (1890).

10. Maintenance.

Responsibility for maintenance. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

11. Improvement, extension or alteration.

Change of course of ditch does not extinguish easement unless quantity of water will increase damage of servient estate. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

Construction. Neuhring v. Schmidt, 130 Iowa 401, 106 N.W. 630 (1906).

Land owner not estopped to fill ditch under circumstances. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

12. Elevation of tracts.

Disposition of ordinary surface water is determined by relative elevations of adjacent tracts. Witthauer v. City of Council Bluffs, 257 Iowa 493, 133 N.W.2d 71 (1965).

13. Crediting value of ditch.

Presence of private ditch does not deprive owner of right to compensation for land taken. Johnston v. Drainage Dist. No. 80 Palo Alto County, 184 Iowa 346, 168 N.W. 886 (1918).

Fact that owner built tile drain considered in assessing benefit. Obe v. Board of Sup'rs of Hamilton County, 169 Iowa 449, 151 N.W. 453 (1915).

14. Purchasers of lands, notice.

Notice of right of adjoining owners to use tile drain. Morse v. Rhinehart, 195 Iowa 419, 192 N.W. 142 (1923).

15. Injunction.

Dominant owner of land who sought only to have natural flow of surface water from his farm over servient owner's land was not precluded from obtaining injunctive relief to restrain defendant from obstructing the natural flow of the water on ground that dominant owner had adequate remedy at law. DeWitt v. DeWitt, 259 Iowa 1037, 147 N.W.2d 32 (1966).

Plaintiff had burden to prove that changes made by defendant changed general direction of flow or substantially increased volume of surface water cast upon plaintiff's land. Witthauer v. City of Council Bluffs, 257 Iowa 493, 133 N.W.2d 71 (1965).

To require removal of obstruction placed in tile line. McKeon v. Brammer, 238 Iowa 113, 29 N.W.2d 518 (1947).

Plaintiff must show damage. Dullard v. Phelan, 204 Iowa 716, 215 N.W. 965 (1927). Morse v. Rhinehart, 195 Iowa 419, 192 N.W. 142 (1923).

To restrain connection with private tile drain where flow of water would be increased to plaintiff's damage. Hilton v. Hawthorne, 181 N.W. 259 (Iowa 1921).

Where laying of tile under contract would not be advantageous. Calhoun v. Robinson, 180 Iowa 538, 163 N.W. 374 (1917).

Denied where new drain would cause no material increase in flowage. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

Restraint of unauthorized extensions. Randau v. Stultz, 140 Iowa 272, 115 N.W. 507 (1908).

Maintenance of ditch could not be enjoined where plaintiff had used the drain. Grosjean v. Lulow, 118 Iowa 346, 92 N.W. 64 (1902).

Injunction not granted where plaintiff was benefited. James v. Bondurant, 86 N.W. 274 (Iowa 1901).

Action to restrain interference with rights conveyed to dig and maintain ditch. Joslin v. Sones, 80 Iowa 534, 45 N.W. 917 (1890).

16. Breach of contract.

Remedy was to repair and sue for compensation. Pascal v. Hynes, 170 Iowa 121, 152 N.W. 26 (1915).

Measure of damages for failure to construct tile drain. Fallon v. Amond, 153 Iowa 504, 133 N.W. 771 (1911).

16.5 Attorney's fees.

If law changes regarding payment of trial preparation expenses, attorneys, and witnesses incurred by owners of condemned land for agricultural drainage is advisible, it should be affected by general assembly. Peel v. Burk, 197 N.W.2d 617 (Iowa 1972).

17. Actions - in general.

Action for breach of agreement to build drain. Robinson v. Luther, 140 Iowa 723, 119 N.W. 146 (1909).

18. Evidence.

Evidence showed oral agreement to erect dike for drainage. Young v. Scott, 216 Iowa 1253, 250 N.W. 484 (1933).

Evidence held to contract for drainage. Schlader v. Strever, 158 Iowa 61, 138 N.W. 1105 (1912).

Evidence failed to show abandonment of right to maintain drain. Hatton v. Cale, 152 Iowa 485, 132 N.W. 1101 (1901).

19. Instructions.

Action on note for additional cost of putting in larger drain tile. Rorem v. Pederson, 199 Iowa 304, 201 N.W. 784 (1925).

Recovery of balance due on contract price. Gorton v. Moeller Bros., 151 Iowa 729, 130 N.W. 910 (1911).

20. Damages.

Owner of dominant estate may cast additional quantity of surface water upon servient estate, if in doing so he does not do substantial damage to servient estate. Witthauer v. City of Council Bluffs, 257 Iowa 493, 133 N.W.2d 71 (1965).

Value of growing crops - proof of. Jefferis v. Chicago & N.W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910).

465.2 Notice of Hearing - Service

1. Construction and application.

Board of supervisors has power to determine whether proposed drainage project is beneficial for sanitary agriculture or mining purposes so as to determine whether county is responsible for projecting such drain across secondary road right of way at location different from the present drain. O.A.G. January 3, 1973.

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land. Cowan v. Grant Tp., Monona County, 190 Iowa 1188, 181 N.W. 637 (1921).

465.3 Service upon Nonresident (No Annotations)

465.4 Service on Omitted Parties - Adjournment (No Annotations)

465.5 Claims for Damages - Waiver

1. Parties liable.

Participation by township in construction of tile did not relieve defendant from liability. Costello v. Pomeroy, 120 Iowa 213, 94 N.W. 490 (1903).

2. Measure of damages.

Measure of damages for loss of growing crops from water erosion is their value in field at time of injury, or their value in matured condition less reasonable expense of maturing and marketing. Witthauer v. City of Council Bluffs, 257 Iowa 493, 133 N.W.2d 71 (1965).

Must be substantial increase in quantity of water discharged. Sheker v. Machovec, 139 Iowa 1, 116 N.W. 1042 (1908).

Increased flow of water must harm plaintiff to be actionable for more than nominal damages. McCormick v. Winters, 94 Iowa 82, 62 N.W. 655 (1895).

3. Waiver.

Failure to file claim for damages with supervisors was waiver of remedy. O.A.G. 1919-20, p. 329.

465.6 Hearing - Sufficiency of Application - Damages

1. Construction and application.

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land. Cowan v. Grant Tp., Monona County, 190 Iowa 1188, 181 N.W. 637 (1921).

Board of supervisors decides whether a drainage tile may be projected across or through a road right of way to a suitable outlet. O.A.G. March 26, 1970.

465.7 Shall Locate When - Specifications

1. Construction and application.

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land. Cowan v. Grant Tp., Monona County, 190 Iowa 1188, 181 N.W. 637 (1921).

465.8 Findings - Record

1. Construction and application.

Ditch not legally established without record showing action of trustees and that ditch was necessary for public health. Hull v. Baird, 73 Iowa 528, 35 N.W. 613 (1887).

Board of supervisors decides whether a drainage tile may be projected across or through a road right of way to a suitable outlet. O.A.G. March 26, 1970.

465.9 Appeal - Notice (No Annotations)

465.10 Transcript (No Annotations)

465.11 Appeal - How Tried - Costs (No Annotations)

465.12 Parties - Judgment - Orders (No Annotations)

465.13 Cost and Damages - Payment (No Annotations)

465.14 Construction

1. Construction and application.

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land. Cowan v. Grant Tp., Monona County, 190 Iowa 1188, 181 N.W. 637 (1921).

2. Injunction.
Will issue to prevent construction till compensation has been ascertained and paid. Horton v. Hoyt, 11 Iowa 496 (1861).

465.15 Construction through Railroad Property

1. In general.
Land owner could not enter railroad right of way to dig ditch to drain water discharged on his land by construction of embankment on the right of way. Klopp v. Chicago, M. & St. P. Ry. Co., 142 Iowa 483, 119 N.W. 377.

465.16 Deposit (No Annotations)

465.17 Failure to Construct (No Annotations)

465.18 Repairs

1. Injunction.
Where owner never complained of dike for 20 years he was not entitled to enjoin its repair. Dodd v. Aitken, 227 Iowa 679, 288 N.W. 898 (1939).

465.19 Obstruction

1. Construction and application.
This section does not apply to counties. O.A.G. March 17, 1961.
Under section 465.23, a county is under no obligation to repair drainage tile installed by private party across farm-to-market road. Id.

2. Acquiescence, ditch established by.
Ditch cannot be obstructed by servient owner, such rights and duties pass to their grantees with the land. Vanneat v. Fleming, 79 Iowa 638, 44 N.W. 906 (1890), 8 L.R.A. 277, 18 Am. St. Rep. 387.

3. Cleaning of ditches.
A ditch constructed by agreement could be cleaned by either party but neither would be compelled to clean it. O'Mara v. Jensma, 143 Iowa 297, 121 N.W. 518 (1909).

4. Allowing obstruction, effect.
Bars action in damages for overflow. Hull v. Harker, 130 Iowa 190, 106 N.W. 629 (1906).

5. Injunction.
Complete defense that defendants acted for land owner to prevent wrongful diversion of water on such land. Orcutt v. Woodard, 136 Iowa 412, 113 N.W. 848 (1907).

6. Actions.
Evidence did not show agreement for construction of ditch. Lehfeldt v. Bachmann, 175 Iowa 202, 157 N.W. 456 (1916).
For damage to tile for negligent exposure to frost. Swanson v. Ft. Dodge, D. M. & S. R. Co., 153 Iowa 78, 133 N.W. 351 (1911).
Obstruction of ditch by construction of too small a tile. Walker v. Gorman, 150 Iowa 455, 130 N.W. 393 (1911).

Where bridge constructed as to obstruct flow of high waters. Delashmutt v. Chicago, B. & Q. Ry. Co. 148 Iowa 556, 126 N.W. 359 (1910).

For obstruction of drainage ditch. Brown v. Honeyfield, 139 Iowa 414, 116 N.W. 731 (1908).

465.20 Drains on Abutting Boundary Lines (No Annotations)

465.21 Boundary Between Two Townships (No Annotations)

465.22 Drainage in Course of Natural Drainage - Reconstruction - Damages

1. Construction and application.

Facts showed drainage system should be looked upon as being wholly on buyer's land. Johannsen v. Otto, 225 Iowa 976, 282 N.W. 334 (1938).

Additional remedy provided. Miller v. Hester, 167 Iowa 180, 149 N.W. 93 (1914).

Consent to discharge of water on one's land. Schlader v. Strever, 158 Iowa 61, 138 N.W. 1105 (1912).

Right to conduct water into natural courses a consideration in assessing benefits under improvement. Lyon v. Board of Sup'rs of Sac County, 155 Iowa 367, 136 N.W. 324 (1912).

Water may not be discharged contrary to natural drainage. Valentine v. Widman, 156 Iowa 172, 135 N.W. 599 (1912).

This section declaratory only of existing law - new rights not created. Parizek v. Hinek, 144 Iowa 563, 123 N.W. 180 (1909).

2. Water course.

No prescriptive right against the public. Droegmiller v. Olson, 40 N.W.2d 292 (Iowa 1950). Hull v. Harker, 130 Iowa 190, 106 N.W. 629 (1906). Hinkle v. Avery, 88 Iowa 47, 55 N.W. 77 (1893), 45 Am. St. Rep. 224.

What will constitute a water course. Chicago, B. & Q. R. Co. v. Board of Sup'rs of Appanoose County, Iowa, 182 F. 291, 104 C.C.A. 573, 31 L.R.A., N.S. 1117 (1910).

Well defined banks not necessary. McKeon v. Brammer, 238 Iowa 113, 29 N.W.2d 518 (1947). Heinse v. Thorborg, 210 Iowa 435, 230 N.W. 881 (1930).

Natural easement in every natural watercourse. Johnson v. Chicago, B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

Waterway to carry water to public highway could not come natural course. Brightman v. Hetzel, 183 Iowa 385, 167 N.W. 89 (1918).

Natural water course may be partly artificial. Falcan v. Boyer, 157 Iowa 745, 142 N.W. 427 (1913).

Swale or depression natural course though lacking defined banks. Parizek v. Hinek, 144 Iowa 563, 123 N.W. 180 (1909).

Eight years acquiescence established natural water course. Sheker v. Machovec, 110 N.W. 1055 (Iowa 1907).

3 through 10 - Reserved

11. Rights and liabilities in general.

No rights acquired against the public. Droegmiller v. Olson, 40 N.W.2d 292 (Iowa 1950).

Injury to building by water seepage from adjoining structure. Dravis v. Sawyer, 218 Iowa 742, 254 N.W. 920 (1934).

Owner on whose land artificial ditch was constructed had duty to remove obstruction. Miller v. Perkins, 204 Iowa 782, 216 N.W. 27 (1927).

Reasonable detention and use of water by upper riparian owner proper. Harp v. Iowa Falls Electric Co., 196 Iowa 317, 191 N.W. 520 (1923), modified in other respects, 196 Iowa 317, 194 N.W. 353.

In every natural water course there is easement for benefit to all land naturally draining onto it. Chicago & N. W. Ry. Co. v. Drainage Dist. No. 5 Sac County, 142 Iowa 607, 121 N.W. 193 (1909). Mason City & Ft. D. R. Co. v. Board of Sup'rs of Wright County, 144 Iowa 10, 121 N.W. 39 (1909). Maben v. Olson, 187 Iowa 1060, 175 N.W. 512 (1919).

Right to discharge water from roof of house into street and alley. Reynolds v. Union Savings Bank, 155 Iowa 519, 136 N.W. 529 (1912).

Right of riparian owner to have water leave his property at its lowest level. Bramley v. Jordan, 153 Iowa 295, 133 N.W. 706 (1911).

Fences not to unreasonably interfere with drainage. Trumbo v. Pratt, 148 Iowa 195, 126 N.W. 1122 (1910).

If natural water course owners at or near outlet must care for the water coming from above. Jenison, 145 Iowa 215, 123 N.W. 979 (1909).

Acquisition of right by prescription, to discharge subterranean waters. Parizek v. Hinek, 144 Iowa 563, 123 N.W. 180.

Owner must receive all natural flow from higher ground. Pohlman v. Chicago, M. & St. P. R. Co., 131 Iowa 89, 107 N.W. 1025 (1906), 6 L.R.A., N.S. 146.

12. Drainage districts as affecting rights of landowners.

Function of drainage district on servient land. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947).

Public drainage improvement does not abridge owners right to avail himself of natural watercourse. Crowley v. Reynolds, 178 Iowa 701, 160 N.W. 241 (1917).

13. Dominant estate owner, rights and liabilitites - in general.

Evidence did not show drainage pipe installation so altered natural system of drainage as to substantially increase burden on servient estate. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Owner of upper or dominant estate has legal and natural easement in lower or servient estate for drainage of surface waters. Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973).

Owner of dominant estate - right to have water flow unobstructed on servient estate. Cundiff v. Kopseiker, 61 N.W.2d 443 (Iowa 1954). Young v. Scott, 216 Iowa 1253, 250 N.W. 484 (1933). Clark v. Pierce, 224 Iowa 1068, 227 N.W. 711 (1938).

Function of drainage district on servient land. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947).

Estopped owner of dominant estate to object to interference of flow of water. Fennema v. Menninga, 236 Iowa 543, 19 N.W.2d 689 (1954).

Owner of servient estate must not obstruct flow of water in natural course. Herman v. Drew, 126 Iowa 315, 249 N.W. 227 (1933).

Owner may drain water through natural watercourse to and over servient estate. Parizek v. Hinek, 114 Iowa 563, 123 N.W. 180 (1909). Board of Sup'rs of Pottawattamie County v. Board of Sup'rs of Harrision County, 214 Iowa 655, 241 N.W. 14 (1932), motion denied, 54 S.Ct. 47, appeal dismissed, 54 S.Ct. 125, 290 U.S. 595, 78 L. Ed. 523.

Owner of servient estate may not artificially prevent flow of water in natural course. Heinse v. Thorborg, 210 Iowa 435, 230 N.W. 881 (1930).

Servient estate burdened with water naturally flowing on it. Miller v. Perkins, 204 Iowa 782, 216 N.W. 27 (1927).

Relative elevation determines dominance of estate. Downey v. Phelps, 201 Iowa 826, 208 N.W. 499 (1926).

Owner of dominant estate may not collect and cast water on servient estate in an unnatural manner. Wirds v. Vierkandt, 131 Iowa 125, 108 N.W. 108 (1906).

Owner of dominant estate may conduct water by tile to its natural channel. Vanneat v. Fleming, 79 Iowa 638, 44 N.W. 906 (1890), 8 L.R.A. 277, 18 Am. St. Rep. 387.

14. Waiver of rights.

Owner of dominant land in private drainage district could waiver rights which he or his successors in ownership might otherwise have under this section, permitting preservation of drainage in course of natural drainage. Halsrud v. Brodale, 247 Iowa 273, 72 N.W.2d 94 (1956).

15. Servient estate owner, rights and liabilities.

For annotations, see § 465.22, Note 13.

16. Railroads, rights and liabilities - in general.

Not liable without fault or act. Hinkle v. Chicago, R. I. & P. Ry. Co., 208 Iowa 1366, 227 N.W. 419 (1929).

Destruction of dam, restoring natural flow created no liability in railroad. Miller v. Perkins, 204 Iowa 782, 216 N.W. 27 (1927).

Rights of natural water course are paramount to rights of railroad. Johnson v. Chicago, B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

Exercise of care by plaintiff was necessary to a recovery for damage due to overflow. Brous. v. Wabash R. Co., 160 Iowa 701, 142 N.W. 416 (1913).

Abandonment of culvert and later reopening. Brainard v. Chicago, R. I. Ry. Co., 151 Iowa 466, 131 N.W. 649 (1911).

Care required of railroad to not dam up channel. Tretter v. Chicago Great Western Ry. Co., 147 Iowa 375, 126 N.W. 339 (1910), 140 Am. St. Rep. 304.

Where flood necessarily results from construction in the usual manner it is not actionable as it is presumed that such damages were awarded originally. Blunck v. Chicago & N.W. Ry. Co. 142 Iowa 146, 120 N.W. 737.

Railroad company may pass down water according to laws of gravitation. Bones v. Chicago, R. I. & P. Ry. Co., 145 Iowa 222, 120 N.W. 717 (1909).

Railroad has no right to construct solid roadbed in interference with natural drainage. Albright v. Cedar Rapids, & I. C. Ry. & Light Co., 133 Iowa 644, 110 N.W. 1052 (1907).

Responsibility of railroad for construction of bridge producing overflows. Vyse v. Chicago, B. & Q. R. Co., 127 Iowa 90, 101 N.W. 736 (1904).

Railroad could not fill trestlework where overflow would be caused. Noe v. Chicago, B. & Q. R. Co., 76 Iowa 360, 41 N.W. 42 (1888).

17. Drainage through railroad right of way.

Sluices or culverts must be constructed to conduct water in its natural course. Hinkle v. Chicago, R. I. & P. Ry. Co., 208 Iowa 1366, 227 N.W. 419 (1929).

Purchaser not entitled to damages for obstruction for which railroad had a release. Johnson v. Chicago B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

Railroad not liable for damages which would have occurred despite its act of obstruction. McAdams v. Chicago, R. I. & P. Ry. Co., 200 Iowa 732, 205 N.W. 310 (1925).

Bridge causing overflow - railroad liable for its negligence. Thompson v. Illinois Cent. R. Co., 177 Iowa 328, 158 N.W. 676 (1916).

Railroad may continue to drain water in its natural course. Chicago, R. I. & P. Ry. Co. v. Lynch, 163 Iowa 283, 143 N.W. 1083 (1913).

Railroad must provide for floods but not for unprecedented floods. Estes v. Chicago, B. & Q. R. Co., 159 Iowa 666, 141 N.W. 49 (1913).

Railroad bridges must not obstruct passage of water. Delashmutt v. Chicago, B. & Q. R. Co., 148 Iowa 556, 126 N.W. 359 (1910).

Surface waters and streams may not be diverted to damage of others. Albright v. Cedar Rapids & Iowa City Railway & Light Co., 133 Iowa 644, 110 N.W. 1052 (1878).

Railroad liable for damages caused by insufficient culvert. Houghtaling v. Chicago G. W. R. Co., 117 Iowa 540, 91 N.W. 811 (1902). Sullens v. Chicago, R. I. & P. Ry. Co., 74 Iowa 659, 38 N.W. 545 (1888). Van Orsdal v. Burlington, C. R. & N. R. Co., 56 Iowa 470, 9 N.W. 379 (1881).

Railroad must take note of rainfall in the climate country. Cornish v. Chicago, B. & Q. R. Co., 49 Iowa 378 (1878).

18. Highways, drainage through or across.

Landowner's access road, the traveled surface of which is raised above adjoining land, must be ditched and must have transverse bridges, culverts, or pipes which permit free passage of water from one side to the other. Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973).

Drainage through culverts in highway proper where in natural course. Jacobson v. Camden, 236 Iowa 976, 20 N.W.2d 407 (1945).

Highway authorities may use culverts to drain waters in their natural course. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Supervisors could not be restrained from building culverts in natural course of drainage. Schwartz v. Wapello County, 208 Iowa 1229, 277 N.W. 91 (1929).

Where culverts were improperly discontinued by county land owner was liable for opening them. Martin v. Schwertley, 155 Iowa 347, 136 N.W. 218 (1912), 40 L.R.A., N.S. 160.

Right of owner to open drain on his own land which goes to public highway. O.A.G. 1919-20, p. 330.

19. Street railroads, rights and liabilities.

May not construct embankment so as to flood land above. Nelson v. Omaha & C. B. St. Ry. Co., 158 Iowa 81, 133 N.W. 831 (1912).

Street railway liable for removal of bridge and insertion of inadequate tile. Hoppes v. Des Moines City Ry. Co., 147 Iowa 580, 126 N.W. 783 (1910).

20. Municipalities, rights and liabilities.

Where city constructed dam prior to condemnation it was liable for flood damages. Wheatley v. City of Fairfield, 221 Iowa 66, 264 N.W. 906 (1936).

Measure of damages. Conklin v. City of Des Moines, 189 Iowa 181, 178 N.W. 353 (1920).

Owner could not recover from city assessment he paid on grounds that the improvement had to be made because of wrongful construction of ditch by city. Conklin v. City of Des Moines, 184 Iowa 384, 168 N.W. 874 (1918).

Drainage of water from culvert under street to private property. Cech v. City of Cedar Rapids, 147 Iowa 247, 126 N.W. 166 (1910).

City must not disturb natural flow of water in street improvement. Baker v. Incorporated Town of Akron, 145 Iowa 485, 122 N.W. 926 (1909), 30 L.R.A., N.S. 619.

21. Counties, rights and liabilities.

May not divert excessive volumes of water from natural course. Anton v. Stanke, 217 Iowa 166, 251 N.W. 153, (1933).

22. Surface waters - in general.

Water leaving channel of river in flood time not surface water. Sullens v. Chicago, R. I. & P. R. Co., 74 Iowa 659, 38 N.W. 545 (1888), 7 Am. St. Rep. 501. Moore v. Chicago, B. & O. R. Co., 75 Iowa 263, 39 N.W. 390 (1888).

Owner cannot interfere with flow of surface water from adjoining land. Besler v. Greenwood, 202 Iowa 1330, 212 N.W. 120 (1927).

Landowner not liable for surface waters carried off by gravitation. Thompson v. Board of Sup'rs of Buena Vista County, 201 Iowa 1099, 206 N.W. 624 (1925).

That water diverted by defendant mingled with other water could not defeat plaintiff's right to recover. Whitsett v. Griffis, 168 N.W. 878 (Iowa 1918).

Rule that dominant owner may not artificially discharge water on lower land does not apply to natural depressions. Miller v. Hester, 167 Iowa 180, 149 N.W. 93 (1914).

Owner cannot complain of water gate by lower owner at entrance of his land of water course because it impedes debris gathered by water on land of upper owner. Trumbo v. Pratt, 148 Iowa 195, 126 N.W. 1122 (1910).

One who relieves his land of water must respect right of his neighbor. Hume v. City of Des Moines, 146 Iowa 624, 125 N.W. 846 (1910) 29 L.R.A., N.S. 126, Ann. Cas. 1912B, 904.

Owner of higher land may not use device to alter natural flow of water. Baker v. Incorporated Town of Akron, 145 Iowa 485, 122 N.W. 926 (1909), 30 L.R.A., N.S., 619.

Owner not relieved from harm caused by change in natural flow, though such water flows along highway prior to causing damage. Sheker v. Machovec, 139 Iowa 1, 116 N.W. 1042 (1908).

If surface water has no defined channel it may be returned by owner in any direction. Brown v. Armstrong, 127 Iowa 175, 102 N.W. 1047 (1905).

Owner of city lot may bring lot to grade although thereby diverting surface water to other lots. City of Cedar Falls v. Hansen, 104 Iowa 189, 73 N.W. 585 (1897), 65 Am. St. Rep. 439.

Water leaving creek and being turned back by embankment into culvert no surface water. Sullens v. Chicago, R. I. & P. Ry. Co., 74 Iowa 659, 38 N.W. 545 (1888), 7 Am. St. Rep. 501.

23. Right to surface waters.

Owner of upper land discharges water into its natural course on lower land. Schwartz v. Wapello County, 208 Iowa 1229, 227 N.W. 91 (1929).

Owner may convert to his own use all surface water coming from higher ground. Pohlman v. Chicago, M. & St. P. Ry. Co., 131 Iowa 89, 107 N.W. 1025 (1906), 6 L.R.A., N.S., 146.

24. Drainage in course of natural drainage.

Upper owner may drain water by a drain in natural course of drainage unless volume is materially increased to damage of lower owner. Cundiff v. Kopseiker, 245 Iowa 179, 61 N.W.2d 443 (1954). McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518 (1947). Dorr v. Simmerson, 127 Iowa 551, 103 N.W. 806 (1905). Sheker v. Machovec, 110 N.W. 1055 (Iowa 1907). Board of Supervisors of Pottawattamie County v. Board of Supervisors of Harrison County, 214 Iowa 655, 241 N.W. 14 (1932), motion denied, 54 S.Ct. 47 appeal dismissed, 54 S.Ct. 125, 290 U.S. 595, 78 L. Ed. 523.

Dominant owner may drain surface water from pond by ditches over course of natural drainage and more closely confine flowage. Tennigkeit v. Ferguson, 192 Iowa 841, 185 N.W. 577 (1921).

Dominant owner may not gather large quantities of water out of ordinary and natural course of drainage and discharge same on lower owner in increased quantity. Conklin v. City of Des Moines, 184 Iowa 384, 168 N.W. 874 (1918).

25. Drainage other than through watercourse.

Drainage in other than natural course to substantial damage of lower owner is actionable. Cundiff v. Kopseiker, 45 Iowa 179, 61 N.W.2d 443 (1954).

Water discharged on lower lands may not be in place or manner different from natural water course. Schwartz v. Wapello County, 208 Iowa 1229, 227 N.W. 91 (1929). Beers v. Incorporated Town of Gilmore City, 197 Iowa 7, 196 N.W. 602 (1924).

Water may not be concentrated in one place and discharged in a body on lower owner. Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803 (1918), 5 A.L.R. 1523.

Owner may not collect and discharge water at place other than natural course so as to increase flow on land of his neighbor. Kaufmann v. Lenker, 164 Iowa 680, 146 N.W. 823 (1914). Sheker v. Machovec, 139 Iowa 1, 116 N.W. 1042 (1908).

26. Natural depression, discharge of surface water.

Water may be collected and discharged into natural depression unless so increased that it causes damage to lower owner. Jontz v. Northup, 157 Iowa 6, 137 N.W. 1056 (1912), Ann. Cas. 1915C, 967.

27. Increase in flow of surface water, liability.

City was not liable for minor increase in flowage due street improvement. Cole v. City of Des Moines, 212 Iowa 1270, 232 N.W. 800 (1930).

Upper owner may not collect water and discharge it, even though a water course is an unusual manner or quantity. Martin v. Schwertley, 155 Iowa 347, 136 N.W. 218 (1912). Valentine v. Widman, 156 Iowa 172, 135 N.W. 599 (1912).

Lower owner may not complain unless damages are substantial due to increased flow. Obe v. Pattat, 151 Iowa 723, 130 N.W. 903 (1911).

Upper owner may not ditch to a swale through which surface water flows. Trumbo v. Pratt, 148 Iowa 195, 126 N.W. 1122 (1910).

The statute is declaratory of the common law. Pohlman v. Chicago, M. & St. P. R. Co., 131 Iowa 89, 107 N.W. 1025 (1906), 6 L.R.A., N.S., 146.

There is no right to construct artificial channels to increase flow of water in unnatural manner. Geneser v. Healy, 124 Iowa 310, 100 N.W. 66 (1904).

It is improper to gather surface water and use ditch to discharge water in a volume on other lands. Stinson v. Fishel, 93 Iowa 656, 61 N.W. 1063 (1895).

28. Artificial barriers to surface water.

Servient owner cannot obstruct natural flow of water to dominant owner's detriment. Fennema v. Menninga, 236 Iowa 543, 19 N.W.2d 689 (1945).

Owner will be restrained from obstructing flow from adjoining land. Belser v. Greenwood, 202 Iowa 1330, 212 N.W. 120 (1927).

Artificial barriers may not be used to prevent flow. Pester v. Smith, 167 N.W. 580 (Iowa 1918).

29. Natural barriers to surface waters, removal.

No right to open or remove natural barriers to flow of water. Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803 (1918), 5 A.L.R. 1523.

30. Protection from diversion of surface water.

No right exists to alter the natural system of drainage from a dominant estate in such manner as to substantially increase the burden on the survient estate. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Each owner must exercise his rights with due regard for rights of others. Lamb v. Stone, 178 Iowa 1268, 160 N.W. 907 (1917).

Dikes or ditches may be used to defend against unlawful diversion of waters. Thiessen v. Claussen, 135 Iowa 187, 112 N.W. 545 (1907).

Artificial diversion of water may be protected against. Matteson v. Tucker, 131 Iowa 511, 107 N.W. 600 (1906).

31. Natural water course, interference - in general.

Owner may not arrest or interfere with flow to injury of another. Fennema v. Menninga, 236 Iowa 543, 19 N.W.2d 689 (1945).

Liability where diversion results in damage due to increased quantity of flowage. Anton v. Stanke, 217 Iowa 166, 251 N.W. 153 (1933).

Cutting through natural barrier to discharge water is prohibited. Kaufmann v. Lenker, 164 Iowa 680, 146 N.W. 823 (1914).

Improper diversion may be restrained. Falcon v. Boyer, 157 Iowa 745, 142 N.W. 427 (1913).

32. Obstruction of flow of natural waterway.

Owner of land through which non-navigable and non-meandered stream runs has a right to have such water flow without obstruction. Watt v. Robbins, 160 Iowa 587, 142 N.W. 387 (1913).

One not entitled to obstruct flow of natural waterway. Schlader v. Strever, 158 Iowa 61, 138 N.W. 1105 (1912).

33. Elevations, cutting through.

Shortening of natural water route. Crowley v. Reynolds, 178 Iowa 701, 160 N.W. 241 (1917).

34. Covered drains.

Use in natural course held proper. Besler v. Greenwood, 202 Iowa 1330, 212 N.W. 120 (1927).

35. Tile drains.

Claim of right to use tile drain is corroborated by long unmolested use. Besler v. Greenwood, 202 Iowa 1330, 212 N.W. 120 (1927).

Tile could not connect with ditch artificially dug to change water course. Lessenger v. City of Harlan, 184 Iowa 172, 168 N.W. 803 (1918), 5 A.L.R. 1523

Owner of land may have tile outlets to natural water course. Parizek v. Hinek, 144 Iowa 563, 123 N.W. 180 (1909). Pascal v. Donahue, 170 Iowa 315, 152 N.W. 605 (1915). Miller v. Hester, 167 Iowa 180, 149 N.W. 93 (1914).

Owner may substitute tile for open ditch if outlet from adjoining land is not rendered less efficient. Valentine v. Widman, 156 Iowa 172, 135 N.W. 599 (1912). Walker v. Gorman, 150 Iowa 455, 130 N.W. 393 (1911).

Tile should not increase flowage. Hull v. Harker, 130 Iowa 190, 106 N.W. 629 (1906). Plagge v. Mensing, 126 Iowa 737, 103 N.W. 152 (1905).

Where no damage other than increased flow is shown plaintiff may recover only nominal damages. McCormick v. Winters, 94 Iowa 82, 62 N.W. 655 (1895).

Owner may construct tile to drain into a lake or other depression. O.A.G. 1919-20, p. 102.

36. Lakes, artificial changes.

Recovery for artificial changes affecting level of water. Merrill v. Board of Sup'rs of Cerro Gordo County, 146 Iowa 325, 125 N.W. 222 (1910).

37. Deposit of earth and sand, liability.

Liability for damages caused thereby. Geneser v. Healy, 124 Iowa 310, 100 N.W. 66 (1904).

38. Seepage or percolation.

Liability for damages caused thereby. Covell v. Sioux City, 224 Iowa 1060, 277 N.W. 447 (1938).

39. Prescription.

Prescriptive right to maintain a dam did not authorize its maintenance at greater height than old dam as used for prescriptive period. Iowa Power Co. v. Hooper, 166 Iowa 415, 147 N.W. 858 (1914).

Right of riparian owner to natural flow of stream may be lost by prescription. Marshall Ice Co. v. La Plant, 136 Iowa 621, 111 N.W. 1016 (1907), 12 L.R.A., N.S., 1073.

Drainage by prescription. Wilson v. Duncan, 74 Iowa 491, 38 N.W. 371 (1888).

40. Easements and counter easements.

Owner of upper or dominant estate has legal and natural easement in lower or servient estate for drainage of surface waters. Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973).

Dominant owner may estop himself from objecting to interference with flow of water. Fennema v. Menninga, 236 Iowa 543, 19 N.W.2d 689 (1945).

Grantee to be o.k. land burdened with permanent drainage assessment shown in chain of tile. Ehler v. Stier, 205 Iowa 678, 216 N.W. 637 (1927).

Where owner settled for present and prospective damages for overflow created permanent easement to overflow. Kellogg v. Illinois Cent. R. Co., 204 Iowa 368, 213 N.W. 253 (1927), rehearing denied, 2024 Iowa 368, 215 N.W. 258.

Facts held to constitute notice for owner of railroad's easement in bridge for damages. Johnson v. Chicago B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

Drainage rights by prescription. Hayes v. Oyer, 164 Iowa 697, 146 N.W. 857 (1914).

41. Levees.

Maintenance not enjoinable because land may be possibly flooded. Kellogg v. Hottman, 226 Iowa 1256, 286 N.W. 415 (1939).

Construction not enjoined where level would not increase land which would flood. Black v. Escher, 186 Iowa 554, 173 N.W. 50 (1919).

Levee could not be constructed where it might cause water to accumulate on land of plaintiff. Mumm v. Holst, 184 Iowa 821, 169 N.W. 140 (1918).

42. Embankments.

Where damage is partially due to overflow of creek. Pfannebecker v. Chicago, R. I. & P. Ry. Co., 208 Iowa 752, 226 N.W. 161 (1929).

Natural flow of water could not be obstructed by embankment. Means for escape of water must be provided. Chicago, R. I. & P. Ry. Co., 163 Iowa 283, 143 N.W. 1083.

For damages there must be a showing that course of flow was altered or that flow has been increased. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

Prescriptive right to maintain embankment gained by 30 years use without objection. Matteson v. Tucker, 131 Iowa 511, 107 N.W. 600 (1906).

Riparian owner could not embank where effect was increased discharge of water on land of another. Keck v. Venghause, 127 Iowa 529, 103 N.W. 773 (1905), 4 Ann. Cas. 716.

Erection of railroad embankment for track was permanent damage. Stodghill v. Chicago, B. & Q. R. Co., 53 Iowa 341, 5 N.W. 495 (1880).

43. Dikes.

County was entitled to enjoin owner of land from maintaining dike which altered flow under bridge across road. Droegmiller v. Olson, 40 N.W.2d 292 (1950).

Prescriptive period may run from time dike acts as barrier to natural drainage. Taylor v. Frevert, 183 Iowa 799, 166 N.W. 474 (1918).

Dike may not obstruct natural flow and cast water in increased quantities at different places. Priest v. Maxwell, 127 Iowa 744, 104 N.W. 344 (1905).

Right acquired by use, to drain by use of dike. Brown v. Armstrong, 127 Iowa 175, 102 N.W. 1047 (1905).

44. Dams.

Landowners could not maintain dam which held water back on highway. Herman v. Drew, 216 Iowa 315, 249 N.W. 277 (1933).

Owner not liable for unauthorized construction of dam by tenant. Miller v. Perkins, 204 Iowa 782, 216 N.W. 27 (1927).

Construction of dam which causes backwater onto plaintiff's land not authorized. Healey v. Citizen's Gas & Electric Co., 199 Iowa 82, 201 N.W. 118 (1924), 38 A.L.R. 1226.

Flashboards are part of a dam and can be maintained to the highest of the old flashboard. Watters v. Anamosa-Oxford Junction Light & Power Co., 184 Iowa 566, 167 N.W. 765 (1918).

Dam which would interfere with flow and backwaters to plaintiffs land could not be maintained. Wharton v. Stevens, 84 Iowa 107, 50 N.W. 562 (1891). 15 L.R.A. 530, 35 Am. St. Rep. 296.

45. Removal of natural dike or dam.

Right to remove where no prescriptive right is shown in servient land owners. Taylor v. Frevert, 183 Iowa 799, 166 N.W. 474 (1918).

Chapter 465.22, Notes 46 through 110, Reserved

111. Actions in general.

Proper for trial court to retain jurisdiction to the end that the litigation be equitably terminated by means of the building of a sufficient retaining wall between the properties. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Against railroad for damages caused by overflow. Use of plans and specifications. Kellogg v. Illinois Cent. R. Co., 239 N.W. 557 (Iowa 1931).

Damages sought by purchaser for obstruction of floodwaters by railroad bridge. Johnson v. Chicago, B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

Proper parties to action. Chicago, R. I. & P. Ry. Co. v. Lynch, 163 Iowa 283, 143 N.W. 1083 (1913).

Action against railroad for injury to tile drain by excavation of borrow pit. Swanson v. Ft. Dodge, D.M. & S.R. Co., 153 Iowa 78, 133 N.W. 351 (1911).

Action for flooding of land by railroad embankment. Steber v. Chicago & G.W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

112. Rights of action and defenses.

Maintenance of barrier or ditch for 10 years or more may bar right to enjoin. Fennema v. Menninga, 236 Iowa 543, 19 N.W.2d 689 (1945).

Recovery of damages caused by permanent embankment. Thomas v. City of Cedar Falls, 223 Iowa 229, 272 N.W. 79 (1937).

Liability may exist for negligent construction of bridge causing damage. Wm. Tackaberry Co. v. Simmons Warehouse Co., 170 Iowa 203, 152 N.W. 779 (1915).

Rights of person in possession of land where possessor is not holder of entire title. Brous v. Wabash R. Co., 160 Iowa 701, 142 N.W. 416 (1913).

Prescriptive right to maintain water gate. Trumbo v. Pratt, 148 Iowa 195, 126 N.W. 1122 (1910).

That owner caused flooding not complete defense. Steber v. Chicago & G.W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

Owners right to recover not affected where he was not shown to have augmented flow of water into culvert. Harvey v. Mason City & Ft. Dodge R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L.R.A., N.S., 973, 113 Am. St. Rep. 483.

Cutting of ditch through highway for drainage actionable. Geneser v. Healey, 124 Iowa 310, 100 N.W. 66 (1904).

Fact that there was standing water on plaintiffs land at time of wrongful diversion of more water would not necessarily defeat recovery. Warner v. Chicago & N.W.R. Co., 120 Iowa 159, 94 N.W. 490 (1903).

Not a defense to railroad that culvert was constructed according to plans of competent engineers. Houghtaling v. Chicago G. W. R. Co., 117 Iowa 540, 91 N.W. 811 (1902).

To be actionable a culvert must increase quantity of water thrown on plaintiff's land. Schrope v. Trustees of Pioneer Tp., 111 Iowa 113, 82 N.W. 466 (1900).

Injury caused by increasing volume of water, or changing manner of discharge is actionable. Williamson v. Oleson, 91 Iowa 290, 59 N.W. 267 (1894).

Estoppel without prescription. Slocumb v. Chicago, B. & Q. Ry. Co., 57 Iowa 675, 11 N.W. 641 (1882).

113. Injunction.

Dominant owner not precluded from obtaining injunctive relief to restrain defendant from obstructing natural flow of water on ground that dominant owner had adequate remedy at law. DeWitt v. DeWitt, 259 Iowa 1037, 147 N.W.2d 32 (1966).

Plaintiff entitled to injunction against obstruction of flow of water from his land onto that of defendant. Dodd v. Blezek, 245 Iowa 1112, 66 N.W.2d 104 (1954).

Owner of easement entitled to injunction. McKeon v. Brammer, 238 Iowa 1113, 29 N.W.2d 518.

Where obstructions placed in artificial ditch did not hold back natural overflow injunction would not lie. Clark v. Pierce, 224 Iowa 1068, 227 N.W. 711 (1938).

Wrongful diversion of surface waters enjoined. Anton v. Stanke, 217 Iowa 166, 251 N.W. 153 (1933).

Owner not enjoined from constructing ditch to expedite flow of water discharged near point of natural discharge. Fennema v. Nolin, 212 N.W. 702 (Iowa 1927).

Interference with use of spring enjoined. De Bok v. Doak, 188 Iowa 597, 176 N.W. 631 (1920).

Where damages are problematic and injunction would deprive defendant of reclaiming his own land, plaintiff's remedy was at law. Black v. Escher, 186 Iowa 554, 173 N.W. 50 (1919).

Diversion of natural watercourse on plaintiff's land was enjoined. Durst v. Puffett, 181 Iowa 14, 163 N.W. 201 (1917).

Diversion of percolating waters not enjoined where diversion would not materially affect plaintiff. Thomas v. City of Grinnell, 171 Iowa 571, 153 N.W. 91 (1915).

Order that plaintiff lay tile sufficient to carry flow as before, held proper. Pascal v. Donahue, 170 Iowa 315, 152 N.W. 605 (1915).

Injunction granted to restrain diversion from stream by ditch where damage is continuing. Falcon v. Boyer, 157 Iowa 745, 142 N.W. 427 (1913).

Interference with flow of water from plaintiff's land to his injury enjoinable. Watt v. Robbins, 160 Iowa 587, 142 N.W. 387 (1913).

Obstruction of flow causing sediment deposit but not decreasing tillable area, not enjoinable. Grimes v. Willey, 134 N.W. 574 (Iowa 1912).

Plaintiff could not restrain discharge of water into natural ditch unless damage was shown. Obe v. Pattat, 151 Iowa 723, 130 N.W. 903 (1911).

Permission to defendant to correct a drain from defendant's land to plaintiff's drain did not bring defendant within the protections of section 465.22. Oxley v. Corey, 116 N.W. 1041 (Iowa 1908).

Continued obstruction of natural flow by construction of railroad restrained. Albright v. Cedar Rapids & Iowa City Railway & Light Co., 133 Iowa 644, 110 N.W. 1052 (1907).

Servient owner must show injury to be entitled to injunction. Resser v. Davis, 100 Iowa 745, 69 N.W. 524 (1896).

Injunction granted to restrain maintenance of drain casting out unusual amounts of water. Holmes v. Calhoun County, 97 Iowa 360, 66 N.W. 145 (1896).

Where plaintiff wrongfully diverted stream he could not enjoin defendant from turning the water to railroad right of way because it might thereby return to plaintiff's land. Preston v. Hull, 77 Iowa 309, 42 N.W. 305 (1889).

114. Pleadings.

Defendant had adequate notification to remove levy which was wrongfully constructed in effort to drain a natural water course. Anderson v. Yearous, 249 N.W.2d 855 (Iowa 1977).

Prayers would be liberally construed in action of servient estate against dominant estate seeking relief of drainage nuisance. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Railroad maintaining bridge obstructing flood waters not required to plead source of tile. Johnson v. Chicago B. & Q. R. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

That drainage system was visible may be a defense in that purchaser was put on inquiry as to existing agreements for drainage. Salinger v. Winthouser, 200 Iowa 755, 205 N.W. 309 (1925).

Petition alleging failure to disconnect drain as agreed shows no cause of action because of improper construction of new drain. Taylor v. Frevert, 183 Iowa 799, 166 N.W. 474 (1918).

Plaintiff had to trace injury to his land to thing alleged to have caused such injury. Watt v. Robbins, 160 Iowa 587, 142 N.W. 387 (1913).

Petition must show the interference with flow where it alleges damage due to obstruction of flow. Hoppes v. Des Moines City Ry. Co., 147 Iowa 580, 126 N.W. 783 (1910).

Equity may restrain contemplated obstruction of flow of stream without proof of insolvency of defendant. Moore v. Chicago, B. & Q. Ry. Co., 75 Iowa 263, 39 N.W. 390 (1888).

115. Presumptions and burden of proof.

Plaintiff had burden of showing damages caused by nuisance complained of. Wheatley v. City of Fairfield, 221 Iowa 66, 264 N.W. 906 (1936).

Burden of proving oral agreement for drainage. Young v. Scott, 216 Iowa 1253, 250 N.W. 484 (1936).

Proximate cause must be shown. Whittington v. City of Bedford, 202 Iowa 442, 210 N.W. 460 (1926).

Owner seeking to enjoin construction of levees and ditches had burden of showing his was dominant estate. Downey v. Phelps, 201 Iowa 826, 208 N.W. 499 (1926).

Burden on the merits in trial court and supreme court and burden of record is on plaintiff. Schuster v. Miller, 188 Iowa 704, 176 N.W. 798 (1920).

Presumption that supply of a spring came from percolating waters. De Bok v. Doak, 188 Iowa 597, 176 N.W. 631 (1920).

Burden of proving that plaintiff could have prevented the damage was on defendant. Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

116. Evidence - in general.

Common knowledge that rapidly receding water does not damage growing crops as much as standing water. Downey v. Phelps, 201 Iowa 826, 208 N.W. 499 (1926).

Servient estate benefits if flow of surface waters from dominant lands are controlled. Kurtz v. Gramenz, 198 Iowa 222, 198 N.W. 325 (1924).

117. Admissibility of evidence.

Evidence of depreciated value for rental of land admissible. Conklin v. City of Des Moines, 184 Iowa 384, 168 N.W. 874 (1918).

Measure of damages to leasehold. Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W 705 (1918).

Expert testimony as to customary method of bridge construction was excluded. Thompson v. Illinois Central R. Co., 153 N.W. 174 (Iowa 1915).

That railroad men went to bridge when storms occurred was admissable to show defendants knowledge of condition of the bridge. Estes v. Chicago, B. & Q. Ry. Co., 159 Iowa 666, 141 N.W. 49 (1913).

Testimony of usual crop yield on land proper. Jefferis v. Chicago & N.W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910).

Evidence admissible that opening for passage of water was restricted by culvert. Houghtaling v. Chicago G. W. Ry. Co., 117 Iowa 540, 91 N.W. 811 (1902).

Testimony by engineers that more culverts would materially help in draining land was admissible. Willitts v. Chicago, B. & K. C. Ry. Co., 88 Iowa 281, 55 N.W. 313 (1898), 21 L.R.A. 608.

Admissibility of evidence of deposits of earth where not specifically pleaded. Hunt v. Iowa Cent. Ry. Co., 86 Iowa 15, 52 N.W. 668 (1892), 41 Am. St. Rep. 473.

Testimony as to value of land with and without use of culverts. Van Orsdal v. Burlington, C.R. & N.R. Co., 56 Iowa 470, 9 N.W. 379 (1881).

118. Sufficient evidence.

Evidence that landowners removed drainage pipe from their access road to highway, thereby causing surface water to remain on adjoining land, damaging adjoining landowners crops, soil, and fences, was sufficient to justify award of damages. Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973).

Decree supported by the evidence. Schwab v. Behrendt, 13 N.W.2d 692 (Iowa 1944).

Evidence failed to show substantial damages. Johannsen v. Otto, 225 Iowa 976, 282 N.W. 334 (1938).

Evidence held to establish natural watercourse. Heinse v. Thorborg, 210 Iowa 435, 230 N.W. 881 (1930).

Plaintiff must establish case by preponderance of evidence. Schemmel v. Kramer, 228 N.W. 561 (Iowa 1930).

Evidence did not prove damage was due to obstruction of flow of surface waters. Besler v. Greenwood, 202 Iowa 1330, 212 N.W. 120 (1927).

Evidence held not to show defendant's land was servient to plaintiff's land. Downey v. Phelps, 201 Iowa 826, 208 N.W. 499 (1926).

Evidence was insufficient to authorize injunctive relief. Pleak v. Chicago, R. I. & P. Ry. Co., 191 Iowa 1018, 183 N.W. 402 (1921).

Findings that watercourse was natural and that defendant obstructed it were sustained by the evidence. Maxson v. Cress, 189 Iowa 362, 178 N.W. 370 (1920).

Evidence was insufficient to sustain finding that defendant caused plaintiff's damage. Fisher v. Chicago, M. & St. P. Ry. Co., 184 Iowa 1261, 169 N.W. 635 (1918).

Evidence held to establish prescriptive right to use flashboard of certain height. Watters v. Anamosa-Oxford Junction Light & Power Co., 184 Iowa 566, 167 N.W. 765 (1918).

Evidence held to sustain finding of natural watercourse and that tiles did not change amount or course of flow. Pester v. Smith, 167 N.W. 580 (Iowa 1918).

Evidence held to not sustain finding that defendants act caused harm complained of. Durust v. Puffett, 181 Iowa 14, 163 N.W. 201 (1917).

Evidence showed ditch would not discharge more water on plaintiff's land than would otherwise reach it. Lamb v. Stone, 178 Iowa 1268, 160 N.W. 907 (1917).

Evidence in action regarding drainage contract showed paper attached to contract was part of it. Carey v. Walker, 172 Iowa 236, 154 N.W. 425 (1915).

Evidence held to show flood was unprecedented and could not have been forseen. Wm. Tackaberry Co. v. Simmons Warehouse Co., 170 Iowa 203, 152 N.W. 799 (1915).

Evidence that drains of defendant gathered more water and cast it differently could not be applied by theory. Pascal v. Donahue, 170 Iowa 315, 152 N.W. 605 (1915).

Evidence did not show injuries to land were caused by flashboards subsequent to date to which his damages had been paid. Watt v. Robbins, 160 Iowa 587, 142 N.W. 387 (1913).

Evidence held to show that defendant had duty to improve so as to avoid injury to plaintiff's crops. Tretter v. Chicago Great Western Ry. Co., 147 Iowa 375, 126 N.W. 339 (1910), 140 Am. St. Rep. 304.

Where evidence showed negligent acts of defendant's employees plaintiff had only to show that his harm was the result. Jefferis v. Chicago & N.W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910).

Evidence showed damage due to very heavy rainfall rather than from acts of defendant. Bones v. Chicago, R.I. & P. Ry. Co., 145 Iowa 222, 120 N.W. 717 (1909).

Evidence showed acts of dominant owner did not materially increase flow of waters. Wirds v. Vierkandt, 131 Iowa 125, 108 N.W. 108 (1906).

Evidence showed actionable injury due to insufficiency of culvert. Harvey v. Mason City & Ft. Dodge R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 113 Am. St. Rep. 483.

Facts held to have shown a watercourse. Hinkle v. Avery, 88 Iowa 47, 55 N.W. 77 (1893), 45 Am. St. Rep. 224.

119. Insufficient evidence.

For annotations, see Note 118.

120. Jury questions.

Separation of damages from natural causes and damages caused by defendant was for the jury. Healey v. Citizens' Gas & Electric Co., 199 Iowa 82, 201 N.W. 118 (1924).

Where there is no controversy over facts as to construction of ditch, the question of whether it is a watercourse is one of law. Falcon v. Boyer, 157 Iowa 745, 142 N.W. 427 (1913).

Whether tiles were insufficient to carry off water which might reasonable be expected to accumulate. Hoppes v. Des Moines City Ry. Co., 147 Iowa 580, 126 N.W. 783 (1910).

Question of negligence. Jefferis v. Chicago & N.W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910).

Whether damage arose from negligent obstruction of a stream. Crook v. Chicago, R. I. & P. Ry. Co., 119 N.W. 696 (Iowa 1909).

Question of whether plaintiff's acts tended to augment flow of water. Harvey v. Mason City & Ft. Dodge R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L.R.A., N.S., 973, 113 Am. St. Rep. 483.

121. Questions of law.

Where there is no controversy over facts as to construction of ditch, question of whether it is watercourse is one of law. Falcon v. Boyer, 157 Iowa 745, 142 N.W. 427 (1913).

122. Instructions.

Jury's disobedience of instructions held error. Pfannebecker v. Chicago, R. I. & P. Ry. Co., 208 Iowa 752, 226 N.W. 161 (1929).

Measure of recovery. McAdams v. Chicago, R. I. & P. Ry. Co., 200 Iowa 732, 205 N.W. 310 (1925).

Action for damages caused by diversion of surface water to plaintiff's land. Whitsett v. Griffis, 168 N.W. 878 (Iowa 1918).

Permanent damage. Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

Whether injury to land was permanent or continuing. Irvine v. City of Oelwein, 170 Iowa 653, 150 N.W. 674 (1915), L.R.A. 1916E, 990.

Reasonable care in construction of bridge. Delashmutt v. Chicago, B. & Q. R. Co., 148 Iowa 556, 126 N.W. 359 (1910).

Action for construction of a levee and filling of a ditch. O'Mara v. Jensma, 143 Iowa 297, 121 N.W. 518 (1909).

Substantial increase in water discharged or material change in method of discharge. Sheker v. Machovec, 139 Iowa 1, 116 N.W. 1042 (1908).

Action for overflow alleged to have been caused by negligent construction of bridge. Vyse v. Chicago, B. & Q. R. Co., 126 Iowa 90, 101 N.W. 736 (1904).

Measure of damages. Mulverhill v. Thompson, 122 Iowa 229, 97 N.W. 1077 (1904). Podhaisky v. City of Cedar Rapids, 106 Iowa 543, 76 N.W. 847 (1898). Willitts v. Chicago B. & K.C. R. Co., 88 Iowa 281, 55 N.W. 313 (1893), 21 L.R.A. 608.

Clogging of culvert by debris. Houghtaling v. Chicago G. W. R. Co., 117 Iowa 540, 91 N.W. 811 (1902).

Liability of owner for casting waste on neighbor's land. Mulvihill v. Thompson, 114 Iowa 734, 87 N.W. 693 (1901).

Knowledge of rights of landowner. Oliver v. Burlington, C.R. & N.R. Co., 111 Iowa 221, 82 N.W. 609 (1900).

Insufficient passageway for water of river. Noe v. Chicago B. & W. R. Co., 76 Iowa 360, 41 N.W. 42 (1888).

Failure to construct culvert. Van Orsdal v. Burlington, C.R. & N.R. Co., 56 Iowa 470, 9 N.W. 379 (1881).

123. Damages - in general.

Mere fact that plaintiff alleging drainage nuisance sought compensatory redress in addition to equitable relief, did not, per se, mean that the case stood in law. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Damage to interest of landlord in crop and permanent injury to soil. Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

Recovery for damage to entire farm for flooding of a part. Hastings v. Chicago, R. I. & P. Ry. Co., 148 Iowa 390, 126 N.W. 786 (1910).

Measure of damages resulting from insufficiency of a culvert. Harvey v. Mason City & Ft. Dodge R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L.R.A., N.S. 973, 113 Am. St. Rep. 483.

Damages for flooding recoverable despite prior recovery for similar injury. Benson v. Connors, 63 Iowa 670, 19 N.W. 812 (1884).

124. Measure of damages.

From drainage nuisance. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

For flooding a part of plaintiff's farm. Thompson v. Illinois Cent. R. Co., 177 Iowa 328, 158 N.W. 676 (1916). Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

To leasehold by flooding. Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 183 Iowa 934, 167 N.W. 705 (1918).

For turning water on growing crops. Martin v. Schwertley, 155 Iowa 347, 136 N.W. 218 (1912). Jefferis v. Chicago & N.W. Ry. Co., 147 Iowa 124, 124 N.W. 367 (1910). Wilson v. Chicago, R. I. & P. Ry. Co., 144 Iowa 99, 121 N.W. 1102 (1909). Drake v. Chicago, R. I. & P. Ry. Co., 63 Iowa 302, 19 N.W. 215, 50 Am. St. Rep. 746.

For flooding land. Steber v. Chicago & G.W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908). Kopecky v. Benish, 138 Iowa 362, 116 N.W. 118 (1908). Blunck v. Chicago & N.W. Ry. Co., 115 N.W. 1013 (Iowa 1908), reversed on other grounds, 142 Iowa 146, 120 N.W. 737. Sullens v. Chicago, R. I. & P. Ry. Co., 74 Iowa 659, 38 N.W. 545 (1888), 7 Am. St. Rep. 501.

125. Waiver of right to damages.

Rights to damages from obstruction of natural water course may be waived. Johnson v. Chicago, B. & Q. Ry. Co., 202 Iowa 1282, 211 N.W. 842 (1927).

126. Findings.

Findings that plaintiff failed to show destruction of or detriment to use and enjoinment of servient estate were not entirely supported by the record. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Finding that equity of the case is with plaintiff is equivalent to a finding of wrongful diversion. Benson v. Connors, 63 Iowa 670, 19 N.W. 812 (1884).

127. Judgment or decree.

Culvert size within discretion of officers under decree modifying injunction affecting drainage. Ehler v. Stier, 205 Iowa 678, 216 N.W. 637 (1927).

Injunction against obstruction limited to removal of obstructions placed in water course. Fennema v. Nolin, 212 N.W. 702 (Iowa 1927).

Decree should restrain maintenance of ditch so as to cause overflows on land of plaintiff. Mickelwait v. Wright, 194 Iowa 1265, 191 N.W. 291 (1922).

That drain be constructed adequate to prevent collection of water. Johnson v. Ruth, 144 Iowa 693, 123 N.W. 326 (1909).

Meaning of "natural channel" and "water course." Benson v. Connors, 63 Iowa 670, 19 N.W. 812 (1884).

128. Review - in general.

Relief from alleged drainage nuisance - review in Supreme Court was de novo despite trial court's finding that the action was one for damages. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Refusal to allow damages. Harvey v. Mason City & Ft. D. Ry. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L.R.A., N.S. 973, 113 Am. St. Rep. 483.

Verdict would not be disturbed where evidence showed no injury. Dorr v. Simerson, 73 Iowa 89, 34 N.W. 752 (1887).

129. Harmless error.

Allowance of damages. Sheker v. Machovec, 139 Iowa 1, 116 N.W. 1042 (1908).

Verdict of jury precluded prejudice to plaintiff. Dorr v. Simerson, 73 Iowa 89, 34 N.W. 752 (1887).

465.23 Drainage Connection with Highway

1. Construction and application.

This section, which provides that governing body with jurisdiction over highway is to pay costs of material and labor in installing tile line or drainage ditch across highway, is only applicable when tile line or drainage ditch on individual land must be project across right-of-way to suitable outlet, and was not applicable to county drainage districts claims against city and DOT for cost of construction of culvert crossings. Drainage Dist. No. 119, Clay County v. Incorporated City of Spencer, 268 N.W.2d 493 (Iowa 1978).

Board of supervisors has power to determine whether proposed drainage project is beneficial for sanitary agriculture or mining purposes, so as to determine whether county is responsible for projecting such drain across secondary road right of way location different from the present drain. O.A.G. January 3, 1973.

Rule that artificial ditch may become natural water course does not apply where rights of public are involved. Droegmiller v. Olson, 40 N.W.2d 292 (Iowa 1950).

County, town and school district could make tile drainage connections in highway ditches. Grimes v. Polk County, 34 N.W.2d 767 (Iowa 1949).

Right of owner to open a drain on his land going to public highway. O.A.G. 1919-20, p. 330.

2. Rights of public.

Owners of land may drain the same in the general course of natural drainage by constructing tile lines and may connect same to any drain or ditch

along or across any public highway, such connections to be made in accordance with specifications furnished by highway authorities having jurisdiction thereof. O.A.G. January 3, 1974.

Rule that artificial ditch may become natural water course does not apply where rights of public are involved. Droegmiller v. Olson, 40 N.W.2d 292 (Iowa 1950).

3. Easements.

Due to knowledge and use defendant could not deny existence of easement. Hayes v. Oyer, 164 Iowa 697, 146 N.W. 857 (1914).

Defeat of claim of easement by adverse user. Schofield v. Cooper, 126 Iowa 334, 102 N.W. 110 (1905).

4. Repairs.

County under no obligation to repair drainage tile installed by private party across farm-to-market road. O.A.G. March 17, 1961.

5. Actions - in general.

Liability for wrongfully changing water course. Mulvihill v. Thompson, 114 Iowa 734, 87 N.W. 693 (1901).

465.24 Private Drainage System - Record (No Annotations)

465.25 Drainage Plat Book (No Annotations)

465.26 Record Book and Index (No Annotations)

465.27 Original Plat Filed (No Annotations)

465.28 Record Not Part of Title (No Annotations)

465.29 Fees for Record and Copies (No Annotations)

465.30 Lost Records - Hearing

1. Construction and application.

Provisions of this section may be utilized to resolve problems of a common drain involving private property and state owned property devoted to use as a primary highway when said property is not part of an established drainage district, and records of said common drain are lost or non-existent. O.A.G. November 17, 1975.

Provisions of this section may be utilized to solve problems of common drain involving private and state property. O.A.G., November 17, 1975.

2. Rights of public.

Owners of land may drain same natural drainage by constructing tile and may connect same to drain or ditch along or across public highway, in accordance with specifications of highway authority. O.A.G., January 3, 1974.

465.31 Mutual Drains - Establishment as District (No Annotations)

465.32 Appeal (No Annotations)

465.33 Record Filed with Established District (No Annotations)

465.34 Lost or Incomplete Records (No Annotations)

465.35 Petition to Combine with Established District (No Annotations)

Chapter 467B

Flood and Erosion Control

467B.1 Authority of Board (No Annotations)

467B.2 Federal Aid (No Annotations)

467B.3 Co-operation (No Annotations)

467B.4 Structures or Levees (No Annotations)

467B.5 Maintenance Cost (No Annotations)

467B.6 Estimate (No Annotations)

467B.7 Structures on Private Land (No Annotations)

467B.8 Conservation Commissioners (No Annotations)

467B.9 Tax (No Annotations)

467B.10 Assumption of Obligations (No Annotations)

467B.11 Highway Law Applicable (No Annotations)

467B.12 Payments from Federal Government (No Annotations)

467B.13 Allocation to Secondary Road Construction Fund (No Annotations)

467B.14 Allocation to County Board of Education Fund (No Annotations)

Chapter 471

Eminent Domain

471.1 Exercise of Power by State

1. Construction and application.

Counties have authority to condemn property for self liquidating sanitary disposal projects under § 394.1, but do not have power of eminent domain for projects under § 471.1. O.A.G., February 2, 1972.

Statutes delegating powers of eminent domain are strictly construed. Bourjaily v. Johnson County, 167 N.W.2d 630 (Iowa 1969). Iowa State Highway Commission v. Hipp, 259 Iowa 1082, 147 N.W.2d 195 (1966). Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

2. Compliance with statute.

Procedure provided for determination of damages in chapters 471 and 472 is not exclusive. Hagenson v. United Tel. Co. of Iowa, 164 N.W.2d 853 (Iowa 1969).

Compliance with condemnation statute is essential. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Right of eminent domain may be exercised by designated agencies acting under statutory authority if its use is proper. R. & R. Welding Supply Co. v. City of Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

To condemn tract of land to provide suitable material for improvement of highway, county board of supervisors must proceed under chapters 471, 472, and denominating this tract "right-of-way" does not permit board to proceed under § 306.51 et. seq. (See now, § 306.28 et. seq.) O.A.G. 1953, p. 84.

Where poles carrying electric transmission lines were located on a private easement acquired from abutting owners of property adjacent to highway, more than a notice in compliance with § § 319.3 and 319.4 would be required of highway authority, and rights of transmission line owner in easement so acquired must be purchased or acquired under provisions of 306.1 et. seq. or by proceedings under eminent domain. O.A.G. 1950, p. 174.

3. Powers of eminent domain, in general.

Owner of peninsular lot land locked by state land under control of board of regents as lakeside laboratory had no power to condemn any portion of state's property for ingress and egress to his lot. State v. Johann, 207 N.W.2d 21 (Iowa 1973).

State statutes, under which board of supervisors may proceed in condemnation of right-of-way for secondary road without affording condemnees number of general procedural advantages available under other statutes, do not violate state constitution. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (1973).

Executive council may use its power of eminent domain to assist highway commission in acquiring site for maintenance facility. O.A.G. September 24, 1969.

Necessity for just compensation. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Proceeding by which state undertakes establishment of drainage district is exercise of taxing power, not power of eminent domain, except to property actually taken or appropriated for ditches. Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County, 182 Iowa 60, 162 N.W. 868 (1917).

City does not have power of eminent domain with reference to acquisition of access, light, air and view affecting properties abutting on street in area

that will be occupied by proposed viaduct over railroad tracks. O.A.G. 1949, p. 11.

4. Private property.

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

Flooding or overflowing of private property constitutes a taking. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Private property cannot be taken for public use without compensation, whether by condemnation proceedings or otherwise. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933).

5. Public use - in general.

Where zoning ordinance has been shown to produce an unreasonable restraint on a property's use, the ordinance may be disregarded in an eminent domain hearing. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

It is for court to say whether condemnor has brought itself within the law so that it is empowered to condemn. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Power of eminent domain may be exercised only where a public use is involved. Vittetoe v. Iowa Southern Utilities Co., 255 Iowa 805, 123 N.W.2d 878 (1963).

Necessity for just compensation. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937).

"Public use" and "public benefit" defined. Ferguson v. Illinois Cent. R. Co., 202 Iowa 508, 210 N.W. 604 (1926).

Where public used is declared by legislature, courts will ordinarily hold the use public. Bankhead v. Brown, 25 Iowa 540 (1868).

6. Legislative determination, public use.

Courts will not interfere unless it is clear, plain and palpable that uses are private in character. Abolt v. City of Ft. Madison, 252 Iowa 626, 108 N.W.2d 263 (1961).

Determination of necessity for taking for public use is a legislative and not a judicial function. Porter v. Board of Sup'rs of Monona County, 238 Iowa 1399, 28 N.W.2d 841 (1947).

Constitution of the United States does not require the legislature to afford potential condemnees an opportunity to be heard on questions of necessity or expediency of such taking. O.A.G. March 26, 1970.

7. Property previously devoted to public use.

Highway commissions construction of bridge with piers in creek channel would be taking of property of drainage district. Harrison, Pottawattamie Drainage Dist. No. 1 v. State, 261 Iowa 1044, 156 N.W.2d 835 (1968).

Generally, property devoted to public use is exempted. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

If two uses of private land for public purposes are not inconsistent, authority for the second use may be implied from a general grant. Town of Alvord v. Great Northern Ry. Co., 179 Iowa 465, 161 N.W. 467 (1917).

8. Urban renewal, public use.

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

9. Extent, public use.

Because of changing circumstances, zoning ordinance may operate as arbitrary and unreasonable restraint. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 336 (Iowa 1975).

If use is public, its extent is immaterial. Dubuque & S.C R. Co. v. Ft. Dodge, D.M. & S.R. Co., 146 Iowa 666, 125 N.W. 672 (1910).

10. Necessity for taking, in general.

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

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

Test for right to condemn is public convenience. Minear v. Plowman, 197 Iowa 1188, 197 N.W. 67 (1924).

Condemnation of land to widen highways is proper where such action is shown to be advisable. O.A.G. 1919-20, p. 261.

11. Property condemnable.

Right of access a subject of compensation. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

Private property subject to taking unless exempted by statute. Hoover v. Iowa State Highway Commission, 210 Iowa 1, 230 N.W. 561 (1930).

Land owned jointly by individual and corporation engaged in transportation was not exempt from condemnation. Diamond Jo Line Steamers v. City of Davenport, 114 Iowa 432, 87 N.W. 399 (1901).

Right to free flow of waters. McCord v. High, 24 Iowa 336 (1868).

12. Leases.

Lessee under the contract of lease had no property rights in the land as would entitle it to a portion of condemnation award. Chicago, M., St. P. & P. R. Co. v. Chicago, R. I. & P. Ry. Co., 138 F.2d 268 (1943).

Lessee is entitled to reasonable compensation for its leasehold taken under condemnation. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Leasehold estate is "property" and when taken in exercise of eminent domain, is compensable. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

13. Title or rights acquired.

Taking of fee title is a taking of entire title, and necessarily includes all lesser estates embraced in the whole. Henderson v. Iowa State Highway Commission, 260 Iowa 891, 151 N.W.2d 473 (1967).

Rights acquired to improve road by use of cuts and fills. Pillings v. Pottawattamie County, 188 Iowa 567, 176 N.W. 314 (1920).

State may obtain good title to property by condemnation where same is desired for addition to fairgrounds. O.A.G. 1911-12, p. 653

14. Easements.

Right of ingress and egress. Dawson v. McKinnon, 226 Iowa 756, 285 N.W. 258 (1939).

Public property of state may sometimes be exempted. State ex rel. Board of R.R. Com'rs of State of Iowa v. Stanoland Pipe Co., 216 Iowa 436, 249 N.W. 366 (1933).

15. Access - in general.

A taking by destruction of access is compensable. Skaff v. Sioux City, 168 N.W.2d 789 (Iowa 1969).

When beneficial use of property is destroyed by city, a property right has been taken. Id.

Denial of rights of access to highway where none previously existed is not compensable to landowner in condemnation case. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

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

Property owner abutting condemned property cannot be deprived of all access by public authorities without just compensation. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277, (1966).

Denial of reasonable access to a street constitutes compensable taking of property. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

16. Reasonable and convenient access.

Highway commission should be held liable for damages if in fact reasonable and convenient access was denied to landowners subsequent to condemnation. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

17. Tenants for years.

As an estate separate and distinct from the estate of the owner of the fee. Skaff v. Sioux City, 255 Iowa 49, 120 N.W.2d 439 (1963).

18. Delay in condemnation.

City not relieved from its obligation to property owners for unreasonable delay in perfecting condemnation because of shift of property from flood control project to urban renewal where change in project was for benefit of city in financing of condemnation. Skaff v. Sioux City, 168 N.W.2d 789 (Iowa 1969).

19. Damages.

Trial court has discretion in awarding attorney fees in eminent domain proceedings, but if allowance is inadequate or excessive, supreme court can change. Iowa State Highway Comm. v. Dubuque Sand and Gravel Co. 258 N.W.2d 153 (Iowa 1977).

In determining compensation for land taken by eminent domain, jury given instruction to consider best use of property without regard to zoning, such instruction became law of the case and jury was entitled to hear experts regarding value of property without alleged zoning restraints. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

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

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

Owner of property may be entitled to damages for taking for public use, even though he has parted with his title and ownership before award is paid. Crawford v. City of Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1964).

Right of access a subject of compensaton. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

20. Mandamus.

Drainage district was not entitled to injunction prohibiting highway department from proceeding with construction of bridge on highway. Harrison-Pottawattamie Drainage Dist. No. 1 v. State, 261 Iowa 1044, 156 N.W.2d 835 (1968).

471.2 On Behalf of Federal Government

1. Construction and application.

Federal government, to aid navigation, may not permanently convert to public use, by use of dams, land of riparian owners above mean high water line without just compensaton. Goodman v. U.S., C.C.A. 113 F.2d 914 (Iowa 1940).

If biological survey desires land not under some state board or commission it may condemn. O.A.G. 1934, p. 667.

471.3 Conveyance by State to Federal Government

1. Construction and application.

Section 471.2 and this section of code 1966 characterized the nature of the grant of authority contained in § 28E.12 of said Code, which section authorizes not only the joint exercise of mutually possessed powers, but also the exercise by one agency of the power of the other in accordance with contract. O.A.G. April 4, 1969.

471.4 Right Conferred

1. Validity.

Right of way condemned to a mine by owner for purpose of railway is not a taking for private use. Morrison v. Thistle Coal Co., 119 Iowa 705, 94 N.W. 507 (1903).

Acts authorizing public ways to mineral lands valid. Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1874).

Act providing for power of condemnation for private roads was void. Bankhead v. Brown, 25 Iowa 540 (1868).

2. Construction and application.

Provision of Home Rule Act granting cities the power of eminent domain did not violate home rule amendment of constitution. Bechtel v. City of Des Moines, 225 N.W.2d 326 (Iowa 1975).

Land condemned by land locked owner becomes a public way. The lane may be taxed to the condemnee. The lane is a public way and the county should maintain it as it does other county roads. O.A.G. February 28, 1975.

Owner of peninsular lot land locked by property owned by state, had no power to condemn state's property for ingress and egress to his lot. State v. Johann, 207 N.W.2d 21 (Iowa 1973).

Constitutional provisions concerning eminent domain are not grants of power but limitations on its exercise. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

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

Revision 1860, section 1278, to be strictly construed. Sandford v. Martin, 31 Iowa 67 (1870).

County could acquire lawfully constructed dam only by condemnation proceedings. O.A.G. 1925-26, p. 124.

3. Public use and necessity for taking.

In determining whether public use necessary for condemnation exists, test is reasonable insurance that intended use will come to pass. Mann v. City of Marshalltown, 265 N.W.2d 307 (Iowa 1978).

This section does not authorize condemnation of land by county for landfill. O.A.G., November 4, 1971.

Determination of necessity for taking property for public use is a legislative, not a judicial function. Porter v. Board of Sup'rs of Monona County, 238 Iowa 1399, 28 N.W.2d 841 (1947).

Weight given to determination of bodies organized for public purposes concerning necessity for taking. In re Primary Road No. U.S. 30, 230 Iowa 1069, 300 N.W. 287 (1941).

Dealer selling items to public bodies has no right of condemnation. Ferguson v. Illinois Cent. R. Co., 202 Iowa 508, 210 N.W. 604 (1926).

4. Particular uses or purposes.

Cities have power to establish streets and condemn right of ways under constitution article 3, section 38A, augmented by this section giving city eminent domain. Oakes Construction Company v. City of Iowa City, 304 N.W.2d 797 (Iowa 1981).

A municipality, through eminent domain may take over private water system bond payment of just compensation. O.A.G., April 26, 1978.

Must be a public purpose. Carroll v. City of Cedar Falls, 221 Iowa 277, 261 N.W. 652 (1935).

Under statutes authorizing appropriation of land for railroad right of way land of individual could not be taken for ferry landing. Sandford v. Martin, 31 Iowa 67 (1870).

5. Property and rights subject of compensation.

Lessee is entitled to reasonable compensation for its leasehold taken under condemnation. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Leasehold estate is "property" and when taken in exercise of eminent domain is compensable. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Property devoted to public purpose cannot be taken for another inconsistent public use, and this rule applies to property about to be lawfully appropriated. Connolly v. Des Moines & Cent. Iowa Ry. Co., 246 Iowa 874, 68 N.W.2d 320 (1955).

Easement for cattle pass under road may not be taken without just compensation. Licht v. Ehlers, 234 Iowa 1331, 13 N.W.2d 688 (1944).

Overflow of land due to road construction was a taking. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

Tenant for years entitled to compensation. Des Moines Wet Wash Laundry v. City of Des Moines, 197 Iowa 1082, 198 N.W. 486 (1924), 34 A.L.R. 1517.

Easement in land must be compensated for. O.A.G. 1928, p. 112.

6. Priorities.

Where railroad commenced condemnation proceedings before city commenced condemnation proceedings against same property, railroad took priority as condemnor. Connolly v. Des Moines Cent. Iowa Ry. Co., 246 Iowa 874, 68 N.W.2d 320 (1955).

7. Courthouses and jails.

Selection of site in discretion of supervisors. Wells v. Boone County, 171 Iowa 377, 153 N.W. 220 (1915).

8. County highways.

Evidence sustained finding that trees materially obstructed highway and interfered with its maintenance and improvement. Carstensen v. Clinton County, 250 Iowa 487, 94 N.W.2d 734 (1959).

9. Road to private property.

Right of owner of farm to condemn a way to the highway. Anderson v. Lee, 191 Iowa 248, 182 N.W. 380 (1921).

Party seeking to condemn way to highway must show he has no public or private way from his land to a street or highway. Strawberry Point Dist. Fair Soc. v. Ball, 189 Iowa 605, 177 N.W. 697 (1920).

Where one opened road over land of another with consent of owner, the former has powers of public official concerning disposal of wood, grass and fences. Wrede v. Grothe, 183 Iowa 60, 166 N.W. 686 (1918).

Damages payable. Miller v. Kramer, 148 Iowa 460, 126 N.W. 931 (1910).

Statutes providing for public way over land of another contemplated unobstructed way. Carter v. Barkley, 137 Iowa 510, 115 N.W. 21 (1908).

Where one has no public way to his land he may acquire one by condemnation. Perry v. Board of Sup'rs of Clarke County, 133 Iowa 281, 110 N.W. 591 (1907).

Railroad right of way as laid substantially complied with requirement that it should be on or immediately adjacent to division line. Morrison v. Thistle Coal Co., 119 Iowa 705, 94 N.W. 507 (1903).

Private way cannot be established by supervisors wholly on land of one to serve another having access to public highway. Richards v. Wolf, 82 Iowa 358, 47 N.W. 1044 (1891), 31 Am. St. Rep. 501.

Road condemned to a mine became public way. Jones v. Mahaska County Coal Co., 47 Iowa 35 (1877).

Road could have been established under general law. Bankhead v. Brown, 25 Iowa 540 (1868).

Where outlet to highway is lost by vacation owner may secure right of way by condemnation. O.A.G. 1932, p. 100.

Way established becomes public highway. O.A.G. 1922, p. 207.

10. Mineral lands.

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

Right of way for railway to mine may be public way. Morrison v. Thistle Coal Co., 119 Iowa 705, 94 N.W. 507 (1903).

11. Foreign corporations.

Corporations not having power of eminent domain in state of its creation may exercise such power in another state if vested therewith by statutes of such state. Hagerla v. Mississippi River Power Co., D.C., 202 F. 776 (1913).

12. Waiver or estoppel as to compensation.

Contract by which land for borrow put was sold construable as contract for sale of the land involved and as not including damages accruing by cutting through drainage ditch in which owner did not have the fee. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

13. Injunction.

An independant suit to enjoin condemnation proceedings may be had where there are allegations of fraud, oppression, illegality or abuse of power or discretion by the condemnor. Mann v. City of Marshalltown, 265 N.W.2d 307 (Iowa 1978).

Interference with exercise of power of eminent domain - fraud, abuse of discretion, or other gross impropriety. Gardner v. Charles City, 259 Iowa 506, 144 N.W.2d 915 (1966).

471.5 Right to Purchase

1. Construction and application.

Owner of penisular lot land locked by state's property had no power to condemn state's property for ingress and egress to his lot. State v. Johann, 207 N.W.2d 21 (Iowa 1973).

Statutes providing for eminent domain must be strictly complied with and restricted to their intent. Id.

Though husband forged name of wife to deed of land to city for park purposes, the city could hold against her dower, land being subject to power of eminent domain. Caldwell v. City of Ottumwa, 198 Iowa 666, 200 N.W. 336 (1924).

Authority of supervisors to condemn - procedure. O.A.G. 1919-20, p. 289.

2. Contract to convey.

Agreement to leave to railroad engineers to determine whether or not undercrossing was advisable bound owner. Coy v. Minneapolis & St. L. R. Co., 116 Iowa 558, 90 N.W. 344 (1902).

Stipulation of time in contract held to refer to running of trains not to construction of depot. Minneapolis & St. L. R. Co. v. Cox, 76 Iowa 306, 41 N.W. 24 (1888), 14 Am. St. Rep. 216.

Contract to convey right of way held sufficiently certain in regard to description to be specifically enforced. Ottumwa, C. F. & St. P. R. Co. v. McWilliams, 71 Iowa 164, 32 N.W. 315 (1887).

3. Specific performance.

Effect of pending action by heir against railroad for building road over decedent's land where railroad sues widow in specific performance of her contract to convey right of way. Waterloo, C. F. & N. Ry. Co. v. Harris, 180 Iowa 149, 161 N.W. 69 (1917).

Petition held sufficient in action for specific performance. Wisconsin, I. & N. R. Co. v. Braham, 71 Iowa 484, 32 N.W. 392 (1887).

Specific performance not refused because value of land taken exceeded agreed sum. Ottumwa, C. F. & St. P. R. Co. v. McWilliams, 71 Iowa 164, 32 N.W. 315 (1887).

Substantial compliance on part of railroad was found entitling it to specific performance. Fitzgerald v. Britt, 43 Iowa 498 (1876).

After lapse of 14 years railroad could not enforce contract without making certain showings. Larimer v. Chicago, R. I. & P. R. Co., 38 Iowa 679 (1874).

Railroad could compel specific performance where it had complied with the conditions of its contract. Chicago & S.W.R. Co. v. Swinney, 38 Iowa 182 (1874).

4. Waiver or Estoppel.

Condemnation limited to one of two tracts owned by condemnees - statutory jurisdiction. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Heir not estopped where after learning of widow's contract for right of way he made no objection during construction of railroad. Waterloo, C.F. & N.Ry. Co. v. Harris, 180 Iowa 149, 161 N.W. 69 (1917).

Under facts vendor estopped to claim non compliance on part of purchaser. Coy v. Minneapolis & St. L. R. Co., 116 Iowa 558, 90 N.W. 344 (1902).

5. Property and rights subject of compensation.

Unity of property required to compel condemnor to take both properties is quite different and much more difficult to establish than unity which would permit evaluation of whole for purpose of establishing severance damages. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Easement in land is a right subject to payment of compensation. O.A.G. 1928, p. 112.

Supervisors cannot secure clear title to land until all lien holders are provided for. O.A.G. 1923-24, p. 179.

471.6 Railways

1. Construction and application.

Power of eminent domain to be exercised with due respect for constitutional rights. Chicago, R. I. & P. R. Co. v. Kay, 107 F. Supp. 895, affirmed in part and reversed in par on other grounds, 204 F.2d 117 (D.C. 1952), rehearing denied, 204 F.2d 954, affirmed, 75 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U.S. 924, 92 L.Ed. 1078.

This section and certain others constitute a legislative determination that certain uses are public. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 112, 54 N.W.2d 863 (1952), 35 A.L.R.2d 1306.

Condemnation documents having been lost, the fact of condemnation and payment were sufficiently established by other evidence. Marling v. Burlington C. R. & N. Ry. Co., 67 Iowa 331, 25 N.W. 268 (1885).

Fair presumption that railroad has easement by purchase or condemnation to land it occupies. Drake v. Chicago, Rock Island & Pacific R. Co., 63 Iowa 302, 19 N.W. 215 (1884), 50 Am. Rep. 746.

Restriction as to what is "necessary" applies to quantity of land to be taken, not to quantity of materials that may be removed from the land. Winklemans v. Des Moines N.W. R. Co., 62 Iowa 11, 17 N.W. 82 (1883).

Agreement that for a consideration a railroad will adopt a certain line instead of one already surveyed is not contrary to public policy. Cedar Rapids & St. P. R. Co. v. Spafford, 41 Iowa 292 (1875).

2. Right to acquire or condemn land.

Power to change natural course of stream did not extend to acquisition of easement for relocation of channel on private land. Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (Iowa 1972).

Test of public character of use. Reter v. Davenport R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952), 35 A.L.R.2d 1306.

Nothing can be acquired by condemnation without authority to condemn the particular place condemned. Chicago, M. & St. P. Ry. Co. v. Des Moines Union Ry. Co, 165 Iowa 35, 144 N.W. 54 (1913).

If agreement can be reached condemnation should not be had. Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 116 Iowa 681, 88 N.W. 1082 (1902).

Consent of railroad commissioners was not necessary to acquisition of right of way by railroad. Morgan v. Des Moines Union R. Co, 113 Iowa 561, 85 N.W. 902 (1901).

Statute did not prevent condemnation of additional right of way for construction of an additional laterial road. Lower v. Chicago, B. & Q. R. Co., 59 Iowa 563, 13 N.W. 718 (1882).

That company owns land adjacent to that it seeks to condemn does not restrict its right of condemnation. Stark v. Sioux City & P. R. Co., 43 Iowa 501 (1876).

Right to condemn based on ground that object is public one, for public use, within constitution. Stewart v. Board of Sup'rs of Polk County, 30 Iowa 9 (1870), 1 Am. Rep. 238.

3. Conflicting interests of companies.

Railroad could not, by purchase and laying of track, debar another company which had previously surveyed and staked out a branch line thereon. Sioux City & D. M. Ry. Co. v. Chicago M. & St. P. Ry. Co., 27 F. 770 (C.C. 1886).

Railroad which purchased is not affected by condemnation proceedings against grantor by another company. Minneapolis & St. L. R. Co. v. Chicago M. St. P. R. Co., 116 Iowa 681, 88 N.W. 1082 (1902).

Right of condemnation against another company whose property is in the public use. Diamond Jo Line Steamers v. City of Davenport, 114 Iowa 432, 87 N.W. 399 (1901), 54 L.R.A. 859.

Construction of crossing so as to interfere with right of way of other company. Chicago, I. & D. R. Co. v. Cedar Rapids, I. F. & N. W. R. Co., 86 Iowa 500, 53 N.W. 305 (1892).

4. Foreign corporations.

Foreign railroad has no power to acquire or possess right of way in Iowa. Holbert v. St. Louis, K. C. & N. R. Co., 45 Iowa 23 (1877).

5. Right of way in general.

Evidence showed right of way obtained for company under which plaintiff claimed. Chicago M. & St. P. Ry. Co. v. Des Moines Union Ry. Co., 165 Iowa 35, 144 N.W. 54 (1913).

Methods of acquisition of right of way. Clark v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

6. Trespassing on or occupying unacquired land.

Trespasser may not plead statute of limitations against proceedings to assess damages. Gates v. Colfax Northern Ry. Co., 177 Iowa 690, 159 N.W. 456 (1916).

That railroad was constructed on land to which company had not acquired title did not make it property of landowner. Chicago, M. & St. P. Ry. Co. v. Des Moines Union Ry. Co., 165 Iowa 35, 144 N.W. 54 (1913).

Remedies of owner of land on which railroad is situated. Clark v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

Where railroad uses land outside its right of way plaintiff must show absolute freehold title. Wattemeyer v. Wisconsin, I. & N. R. Co., 71 Iowa 626, 33 N.W. 140 (1887).

Remedies of landowner against railroad occupying part of his land. Birge v. Chicago M. St. P. Ry. Co., 65 Iowa 440, 21 N.W. 767 (1884).

Owners rights to recover damages for trespass as well as damages of permanent nature. Drady v. Des Moines & Ft. D. R. Co., 57 Iowa 393, 10 N.W. 754 (1881).

Consent of all tenants in common necessary. Rush v. Burlington C. R. & N. R. Co., 57 Iowa 201, 10 N.W. 628 (1881).

Right of owner to bring action for possession. Jackson v. Centerville, M. & A. Ry. Co., 64 Iowa 292, 20 N.W. 442 (1884).

Stature of railroad entering without permission or condemnation is that of trespasser. Hibbs v. Chicago & S. W. R. Co., 39 Iowa 340 (1874).

Remedies against taking of property without tender of compensation. Daniels v. Chicago & N. W. R. Co., 35 Iowa 129 (1872), 14 Am. Rep. 490.

7. Possession, payment or deposit condition precedent.

Where railroad condemned certain property subsequent acts did not render it liable to pay the award. Dimmick v. Council Bluffs & St. L. R. Co., 58 Iowa 637, 12 N.W. 710 (1882).

Occupancy by railroad during appeal from assessment was proper. Peterson v. Ferreby, 30 Iowa 327 (1870).

Company is given right to enter upon payment of sum assessed. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523 (1866), 89 Am. Dec. 550.

Legislature could not authorize taking for use till compensation was made to owner. Henry v. Dubuque & P. R. Co., 10 Iowa 540 (1859).

8. Contracts to convey.

For annotations, see I.C.A., this section.

9. Conveyances and gifts.

Grant of right of way gave strip of full statutory width. Iowa Ry. & Light Co. v. Chicago, M. & St. P. Ry. Co., 241 F. 581, 154 C.C.A. 357 (1917).

Liberal construction of deeds of right of way to railroad. Keokuk county v. Reinier, 227 Iowa 499, 288 N.W. 676 (1939).

Company acquires land by purchase where it takes deed prior to assessment of damages in condemnation proceedings. Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 116 Iowa 681, 88 N.W. 1082 (1902).

Grant to railroad held binding on subsequent purchaser. Hileman v. Chicago G. W. R. Co., 113 Iowa 591, 85 N.W. 800 (1901).

Landowner, under the circumstances, could not restrain operation of railroad till damages had been assessed and paid. Bentley v. Wabash, St. L. R. Co., 61 Iowa 229, 16 N.W. 104 (1883).

Proceedings to condemn strip wider than that conveyed by deed do not affect the deed. Gray v. Burlington & M. R. Co., 37 Iowa 119 (1873).

Deed held valid despite question of uncertainty of description. Barlow v. Chicago, R. I. & P. R. Co., 29 Iowa 276 (1870).

10. Conditions and covenants - in general.

For annotations, see I.C.A., this section.

11. Performance of conditions, conditions and convenants.

For annotations, see I.C.A., this section.

12. Adoption by acts, conditions and covenants.

For annotations, see I.C.A., this section.

13. Roads, streets, bridges, etc., occupying.

Railroad constructed with consent of city not enjoined from continuing operation as public nuisance. Milburn v. City of Cedar Rapids, 12 Iowa 246 (1861). Hughes v. Mississippi & M. R. Co., 12 Iowa 261 (1861).

"Along," "on" and "over" defined. Heath v. Des Moines & St. L. R. Co., 61 Iowa 11, 15 N.W. 573 (1883).

Laying of second track through city not necessarily a nuisance. Davis v. Chicago & N. W. Ry. Co., 46 Iowa 389 (1877).

Imposing of conditions on railroad by ordinance. City of Council Bluffs v. Kansas City, St. J. & C. B. R. Co., 45 Iowa 338 (1876), 24 Am. Rep. 773.

Railway laying track on highway bound to put highway in as good repair. Gear v. C. C. & D. R. Co., 43 Iowa 83 (1876).

Railway could be laid on city street without consent of city authorities. Hine v. Keokuk & D. M. R. Co., 42 Iowa 636 (1876).

Right to lay tracks on bridge discussed. City of Des Moines v. Chicago, R. I. & P. R. Co., 41 Iowa 569 (1875).

City could not grant same rights to occupy streets as company could acquire under statute. Ingram v. Chicago D. & M. R. Co., 38 Iowa 669 (1874).

Power of city to grant rights conferred by ordinance. Slatten v. Des Moines Valley R. Co., 29 Iowa 148 (1870), 4 Am. Rep. 205.

14. Amount of land acquired or taken.

Company may anticipate growth and development. Town of Alvord v. Great Northern Ry. Co., 179 Iowa 465, 161 N.W. 467 (1917).

15. Right to compensation.

Where city held title to land dedicated for public use, adverse possession could not run in favor of individual so as to give him right to recover damages for construction of depot. Simplot v. Chicago M. & St. P. Ry. Co., 16 F. 350, (C.C. 1883).

Where strip condemned separated buildings from rest of farm, owners refusal to move them not basis for denying damages for separation. Wilson v. Fleming, 31 N.W. 2d (Iowa 1948), motion denied, 32 N.W.2d 798.

That an act is authorized by statute does not mean company may act without liability for damage to property owners. Wulke v. Chicago, M. & St. P. Ry. Co., 189 Iowa 722, 178 N.W. 1009 (1920).

Construction of embankment destroying use of avenue creates liability. Dairy v. Iowa Cent. Ry. Co., 113 Iowa 716, 84 N.W. 688 (1900).

Damages could not be claimed on a change of law. Merchants' Union Barb Wire Co. v. Chicago, R. I. & P. Ry. Co, 70 Iowa 105, 28 N.W. 494 (1886), rehearing denied, 70 Iowa 105, 29 N.W. 822.

Where track was laid on street where owners kept the fee damages were payable to owners. Kucheman v. C. C. & C. Ry. Co., 46 Iowa 366 (1877).

Owner of adjacent property has interest in street entitling him to maintain action against railway for location of track on street. Cadle v. Muscatine Western R. Co., 44 Iowa 11 (1876).

Interference with access renders company liable to pay damages. Park v. Chicago & S. W. Ry. Co., 43 Iowa 636 (1876).

Owner of private way may recover damages for its occupancy by railroad. Gear v. C. C. & D. Ry. Co., 39 Iowa 23 (1874).

Where city owns fee in street owner of lot has no interest entitling him to sue for damages for the use of street by railroad. City of Davenport v. Stevenson, 34 Iowa 225 (1872).

Construction of railway along bank of navigable stream, between high and low water marks did not make railroad liable in damages to one deprived of access of stream. Tomlin v. Dubuque B. & M. Ry. Co., 32 Iowa 106 (1871), 7 Am. Rep. 176.

Where railroad appeals from condemnation award right of land owner to receive amount suspended till hearing of appeal. Peterson v. Ferreby, 30 Iowa 327 (1870).

Streets not private property of city in such sense as to entitle it to compensation for additional public use by railroad. City of Clinton v. Cedar Rapids & M. R. R. Co., 24 Iowa 445 (1868).

16. Retroactive laws, right to compensation.

Where city held title to land dedicated for public use, adverse possession could not run in favor of individual so as to give him right to recover damages for construction of depot. Simplot v. Chicago, M. & St. P. Ry. Co., 16 F. 350 (1883).

Damages could not be claimed on change of law. Merchants' Union Barb Wire Co. v. Chicago, R. I. & P. Ry. Co., 70 Iowa 105, 28 N.W. 494 (1886).

17. Estoppel, forfeiture, waiver, and other defenses to claim.

Even unauthorized improvements could not be taken without compensation. Davenport & N. W. Ry. Co. v. Renwick, 102 U.S. 180, 267 L.ED. 51 (1880).

Acceptance of award on condition created no estoppel. Mason v. Iowa Cent. Ry. Co., 131 Iowa 468, 109 N.W. 1 (1906).

Where railroad was not built along line specified in contract railroad was liable for damages for land taken. Hartley v. Keokuk & N. W. R. Co., 85 Iowa 455, 52 N.W. 352 (1892).

Consent of other co-tenant of plaintiff's lot was not essential to render waiver effective as to his interest in the lot. Merchants' Union Barb Wire Co. v. Chicago, R. I. & P. R. Co., 79 Iowa 613, 44 N.W. 900 (1890).

Where railroad put right of way over land not granted to it by owner he could bring action for damages. Chicago, I. & D. R. Co. v. Estes, 71 Iowa 603, 33 N.W. 124 (1887).

Even unauthorized improvements could not be taken without compensation. Renwick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

Fact that city granted right to lay track on city street does not deprive owner from maintaining action where he suffers special injury. Frith v. City of Dubuque, 45 Iowa 406 (1877).

Acceptance of award by one of the tenants in common does not conclude the other. Ruppert v. Chicago, O. & St. J. R. Co., 43 Iowa 490 (1876).

Where owner permitted construction of railway on his land he was not estopped to maintain ejectment. Conger v. Burlington & S. W. R. Co., 41 Iowa 419 (1875).

Owner could not maintain injunction against lessee company where he donated right of way to lessor company. Holbert v. St. Louis, K. C. & N. Ry. Co., 38 Iowa 315 (1874).

18. Persons entitled to compensation.

Mortgagee has claim prior to that of attachment. Sawyer v. Landers, 56 Iowa 422, 9 N.W. 341 (1888).

19. Damages - in general.

Instructions that in connection with testimony jury could use own judgment was not error. Hoyt v. Chicago, M. & St. P. R. Co., 117 Iowa 296, 90 N.W. 724 (1902).

Damages held not excessive. Dudley v. Minnesota & N. W. R. Co., 77 Iowa 408, 42 N.W. 359 (1889). Ball v. Keokuk & N. W. Ry. Co., 74 Iowa 132, 37 N.W. 110 (1888).

20. Measure of damages, in general.

Where part of tract is taken measure is difference in market value of tract as a whole before the taking and afterwards. Watkins v. Wabash R. Co., 137 Iowa 441, 113 N.W. 924 (1907). Klopp v. Chicago, M. & St. P. Ry. Co., 142 Iowa 474, 119 N.W. 373 (1909).

Fair and just compensation of value of whole tract before and after improvement is made. Henry v. Dubuque & P. R. Co., 2 Iowa 288, 2 Clarke 288 (1855). Hamm v. Wisconsin I. & N. R. Co., 61 Iowa 716, 17 N.W. 157 (1883).

Where evidence shows farm depreciated as a whole recovery not limited to value of land taken. Watkins v. Wabash R. Co., 137 Iowa 441, 113 N.W. 924 (1907).

Measure of damages to leasehold. Werthman v. Mason City & Ft. D. R. Co., 128 Iowa 135, 103 N.W. 135 (1905).

Damages awarded as of time of entry by railroad. Van Husan v. Omaha Bridge & Terminal R. Co., 118 Iowa 366, 92 N.W. 47 (1902).

Differences between fair market value of farm before and after the taking exclusive of any benefits. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Value of land at time of assessment not at time of appeal governs. Ellsworth v. Chicago & I. W. R. Co., 91 Iowa 386, 59 N.W. 78 (1895). Kitterman v. Chicago M. & St. P. R. Co., 69 Iowa 440, 30 N.W. 174 (1886).

Damages properly awarded on basis of market value of land there being no evidence of minerals. Hollingsworth v. Des Moines & St. L. R. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Instruction did not raise inference that court meant forced sales in instructing on measure of damages. Everett v. Union Pac. R. Co., 59 Iowa 243, 13 N.W. 109 (1882).

Measure of damages to leasehold. Renick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

Damages measured as of time of appropriation. Daniels v. C. I. & N. R. Co., 41 Iowa 52 (1875).

Owner entitled to only what will compensate him for appropriation of his land. Gear v. C. C. & D. R. Co., 39 Iowa 23 (1874).

Instruction held not erroneous. Harrison v. Iowa Midland R. R. Co., 36 Iowa 323 (1873).

Jury not to consider benefits. Henry v. Dubuque & P. R. Co., 5 Iowa (Cole Ed.) (1858).

21. Before and after taking, measure of damages.

For annotations, see § 471.6, Note 20.

22. Land as entity, and separate lots, parts or tracts, in general damages.

Instructions on consideration of each quarter section as an entire farm were not misleading. McCaskey v. Ft. Dodge, D. M. & S. Ry. Co., 154 Iowa 652, 135 N.W. 6 (1912).

Platted area not built up, owned by one person could be assessed as a whole. Gray v. Iowa Cent. R. Co., 129 Iowa 68, 105 N.W. 359 (1905).

Diminution of value of farm estimated on basis of entire farm. Parrott v. Chicago Great Western R. Co., 127 Iowa 419, 103 N.W. 352 (1905).

Recovery for damages to farm as entirety. Cook v. Boone Suburban Electric R. Co., 122 Iowa 437, 98 N.W. 293 (1904).

Acreage held to not be part of farm. Hoyt v. Chicago, M. & St. P. R. Co., 117 Iowa 296, 90 N.W. 724 (1902).

Owner was entitled to have his farm valued as a whole. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Instruction on determining if several tracts constituted one farm. Westbrook v. Muscatine N. & S. R. Co., 115 Iowa 106, 88 N.W. 202 (1901).

Whether all tracts should be treated as an entire farm a question for the jury. Ellsworth v. Chicago & I. W. R. Co., 91 Iowa 386, 59 N.W. 78 (1894).

Where railroad took city lots, measure of damages to owner of block is measured by the whole block. Cox v. Mason City & Ft. D. R. Co., 77 Iowa 20, 41 N.W. 475 (1889).

Charge that only tract covered by right of way was damaged, as opposed to whole farm, properly refused. Doud v. Mason City & F. D. R. Co., 76 Iowa 438, 41 N.W. 65 (1888).

Village property taken and adjacent farm property considered separately. Haines v. St. Louis, D. M. & N. R. Co., 65 Iowa 216, 21 N.W. 573 (1884).

Injury to farm as a whole was proper measure though farm was separated by a highway and railroad took only along one tract. Hamm v. Wisconsin, Iowa and Nebraska Ry. Co., 61 Iowa 716, 17 N.W. 157 (1883).

Testimony offered as to damage to separate portions of farm properly excluded. Winklemans v. Des Moines N. W. Ry. Co., 62 Iowa 11, 17 N.W. 82 (1883).

Farm as a whole should be considered. Hartshorn v. Burlington, C. R. & N. R. Co., 52 Iowa 613, 3 N.W. 648 (1879).

Jury should consider injury to entire leasehold. Renwick v. Davenport & N. W. R. Co., 49 Iowa 664 (1878), affirmed, 102 U.S. 180, 26 L. Ed. 51.

Value of acreage taken as well as that cut off from farm may be considered. Harrison v. Iowa Midland R. Co., 36 Iowa 323 (1873).

Separate lots measured separately. Fleming v. Chicago, D. & M. R. Co., 34 Iowa 353 (1872).

23. Construction and operation of railroad, damages.

For annotations, see I.C.A.

24. Evidence as to damages.

Cross examination improper on per acre value where on direct examination testimony to that effect was objected to and objection sustained. Westbrook v. Muscatine N. &. S. R. Co., 115 Iowa 106, 88 N.W. 202 (1901).

25. Admissibility of evidence.

Instructions on consideration of each quarter section as an entire farm were not misleading. McCaskey v. Ft. Dodge, D. N. & S. Ry. Co., 154 Iowa 652, 135 N.W. 6 (1912).

Error to limit witness testimony on value of farm to consideration of one particular type of use. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Effect of construction on farming operations admissible. Ellsworth v. Chicago & I. W. R. Co., 91 Iowa 386, 59 N.W. 78 (1894).

Evidence of value per acre of land taken admissible. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

Evidence showing fences maintained by company, crossings, value and convenience of use is admissible. Bell v. Chicago, B. & Q. R. Co., 74 Iowa 343, 37 N.W. 768 (1888).

Evidence of value per acre before and that land was worth a number of dollars less per acre after was not prejudicial error. Ball v. Keokuk & N. W. Ry. Co., 74 Iowa 132, 37 N.W. 110 (1888).

Evidence on damage per acre, without definite proof of acreage, should not be allowed. Ball v. Keokuk & N. W. Ry. Co., 71 Iowa 306, 32 N.W. 354 (1887).

Speculative use of land not admitted. La Mont v. St. Louis, D. M. & N. R. Co., 62 Iowa 193, 17 N.W. 465 (1883).

Where spring was destroyed by right of way, not error to allow witness that testified to damage to be cross examined as to how much damage destruction of spring of certain capacity would be. Winklemans v. Des Moines N. W. Ry. Co., 62 Iowa 11, 17 N.W. 82 (1883).

In action to recover for damage for right of way through farm it was not allowable to ask witness to give his opinion of damages sustained by the taking. Harrison v. Iowa Midland R. Co., 36 Iowa 323 (1873).

Price at which right of way was purchased through adjoining tracts not admissible. King v. Iowa Midland R. Co., 34 Iowa 458 (1872).

26. Instructions.

Instructions on consideration of each quarter section as an entire farm were not misleading. McCaskey v. Ft. Dodge, D. N. & S. Ry. Co., 154 Iowa 652, 135 N.W. 6 (1912).

Instruction that jury could consider every element of annoyance and disadvantage resulting from railroad was erroneous. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Owner was entitled to have his farm valued as a whole. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Instruction on determining if several tracts constituted one farm. Westbrook v. Muscatine N. & S. R. Co., 115 Iowa 106, 88 N.W. 202 (1901).

For additional annotations, see I.C.A.

27. Interest as damages.

Where plaintiff sued to recover value of right of way he was entitled to interest from date he acquired title to the property. Clark v. Wabash R. Co., 132 Iowa 22, 109 N.W. 309 (1906).

Interest in condemnation awarded as of date railroad takes possession and cannot be awarded in absence of testimony as to when it took possession. Quinn v. Iowa & St. L. Ry. Co., 131 Iowa 680, 109 N.W. 209 (1906).

28. Assignment of damages.

Vendor of property involved could not assign damages. Clark v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

29. Matters considered in determining damages.

It is proper to consider effect the use of land taken may have on entire tract. Lewis v. Omaha & C. B. S. Ry. Co., 158 Iowa 137, 138 N.W. 1092 (1912).

Adequacy and quality of crossings. Quinn v. Iowa & St. L. Ry. Co., 131 Iowa 680, 109 N.W. 209 (1906).

Instruction that jury could consider every element of annoyance and disadvantage resulting from railroad was erroneous. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Fact that railroad allowed telegraph company to erect poles on the right of way did not entitle an accounting for rents and profits received from telegraph company. Chicago, M. & St. P. R. Co. v. Snyder, 120 Iowa 31, 89 N.W. 183 (1903).

Adequacy and quality of crossing. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Jury may consider prospective location of depot thereon at time of taking. Snouffer v. Chicago & N. W. R. Co., 105 Iowa 681, 75 N.W. 501 (1898).

Effect of construction on farming operations admissible. Ellsworth v. Chicago & I. W. R. Co., 9 Iowa 386, 59 N.W. 78 (1894).

Evidence showing fences maintained by company, crossings, value and convenience of use is admissible. Bell v. Chicago, B. & Q. R. Co., 74 Iowa 343, 37 N.W. 768 (1888).

That it was valuable for residences before and that afterwards it was not admissible. McClean v. Chicago, I. & D. R. Co., 67 Iowa 568, 25 N.W. 782 (1885).

Defendant was estopped to claim buildings on land condemned by it did not become its property. Hollingsworth v. Des Moines & St. L. Ry. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Proper to consider that track will lie in a cut. Cummins v. Des Moines & St. L. R. Co., 63 Iowa 397, 19 N.W. 268 (1884).

Evidence relating to effects on farm and stream and access thereto, grades, depth of ditches is admissible. Dreher v. Iowa S. W. R. Co., 59 Iowa 599, 13 N.W. 754 (1882).

Value is what it is worth in condition at time condemned, not prospective value as city lots when not in fact so laid out. Everett v. Union Pac. R. Co., 59 Iowa 243, 13 N.W. 109 (1882).

Owner could introduce plat though not recorded. Hartshorn v. Burlington C. R. & N. R. Co., 52 Iowa 613, 3 N.W. 648 (1879).

Remote and contingent consequences must not be considered. Fleming v. Chicago, D. & M. R. Co., 34 Iowa 353 (1872).

All circumstances immediately depreciating value of premises by taking are proper for consideration. Henry v. Dubuque & P. R. Co., 2 Iowa 288, 2 Clarke 288 (1855).

30. Crops, springs, minerals, matters considered in determining damages.

Evidence that the land contains coal beds admissible. Doud v. Mason City & F. D. R. Co., 76 Iowa 438, 41 N.W. 65 (1888).

Destruction of valuable spring should be considered in estimating damages. Winklemans v. Des Moines N. W. Ry. Co., 62 Iowa 11, 17 N.W. 82 (1883).

Value of growing crops destroyed by construction are an element of damages. Lance v. Chicago, M. & St. P. R. Co., 57 Iowa 636, 11 N.W. 612 (1882).

31. Fences and cattle guards, matters considered in determining damages.

Additional fencing required due to construction not proper matter to consider in estimating compensation. Henry v. Dubuque & P. R. Co., 2 Iowa 288, 2 Clarke 288 (1855). Kennedy v. Dubuque & P. R. Co., 2 Iowa 521, 2 Clarke 521 (1856).

Failure of company to erect cattle guards could not be considered in estimation of damages. King v. Iowa Midland R. Co., 34 Iowa 458 (1872).

While jury cannot allow for fencing as such it can consider that the land would be thrown open and left unfenced. Henry v. Dubuque & P. R. Co., 5 Iowa (Cole Ed.) 576 (1858).

Where land was fenced and the taking opened it, this fact could be considered. Henry v. Dubuque & P. R. Co., 2 Iowa 288, 2 Clarke 288 (1855).

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

Damage resulting from obstruction of flow of surface water. Blunck v. Chicago & N. W. Ry. Co., 142 Iowa 146, 120 N.W. 737 (1909).

Interference with access to town. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Obstruction to the use of property - instruction. Diamond Jo Line Steamers v. Davenport R. I. & N. W. R. Co., 115 Iowa 480, 88 N.W. 959 (1902).

Offer by company to show minimization of fire hazard properly refused. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

Inconvenience considered as bearing market value. Dudley v. Minnesota & N. W. R. Co., 77 Iowa 408, 42 N.W. 359 (1889).

Providing of crossing under trestle work. Bell v. Chicago, B. & Q. R. Co., 74 Iowa 343, 37 N.W. 768 (1888).

Evidence as to noise, smoke and fire admissible. Wilson v. Des Moines, O. & S. R. Co., 67 Iowa 509, 25 N.W. 754 (1885).

Obstruction of view, interference with privacy and noise are proper items to consider as bearing on damages. Ham v. Wisconsin, Iowa & Nebraska Ry. Co., 61 Iowa 716, 17 N.W. 157 (1883).

Actual damages only are allowable. Dreher v. Iowa S. W. R. Co., 59 Iowa 599, 13 N.W. 754 (1882).

Evidence of danger of fire. Lance v. Chicago, M. & St. P. R. Co., 57 Iowa 636, 11 N.W. 612 (1882).

Inconvenience in cultivation or use of farm. Hartshorn v. Burlington C. R. & N. R. Co., 52 Iowa 613, 3 N.W. 648 (1879).

Obstruction of public highway not considered in estimating damages to which owner of adjacent land is entitled for taking of right of way by railroad. Gear v. C. C. & D. R. Co., 43 Iowa 83 (1876).

33. Possible use of right of way by railroad, matters considered in determining damages.

For annotations, see I.C.A.

34. Benefits, matters considered in determining damages.

Instructions to not consider benefits accruing by reason of contemplated construction of depot not misleading. Snouffer v. Chicago & N. W. R. Co., 105 Iowa 681, 75 N.W. 501 (1898).

Instruction that it was not proper to set off benefits on account of improvement was properly given. Ball v. Keokuk & N. W. R. Co., 74 Iowa 132, 37 N.W. 110 (1888).

Appreciation in value of adjacent land belonging to same owner cannot be considered in estimating damages. Koestenbader v. Peirce, 41 Iowa 204 (1875).

Instruction that value was to be arrived at without considering benefit which might accrue was not erroneous. Brooks v. Davenport & St. P. R. Co., 37 Iowa 99 (1873).

35. Title, estate, and interest acquired by railroad.

For annotations, see I.C.A.

36. Rights of, and use of land by railroad company.

For annotations, see I.C.A.

37. Use of land by former owner and successors.

For annotations, see I.C.A.

38. Transfers by owner.

In action against railroad for damages by owner who bought subsequent to occupation of street, company may show plaintiff's grantor consented to construction and operation of road along street. Pratt v. Des Moines N. W. R. Co., 72 Iowa 249, 33 N.W. 666 (1887). Jolley v. Des Moines N. W. R. Co., 72 Iowa 759, 33 N.W. 668 (1887).

That both parties knew railroad was in operation across the land conveyed made its existence none the less a breach of covenant in the conveyance. Barlow v. McKinley, 24 Iowa 69 (1867). Gerlad v. Elley, 45 Iowa 322 (1876). Flynn v. White Breast Coal & Mining Co., 72 Iowa 738, 32 N.W. 471 (1887).

Defendants title to right of way was not established. Montgomery County v. Case, 212 Iowa 73, 232 N.W. 150 (1930).

Land conveyed for railroad right of way did not pass to second grantee when land in which right of way went through was conveyed. Monarch Coal Co. v. Phillips Coal Co., 178 Iowa 660, 156 N.W. 297 (1916).

Deed excepting land occupied by railroad right of way excepted the soil itself, and not merely the right of way. Hall v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

Railroad right of way is encumbrance on land constituting breach of covenant of warranty. Fierce v. Houghton, 122 Iowa 477, 98 N.W. 306 (1904).

Conveyance "subject to all right of way..." did not include portion claimed by railroad as depot grounds. Mead v. Illinois Cent. R. Co., 112 Iowa 291, 83 N.W. 979 (1900).

Conveyance held to pass whatever right of reversion grantor had. Smith v. Hall, 103 Iowa 95, 72 N.W. 427 (1897).

Purchaser charged with notice of railroad's license to operate in street fronting lot. Merchants' Union Barb-Wire Co. v. Chicago R.I. & P. R. Co., 79 Iowa 613, 44 N.W. 900 (1890).

Breach of warranty exists where grantor conveys without reservations land on which is situated a railroad. Flynn v. White Breast Coal Co., 72 Iowa 738, 32 N.W. 471 (1887).

Railroad right of way across land conveyed is not a breach of covenant of warranty in a deed of such lands. Brown v. Young, 69 Iowa 625, 29 N.W. 941 (1886).

Lessee of land has no greater right to question validity of company's right of way than lessor had when lease was made. Chicago, M. & St. P. R. Co. v. Bean, 69 Iowa 257, 28 N.W. 585 (1886).

Purchaser of trespassing railroad liable as trespasser after purchase to a grantee of prior owner of the land. Donald v. St. Louis, K. C. & N. R. Co., 52 Iowa 411, 3 N.W. 462 (1879).

Existence of railroad is breach of covenants against encumbrances, but mere use of right of way does not show right thereto. Jerald v. Elly, 51 Iowa 321, 1 N.W. 639 (1879).

Right of way is acquired when damages assessed are paid to sheriff, and conveyances made thereafter are subject to title of company. Ruppert v. Chicago, O. & St. J. R. Co., 43 Iowa 490 (1876).

39. Transfers, mortgages, licenses, and permits by company.

For annotations, see I.C.A.

40. Adverse possession of right of way.

For annotations, see I.C.A.

41. Condemning land condemned or acquired.

City or town cannot condemn for street purposes property already devoted to public use by railway where such taking would require removal of depot building. Chicago, M. & St. P. Ry. Co. v. Incorporated Town of Lost Nation, D. C., 237 F. 709 (1916).

City could reopen streets by condemnation where it had previously vacated and conveyed streets to railroad. City of Osceola v. Chicago B. & Q. R. Co., 196 F. 777, 116 C. C. A. 72 (1912).

Railroad property may be taken, under proper conditions, for public use. Ferguson v. Illinois Cent. R. Co., 202 Iowa 508, 210 N.W. 604 (1926).

In condemnation for street purposes evidence showed railroad had not overestimated ground required in present and future for depot. Town of Alvord v. Great Northern Ry. Co., 179 Iowa 465, 161 N.W. 467 (1917).

42. Proceedings in general.

Proceeding before sheriff is administrative until appeal. Chicago R. I. & P. R. Co. v. Stude, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 989 L. Ed. 1078 (1954).

No error in permitting railroad to file waiver of right to claim damages because of any future street crossings. Purdy v. Waterloo C. F. & N. Ry. Co., 172 Iowa 676, 154 N.W. 881 (1915).

Sheriff conducting condemnation proceedings not a part to proceedings, and is not disqualified from serving notice of appeal. Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 60 Iowa 35, 14 N.W. 76 (1882).

Notice of appeal constitutes presumptive evidence that assessment has been made. Hahn v. Chicago, O. & St. J. R. Co., 43 Iowa 333 (1876).

Appeal in absence of statutory regulation. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

Trial of cause anew and award of damages without notice of appeal was erroneous. Burlington & M. R. R. Co. v. Sinnamon, 9 Iowa 293 (1859).

53. Filing papers on appeal.

On appeal it was not required that report of jury be filed in appellate court, the notice of appeal being presumptive evidence that award had been made. Hahn v. Chicago, O. & St. J. R. Co., 43 Iowa 333 (1876).

Failure of officer to file papers until first day of next term after appeal was taken, not sufficient grounds for dismissal. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

Not error to file bond with clerk instead of sheriff. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1865).

54. Pleadings on appeal.

Motion to dismiss properly denied where based on agreement to arbitrate, since such defense should be set up by answer. Hynes v. S. A. & D. Ry. Co., 38 Iowa 258 (1874).

Answer, on appeal, alleged delivery of deed for right of way. Plaintiff objected to admission of deed in evidence for reason that copy of deed was not attached to answer. Held objection overruled. Taylor v. Cedar Rapids & St. P. R. Co., 25 Iowa 371 (1868).

Filing of petition in district court on an appeal did not violate statute. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1864).

55. Trial on appeal or in action for damages.

In action for damages defendants plea of estoppel by agreement to accept $600.00 in full settlement was adequately submitted in instructions that if jury found agreement as contended plaintiff could recover $600.00 and no more. Darst v. Ft. Dodge, D. M. & S. Ry. Co., 194 Iowa 1145, 191 N.W. 288 (1922).

Railroad could not set up defendants breach of agreement to donate right of way where instead of entering it condemned. Burrell v. Waterloo, C. F. & N. Ry. Co., 173 Iowa 441, 155 N.W. 809 (1916).

Instruction that jury should not be influenced by fact that company took possession immediately after condemnation was not erroneous. Purdy v. Waterloo, C. F. N. Ry. Co., 172 Iowa 676, 154 N.W. 881 (1915).

If assessment of damages included a portion of land not owned by plaintiff, error could be corrected on appeal. Hall v. Wabash R. Co., 141 Iowa 250, 119 N.W. 927 (1909).

Trial court did not abuse discretion in granting new trial where jury's verdit was excessively small. Werthman v. Mason City & Ft. D. R. Co., 128 Iowa 135, 103 N.W. 135 (1905).

Matter for jury to consider in regard to duty of railroad keeping its track and cattle guards in proper condition. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

Plaintiff was entitled to prove damage to entire farm though it consisted of more land than was described in notice of appeal. Dudley v. Minnesota & N. W. R. Co., 77 Iowa 408, 42 N.W. 359 (1889).

Improper for plaintiff's council to refer to amount of award appealed from, but such is not ground for discharging jury on motion of defendant. Ball v. Keokuk & N. W. R. Co., 74 Iowa 132, 37 N.W. 110.

Where court decided it had no jurisdiction it properly refused to determine what rights of parties would have been. Slough v. Chicago & N. W. Ry. Co., 71 Iowa 641, 33 N.W. 149 (1887).

Not competent to ask commissioners who assessed damages whether their assessment correctly expressed their judgment. Winklemans v. Des Moines N. W. R. Co., 62 Iowa 11, 17 N.W. 82 (1883).

It was not error for court to refuse to instruct that law does not require railroad to fence its road where court indicated liability for injuries to stock from failure to fence. Harrison v. Iowa Midland R. Co., 36 Iowa 323 (1873).

Appeal from assessment brought case before district court on its own merits. Runner v. City of Keokuk, 11 Iowa 543 (1861).

Where case was in district court in appeal on merits, certain irregularities below were immaterial. Mississippi & M. R. Co. v. Rosseau, 8 Iowa 373, 8 Clarke 373 (1859).

16. Verdict, judgment and orders on appeal.

Jury to assess damages as of date of assessment by sheriff's jury and court makes order regarding interest. Reed v. Chicago, M. & St. P. Ry. Co., C. C., 25 F. 886 (1885).

No judgment should be entered for owner since proceedings can be abandoned with liability for costs only. Klopp v. Chicago, M. & St. P. Ry. Co., 142 Iowa 474, 119 N.W. 373 (1909).

Judgment of pleadings properly rendered. Burns v. Chicago, Ft. M. & D. M. R. Co., 110 Iowa 385, 81 N.W. 794 (1900).

Judgment assessing damages to be paid does not bind company to take the land and pay damages. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523, 89 Am. Dec. 550 (1866).

Judgment reversed because of improper consideration of certain items of damage by jury. Kennedy v. Dubuque & Pac. R. Co., 2 Iowa 521, 2 Clarke 521 (1856).

57. Review by appellate court.

Appeal does not lie from decision of sheriff's commission in Iowa to Federal District Court. Chicago, R. I. & P. R. Co. v. Kay, D. C., 107 F. Supp. 895 (1952), affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

Contention that condemnor by bringing such proceedings, estopped itself to claim plaintiff had no title may not be made for first time on appeal. Watkins v. Iowa Cent. Ry. Co., 123 Iowa 390, 98 N.W. 910 (1904).

Where court in instruction omitted one-tenth of an acre and company offered to add value of such part to judgment, judgment should not be reversed on that ground. Hoyt v. Chicago, M. & St. P. R. Co., 117 Iowa 296, 90 N.W. 724 (1902).

Not presumed that injuries by fire to fences and timber a mile from the tracks were considered in estimating damages. Rodemacher v. Milwaukee & St. P. Ry. Co., 41 Iowa 297, 20 Am. Rep. 592 (1875).

Presumption that findings on question of what lands were considered by jury in making assessment was correct. Mississippi & M. R. Co. v. Byington, 14 Iowa 572 (1863).

58. Certiorari.

Proceedings to condemn land not set aside upon mere allegations of petition for certiorari without further showing. Everett v. Cedar Rapids & M. R. R. Co., 28 Iowa 417 (1869).

59. Award of judgment, payment and enforcement.

Where railroad refuses to pay award injunction is available to owner. Gates v. Colfax Northern Ry. Co., 177 Iowa 690, 159 N.W. 456 (1916).

Whether land taken was for use of railroad is not determinable in equitable action to enjoin use of tracks laid. Davis v. Des Moines & Ft. D. R. Co., 155 Iowa 51, 135 N.W. 356 (1912).

Payment by company to sheriff, without payment to owner, not a defense to action for restitution of premises on failure to pay award. Burns v. Chicago, Ft. M. & D. M. R. Co., 110 Iowa 385, 81 N.W. 794 (1900).

Owner cannot maintain separate action to recover interest. Jamison v. Burlington & W. R. Co., 78 Iowa 562, 43 N.W. 529 (1889).

Where landowner has received amount awarded he cannot object to fact that no notice of proceedings was given to him. Marling v. Burlington, C. R. & N. R. Co., 67 Iowa 331, 25 N.W. 268 (1885).

Payment by company to sheriff, without payment to owner, not a defense to action for restitution of premises on failure to pay award. White v. Wabash, St. L. & P. R. Co., 64 Iowa 281, 20 N.W. 436 (1884).

Allowing award of damages to be recorded not a tort, and no title passes thereby, so as to raise implied contract to pay amount thereof till mistake is made known to company and reasonable time elapses. Dimmick v. Council Bluffs & St. L. R. Co., 58 Iowa 637, 12 N.W. 710 (1882).

Owner may enjoin use till compensated. Holbert v. St. Louis, K. C. & N. R. Co., 45 Iowa 23 (1876).

Action of ejectment proper against company failing to compensate owner for right of way appropriated. Conger v. Burlington & S. W. R. Co., 41 Iowa 419 (1875).

Injunction will lie to restrain use of land taken till compensation has been paid. Hibbs v. Chicago & S. W. R. Co., 39 Iowa 340 (1874). Richards v. Des Moines Val. R. Co., 18 Iowa 259 (1865).

60. Costs and attorney's fees.

Absent statute, attorney fees not taxable in condemnation proceedings. Woodcock v. Wabash Ry. Co., 135 Iowa 559, 113 N.W. 347 (1907).

In proceeding to recover value of property appropriated attorney's fees allowable to plaintiff. Clark v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

Where company took land it was precluded from questioning constitutionality of statute imposing liability for attorney's fees. Gano v. Minneapolis & St. L. R. Co., 114 Iowa 713, 87 N.W. 714 (1901), 55 L. R. A. 263, 89 Am. St. Rep. 393, affirmed, 23 S. Ct. 854, 190 U. S. 575, 47 L. Ed. 1183.

Purchaser of railroad during appeal liable for attorney's fees incurred on appeal by company from whom purchased. Frankel v. Chicago, B. & P. R. Co., 70 Iowa 424, 30 N.W. 679 (1886), rehearing denied, 70 Iowa 424, 32 N.W. 488.

61. Conclusiveness of proceedings.

Where real owner is party to proceedings, the proceedings are valid against him though it is indicated commissioners thought unknown lessee also had interest therein. Chicago, M. & St. P. Ry. Co. v. Bean, 69 Iowa 257, 28 N.W. 585 (1886).

Presumed from record of proceedings where it had not entered and had not paid the award. Kostendader v. Pierce, 37 Iowa 645 (1873).

62. Dismissal of proceedings.
Company could dismiss proceedings where it had not entered and had not paid the award. Burlington & M. R. Co. v. Sater, 1 Iowa 421, 1 Clarke 421 (1855).

63. Priority.
Where railroad commenced proceedings prior to city it had priority over city. Connolly v. Des Moines & Cent. Iowa Ry. Co., 68 N.W.2d 320 (Iowa 1955).

471.7 Cemetery Lands (No Annotations)

471.8 Limitation on Right of Way

1. Construction and application.
Condemnation of additional independent right of way to construct and maintain original road not prevented by statute. Lower v. Chicago B. & O. R. Co., 59 Iowa 563, 13 N.W. 718 (1882).
Judgment in form of debt construed to have no greater effect than if conforming to statute authorizing it. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523, 89 Am. Dec. 550 (1866).

2. Buildings, land for.
Additional realty outside of one hundred feet could not be taken. Johnson v. Chicago, M. & St. P. Ry. Co., 58 Iowa 537, 12 N.W. 576 (1882).

471.9 Additional Purposes

1. Validity.
Validity upheld as not authorizing taking for private use. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306 (1952).
Right of way to mine is public way. Morrison v. Thistle Coal Co., 119 Iowa 705, 94 N.W. 507 (1903).
Public ways are contemplated. Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1874).

2. Construction and application.
Statute constitutes legislative determination of public use. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306 (1952).
Petition to condemn land did not have to show necessity. Eikenberry v. St. Paul & K. C. S. L. R. Co., 174 Iowa 6, 156 N.W. 163 (1916).
Where railroad desired land for additional depot grounds, action of commissioners was to precede effort to condemn. Crandall v. Des Moines, N. & W. R. Co., 103 Iowa 684, 72 N.W. 778 (1897).

3. Depots.
Condemnation authorized for new stations where necessary. Jager v. Dey, 80 Iowa 23, 45 N.W. 391.
Under former statute, completed railroad could not condemn for depot. Forbes v. Delashmutt, 68 Iowa 164, 26 N.W. 56 (1886).

4. Spur tracks.

Test of public character use is whether industries are enabled thereby to be reached by public. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306 (1952).

Corporation organized to engage in business of generating electricity to be sold is not a "manufacturing corporation." Hagerla v. Mississippi River Power Co., D. C., 202 F. 776 (1913).

Right of public to use spur track sufficient public use. Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co., 146 Iowa 666, 125 N.W. 672 (1910).

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

5. Double tracks, curves, grades, relocations, excavations, etc.

Company building overhead crossing authorized to condemn land necessary to raising or lowering of highway. Eikenberry v. St. Paul & K. C. S. L. R. Co., 174 Iowa 6, 156 N.W. 163.

Plaintiff could show inconvenience of being deprived of crossing. Klopp v. Chicago, M. & St. P. Ry. Co., 142 Iowa 474, 119 N.W. 373 (1909).

6. Water stations, etc.

Reservation by landowners of right to use water in reservoir conveyed to railroad deemed easement appurtenant to remaining land. McCoy v. Chicago, M. & St. P. Ry. Co., 176 Iowa 139, 155 N.W. 995 (1916).

7. Lateral road.

Condemnation of land for additional road authorized for construction and maintenance of original road. Lower v. Chicago, B. & Q. R. Co., 59 Iowa 563, 13 N.W. 718 (1882).

471.10 Finding by Transportation Regulation Board

1. Construction and application.

Statute authorizing condemnation strictly construed. Chicago, R. I. & P. R. Co. v. Kay, D. C. 107 F. Supp. 895 (1952), affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S. Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Necessity and expediency of taking may be determined by public body or agency. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306 (1952).

When petition showed inquiry had been made as to necessity, and was so certified by railroad commissioners, it was sufficient without showing need for embankments for which land was desired. Eikenberry v. St. Paul & K. C. S. L. R. Co., 174 Iowa 6, 156 N.W. 163 (1916).

Where railroad desired land for additional depot grounds, action of commissioners was to precede effort to condemn. Crandall v. Des Moines, N. & W. R. Co., 103 Iowa 684, 72 N.W. 778 (1897).

Commissioners had authority to grant certificate for condemnation for depot purposes where railroad had no depot. Jager v. Dey, 80 Iowa 23, 45 N.W. 391 (1890).

471.11 Land for Water Stations - How Set Aside (No Annotations)

471.12 Access to Water - Overflow Limited

1. Construction and application.

Landowner's right to use water in reservoirs conveyed to railroad deemed an easement appurtenant to remaining land. McCoy v. Chicago, M. & St. P. Ry. Co., 176 Iowa 139, 155 N.W. 995 (1916).

471.13 Change in Streams

1. Validity.

Statute authorizing change in course of stream to promote safety of travel was constitutional. Reusch v. Chicago, B. & Q. R. Co., 57 Iowa 687, 11 N.W. 647 (1882).

2. Construction and application.

Even if changing the "natural course" of stream so that it would join river before, rather than after, crossing under highway, thereby eliminating a bridge upon reconstruction of the highway, was to be regarded as being for the purpose of draining the highway, within § 306.19 conferring upon the state highway commission its power of eminent domain, such power did not extend to the acquisition of an easement for relocation of the channel of the stream on private land. Branderhorst v. Iowa State Highway Commission on Behalf of State, 202 N.W.2nd 38 (Iowa 1972).

Where in a first suit object of plaintiff was to recover original and permanent damage he was estopped in second suit to deny such though additional damage had occurred. Thompson v. Illinois Cent. R. Co., 191 Iowa 35, 179 N.W. 181 (1920).

Land may be taken to erect embankment instead of bridge. Reusch v. Chicago, B. & Q. R. Co., 57 Iowa 687, 11 N.W. 647 (1882).

471.14 Unlawful Diversion Prohibited

1. Construction and application.

Condemnation of right of way did not give right to divert surface water to damage of landowner. Albright v. Cedar Rapids & Iowa City Railway & Light Co., 133 Iowa 644, 110 N.W. 1052. Stodghill v. Chicago, B. & Q. R. Co., 43 Iowa 26, 22 Am. Rep. 210 (1876).

471.15 Repealed by Act 83, ch. 121, § 15 (See § 471.16).

471.16 Right to Condemn Abandoned Right of Way

1. Validity.

Right of way for railroad, is taken by state for public use; and it is competent for legislature to provide for its transfer under certain conditions. Noll v. Dubuque B. & M. R. Co., 32 Iowa 66 (1871).

471.17 Repealed by Act 83, ch. 121, § 15 (See § 471.16).

471.18 Parties Entitled to Damages

1. Validity.

Right of way for railroad, is taken by state for public use; and it is competent for legislature to provide for its transfer under certain conditions. Noll v. Dubuque, B. & M. R. R. Co., 32 Iowa 66 (1871).

2. Construction and application.

Where land was abandoned for over eight years and another company entered without authority it was a trespasser. McGinnis v. Wabash R. Co., 114 N.W. 1039 (1908).

Where right of way was abandoned for over eight years another company cannot condemn without compensation to owners. Remey v. Iowa Cent. R. Co., 116 Iowa 133, 89 N.W. 218 (1902).

Where right of way was condemned and paid for and abandoned, when acquired by defendant company be condemnation, land being sold to plaintiff before defendant's acquisition, plaintiff could not recover compensation. Remey v. Iowa Cent. R. Co., 83 N.W. 1059 (Iowa 1900).

Where right of way was condemned and owner did not take award and did not appeal, and land was not used for long time; when road was built owner could not proceed for second award for damages. Chicago, M. & St. P. Ry. Co. v. Bean, 69 Iowa 257, 28 N.W. 585 (1886).

Grantee of owner who received compensation had no greater rights than former owner. Dubuque & D. R. Co. v. Diehl, 64 Iowa 635, 21 N.W. 117 (1884).

471.19 Interpretative Clause

1. In general.

A leasehold interest is property, and when taken in exercise of eminent domain, the owner is entitled to compensation. R. & R. Welding Supply Co. v. City of Des Moines, 256 Iowa 973, 129 N.W.2d 666 (1964).

471.20 Description of Land Furnished

1. In general.

County auditor must accept deed describing original tract less description of highway as legal description when land may accurately be located by a competent surveyor. O.A.G. July 2, 1973.

Chapter 472

Procedure Under Power of Eminent Domain

472.1 Procedure Provided

1. Construction and application.

Statutory regulation of eminent domain must be strictly construed and complied to protect constitutional property rights of owner. City of Des Moines v. Geller Glass and Upholstery, 319 N.W.2d 239 (Iowa 1982).

Court must determine whether land taken by eminent domain is for public purpose when constitionality is challenged. Simpson v. Low-rent Housing Agency of Mt. Ayr, 224 N.W.2d 624 (Iowa 1974).

Road project for which plaintiff's land was condemned did not involve federal funds where bridge project was discrete from road building for which such land was taken. Cahill v. Cedar County, Iowa, 367 F. Supp. 39 (1973).

Statutes providing for exercise of eminent domain must be strictly complied with. State v. Johann, 207 N.W.2d 21 (1973).

Implementing agreement between city and state highway commission concerning highway construction project. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

Removal costs - buildings or fences. O.A.G. November 20, 1970.

Power of eminent domain to be exercised with due respect to constitutional right and guarantees. Chicago, R. I. & P. R. Co. v. Kay, 107 F. Supp. 895 (1952), affirmed in part and reversed in part on other grounds, 205 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U.S. 924, 98 L. Ed. 1089.

Supervisors must proceed under Chapter 471, 472 to condemn land to provide suitable material for highway improvement. O.A.G. 1953, p. 84.

Electric transmission poles located on private easement acquired from abutting owner must be purchased or acquired under section 306.1 or under this section. O.A.G. 1950, p. 174.

Condemnation procedure under Code 1873 by city under special charter granted in 1853. Arnold v. City of Council Bluffs, 85 Iowa 441, 52 N.W. 347 (1892). Williams v. City of Council Bluffs, 85 Iowa 735, 52 N.W. 349 (1892).

Power company may do what is reasonable necessary to carry out public purpose. De Penning v. Iowa Power & Light Co., 83 N.W.2d 349 (Iowa 1892).

General chapter on eminent domain does not apply where other procedure is provided by law. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).

Commencement of condemnation proceeding impliedly admits taking or contemplated taking. Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W. 979 (1925).

In establishing drainage district damages were not assessable by sheriff's jury. Shaw v. Board of Sup'rs of Greene County, 195 Iowa 545, 192 N.W. 525 (1923).

Under code 1873, sheriff's jury could only assess damages for land taken by railroad, not for injury to property abutting on street where railroad was laid. Slough v. Chicago & N. W. R. Co., 71 Iowa 641, 33 N.W. 149 (1887).

Where owner agreed to accept sum to be fixed by one and sold land to another and company took no steps toward having compensation fixed, vendee was entitled to have commissioners fix compensation. Corbin v. Wisconsin, I. & N. R. Co., 66 Iowa 269, 23 N.W. 662 (1885).

Order establishing road without provision for payment was not unconstitutional where owner made no claim for damages in method prescribed by statute. Abbott v. Scott County Sup'rs, 36 Iowa 354 (1873).

2. Ad quod damnum proceedings

Rights of purchaser at tax sale not extinguished where he had not been made a party by proper notice. Garmoe v. Sturgeon, 65 Iowa 147, 21 N.W. 493 (1884).

Where first writ was quashed another could be granted without notice to opposite party. Burnham v. Thompson, 35 Iowa 421 (1872).

3. Conditions precedent.

Land cannot be taken for state park and lake and final determination to proceed with project must await some determination of damages. Mathiasen v. State Conservation Comm., 70 N.W.2d 158 (Iowa 1955).

Proceedings were without jurisdiction where owner did not refuse to give deed and there was no disagreement on compensation. Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 116 Iowa 681, 88 N.W. 1082 (1902).

Proceedings authorized only where owner refused to grant right of way or agreement on compensation could not be reached. Council Bluffs & St. L. R. Co. v. Bentley, 62 Iowa 446, 17 N.W. 668 (1883).

Conditions which owner must comply with prior to recovery of damages for opening of street. Blake v. City of Dubuque, 13 Iowa 66 (1862).

Acts showed owner refused to grant right of way. Mississippi & M. R. Co. v. Rosseau, 8 Iowa 373, 8 Clarke 373 (1859).

4. Title of landowner.

Owner could not recover damages from county without showing title in himself. Montgomery County v. Case, 212 Iowa 73, 232 N.W. 150 (1930).

Facts showed title sufficiently for purpose of proceeding. Hartley v. Keokuk & N. W. R. Co., 85 Iowa 455, 52, N.W. 352 (1892).

5. Proceedings in general.

Installation of median strips for purpose of regulating flow of traffic - within exercise of police power - must be proper and reasonable and not amount to taking of property without due process. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Procedure provided for determination of damages in this section and following, relative to taking of private property for public use by condemnation, is not exclusive. Hagenson v. United Tel. Co. of Iowa, 164 N.W.2d 853 (Iowa 1969).

Legislature has power to prescribe and fix terms and conditions upon which condemnations may be made. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Unity of property required to compel condemnor to take both properties is quite different and much more difficult to establish than unity which would permit evaluation of whole for purpose of establishing severance damages. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Only question involved in eminent domain procedure is value of property taken, and the only appeal that can be taken is from the award of damages. Stellingwerf v. Lenihan, 249 Iowa 179, 85 N.W.2d 912 (1957).

Only by process of appeal does district court obtain jurisdiction, and then appellate only. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Proceeding before sheriff is administrative till appeal has been taken. Chicago, R. I. & P. R. Co. v Stude, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338 (1954), rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

That only part of land required according to approved plans, was acquired did not invalidate condemnation. Mill v. City of Denison, 237 Iowa 1335, 25 N.W.2d 323 (1945).

Soldiers and Sailors Civil Relief Act would safeguard appeal rights of soldier-owner. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1945).

Legislative power in fixing terms and conditions on which condemnation may be made. Richardson v. City of Centerville, 137 Iowa 253, 114 N.W. 1071 (1908).

Absent special provision so requiring there is no right to trial by jury in condemnation cases. Bradley, 108 Iowa 476, 79 N.W. 280 (1899).

Question whether grade crossings should be allowed cannot be determined in condemnation proceedings. Chicago, B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 91 Iowa 16, 58 N.W. 918 (1894).

Party entitled only to compensation in manner prescribed by law. Connolly v. Griswold, 7 Iowa 416, 7 Clarke 416 (1858).

Statutory provisions must be strictly complied with. Walters v. Houck, 7 Iowa 72, 7 Clarke 72 (1858).

6. Actions for damages.

In determining just compensation for land taken by eminent domain, evidence of comparable sales is admissable as substantive evidence of value, and it is for jury to determine weight and credit of such evidence. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Appeal from condemnation awards involves appellate, not original, jurisdiction of the district courts. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Plaintiff not entitled to severance damages on basis of partial taking of single unit composed of two tracts. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Location of corner established by government survey held question of fact for court sitting without jury. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

County condemning land not liable to owner, not served with notice, for damages in trespass. Gibson v. Union County, 208 Iowa 314, 223 N.W. 111 (1929).

Suit for damages was not adequate remedy to owner whose land was seized under eminent domain. Scott v. Price Bros. Co., 207 Iowa 191, 217 N.W. 75 (1927).

Rule that failure to condemn gives owner right to elect action at law does not apply to county. Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363 (1923).

Proceeding to assess damages to land could not be collaterally attacked in action of trespass. Carlisle v. Des Moines & K. C. R. Co., 99 Iowa 345, 68 N.W. 784 (1896).

7. Ejectment.

Ejectment would lie where property was taken by railroad without tender of payment. Daniels v. Chicago & N. W. R. Co., 35 Iowa 129 (1872), Am. Rep. 490.

8. Injunction.

In suit to enjoin condemnation proceeding plaintiff must show equitable gound to justify interference. Porter v. Board of Sup'rs of Monona County, 238 Iowa 1399, 28 N.W.2d 841 (1947).

Action to enjoin improvement properly dismissed where no wrongful acts or proceedings were shown. Mill v. City of Denison, 237 Iowa 1335, 25 N.W.2d 323 (1947).

Injunction proper remedy to prevent establishment of highway through orchard and ornamental grounds. Hoover v. State Highway Commission, 207 Iowa 56, 222 N.W. 438 (1938).

Equity cannot enjoin or impose conditions precedent to prosecution of condemnation proceedings. Herman v. Board of Park Com'rs of City of Boone, 200 Iowa 1116, 206 N.W. 35 (1925).

Injunction arresting proceedings before stage of assessment of damages and prior to appeal was improperly invoked. Minear v. Plowman, 197 Iowa 1188, 197 N.W. 67 (1924).

Certain persons were neither necessary nor proper parties in action to enjoin proceeding to establish public way. Miller v. Kramer, 154 Iowa 523, 134 N.W. 538 (1912).

Question of waiver of objections could not be considered for first time on appeal. Scott v. Frank, 121 Iowa 218, 96 N.W. 764 (1903).

Since objection can be made that property sought is already devoted to public use no action will lie to enjoin condemnation. Waterloo Water Co. v. Hoxie, 89 Iowa 317, 56 N.W. 499 (1893).

Grounds insufficient for injunction against proceedings. Keokuk & N. W. R. Co. v. Donnell, 77 Iowa 221, 42 N.W. 176 (1889).

Owner could not maintain suit in equity to have proceedings declared void for irregularity since he had statutory right of appeal. Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1884).

Railway could compel specific performance of contract to convey right of way after complying with conditions and enjoin condemnation proceedings. Chicago & S. W. R. Co. v. Swinney, 38 Iowa 182 (1874).

9. Mandamus.

Mandamus will lie to compel condemnation where land has been taken without authority and without compensation. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975). Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973). Baird v. Johnston, 230 Iowa 161, 297 N.W. 315 (1941).

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

Under the facts, plaintiff was entitled to compel assessment of damages. Dawson v. McKinnon, 226 Iowa 756, 285 N.W. 258 (1939).

10. Agreements, settlements, stipulations, and waiver.

Issue of waiver cannot be raised by special appearance. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

If damages may be avoided by waiver or stipulation, which will fully protect all parties concerned such waiver should be received and acted upon. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

Evidence insufficient to authorize finding that there has been a settlement or compromise. Mason v. Iowa Cent. Ry. Co., 131 Iowa 468, 109 N.W. 1 (1906).

11. Property, estates, or interests subject to eminent domain.

Although a landowner whose property abuts upon public highway is not entitled to access to his land at all points between property and highway, such landowner does have property right in nature of easement appurtenant to ownership of free and convenient ingress to and egress from property to particular highway upon which land abuts. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Eminent domain can be exercised only for public use and cannot be utilized for taking private property from one person for private use of another. Simpson v. Low-rent Housing Agency of Mt. Ayr, 224 N.W.2d 624 (Iowa 1974).

One whose personal property is damaged, destroyed, or reduced in value in a condemnation is entitled to compensation. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Leasehold estate is "property" and when taken in exercise of eminent domain is compensible. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963). Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

City lacks power of eminent domain with reference to acquisition of light, air and view affecting properties abutting on street in area to be occupied by viaduct. O.A.G. January 14, 1949, p. 11.

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

12. Payment.

Payment of award by condemnor, prior to giving notice of appeal, did not divest district court of jurisdiction of subject matter of appeal by condemnor from compensation commission award. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Iowa Relocation Assistance Act, section 316.1 et. seq., provides for payments separate from and in addition to just compensation payable in condemnation proceedings. O.A.G. Nov. 20, 1970.

Payment of damages to be in money. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503.

13. Title, estate, interest, or rights acquired.

Power company condemning strip acquired easement. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503.

14. Foreign corporations.

Foreign corporation lacks power of eminent domain and owner cannot maintain such proceeding against such corporation. Holbert v. St. Louis, K. C. & N. C. R. Co., 45 Iowa 23 (1876).

15. Tenants for years.

A tenant for years is the owner of property subject to condemnation. Skaff v. Sioux City, 255 Iowa 49, 120 N.W.2d 439 (1963).

16. Compliance with statute.

Landowner who is dissatisfied with assessment by condemnation commissioners and who desires to appeal to district court must substantially follow procedure prescribed by this chapter, and if he fails to do so, the commissioners' award stands. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Landowner, who on appeal had increased highway condemnation award of damages, not entitled to attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

Compliance with condemnation statute is essential. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

17. Pleadings.

Waiver is an affirmative defense, and is not jurisdictional. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Allowing landowners in condemnation case to amend their petition was within sound discretion of trial court. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

472.2 By Whom Conducted (No Annotations)

472.3 Application for Condemnation

1. Construction and application.

Appointment of compensation commission by chief judge of judicial district of county in which private land sought to be condemned is located. State v. Johann, 207 N.W.2d 21 (Iowa 1973).

Failure to name and serve contract vendors and mortgagee constituted substantive error and rendered eminent domain proceedings and award a nullity. Bourjaily v. Johnson County, 167 N.W.2d 630 (Iowa 1969).

Determination as to necessity of taking private property for public use is ordinarily a legislative, not judicial function. Thornberry v. State Bd. of Regents, 186 N.W.2d 154 (Iowa 1971).

Right to enter on land for purpose of making preliminary surveys and investigations in contemplation of highway condemnation could not reasonably be implied from this section requiring that condemnor file application describing property and a plat showing location of right of way. Iowa State Highway Commission v. Hipp, 259 Iowa 1082, 147 N.W.2d 195 (1966).

Only by process of appeal does district court obtain jurisdiction, and then appellate only. Mazzoli v. City of Des Moines, 247 Iowa 571, 63 N.W.2d 218 (1954).

Proceeding before sheriff is administrative till appeal has been taken. Chicago, R. I. & P. R. Co. v. Stude, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338 (1954), rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

Compliance with statutes gave jurisdiction of proceedings to assess damages whether or not equitable owners were properly joined as plaintiffs. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

Prior survey, if made, is not commencement of condemnation proceedings. Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 116 Iowa 681, 88 N.W. 1082 (1902).

2. Limitations.

Right of landowner to prosecute condemnation proceedings was not cut off in five years by statute of limitations relative to injuries to real property. Gates v. Colfax Northern Ry. Co., 177 Iowa 690, 159 N.W. 456 (1916).

3. List of owners and parties.

Where provision of this section requires that all persons holding liens or encumbrances on land to be condemned be named in the application and be given notice of proceedings, due process requires no less as to those holding liens or encumbrances of record on personal property which may be damaged, destroyed or reduced in value by condemnation proceedings against real state. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Listing of all record owners of property affected is not jurisdictional requirement. Mill v. City of Denison, 237 Iowa 1335, 25 N.W.3d 323 (1947).

Purchaser of property sought to be condemned was real party in interest. Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W. 979 (1925).

Compliance with statutes gave jurisdiction of proceedings to assess damages whether or not equitable owners were properly joined as plaintiffs. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

Company taking right of way could not complain that contract purchasers were made parties. Wolfe v. Iowa Ry. & Light Co., 173 Iowa 277, 155 N.W. 324 (1915).

4. Particular facts.

Application to sheriff by landowner asking assessment of damages, need not allege that he refused to grant right of way. Hartley v. Keokuk & N. W. R. Co., 85 Iowa 455, 52 N.W. 352 (1892).

Foreign corporation lacks power of eminent domain and owner cannot maintain such proceeding against such corporation. Holbert v. St. Louis, K. C. & N. R. Co., 45 Iowa 23 (1877).

5. Extent of property or rights to be taken.

Where limited right is desired by condemnor, limitations should be made part of record by placement in petition or order of condemnation. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

That notice stated right of way was for a "suburban and interurban line" did not prevent operation of steam trains without new condemnation. Lewis v. Omaha & C. B. S. Ry. Co., 158 Iowa 137, 138 N.W. 1092 (1912).

6. Damages.

Form of application did not limit claim to damages to lots particularly described. Cox v. Mason City & Ft. D. R. Co., 77 Iowa 20, 41 N.W. 475 (1889).

7. Amendments.

Petition for damages can be amended by increase in amount claimed. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

8. Answer.

Formal pleadings not required in condemnation proceedings. Mason v. Iowa Cent. R. Co., 131 Iowa 468, 109 N.W. 1 (1906).

Objection can be made by answer to application. Bennett v. City of Marion, 106 Iowa 628, 76 N.W. 844 (1898).

9. Leases.

Leasehold estate is "property" and when taken in exercise of eminent domain, is compensable. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963). Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963). Batcheller v. Iowa State Highway Commission, 251 Iowa 364, 101 N.W.2d 30 (1960).

10. Tenants for years.

A tenant for years is the owner of property subject to condemnation. Skaff v. Sioux City, 255 Iowa 49, 120 N.W.2d 439 (1963).

11. Entry.

Highway Commission did not have, under power of eminent domain granted to it, right to enter upon or explore land before proceedings to acquire it. Iowa State Highway Commission v. Hipp, 259 Iowa 1082, 147 N.W.2d 195 (1966).

12. Review.

Challenge of appointment of condemnation commission. Koss v. City of Cedar Rapids, 271 N.W.2d 730 (Iowa 1978).

13. Notice.

Condemnation notice which stated it was for right of way of transmission line sufficiently specified property interest of utility to comply with statute which required notice to describe land for condemnation. SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635 (Iowa 1983).

472.4 Commission to Assess Damages

1. Validity.

No deprivation of jury trial since such can be had on appeal. Tharp v. Witham, 65 Iowa 566, 22 N.W. 677 (1885).

2. Construction and application.

Specification of mode that chief judge must use in selecting commissioners. State v. Johann, 207 N.W.2d 21 (Iowa 1973).

Condemnation commission which assessed damages was properly constituted. Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971).

On appeal from commissioner's awards in condemnation proceedings, trial court has authority to make proper assessment of costs. Fanning v. Mapco, Inc., 181 N.W.2d 190 (Iowa 1970).

Presence of metal deposits in land is proper element to consider in valuing property condemned. Townsend v. Mid-American Pipeline Co., 168 N.W.2d 30 (1969).

Measure of damages for partial taking is the difference in actual, or fair market value of property immediately before and after condemnation. Reeder v. Iowa State Highway Commission, 166 N.W.2d 839 (Iowa 1969).

Condemnation commission is an impartial and independent body organized for purpose of awarding a price for condemned property fair to both condemnee and condemnor. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

Proceeding is administrative till appeal has been taken to district court. Chicago, R. I. & P. R. Co. v. Stude, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. (1954), rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

Sheriff's commission is in no sense a judicial tribunal. Chicago, R. I. & P. R. Co. v. Kay, D. C., 107 F. Supp. 895 (1952), affirmed in part and reversed in part on other grounds, 204 F2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

3. Qualified persons.

Appointment of persons eligible to serve on compensation commission. O.A.G. July 22, 1971.

That five or six members of commission, though freeholders of county, were not freeholders of city, was no basis for action to set aside proceedings. Mill v. City of Denison, 237 Iowa 1335, 25 N.W.2d 323 (1947).

Commissioners could be reappointed after injunction was dissolved. Miller v. Kramer, 154 Iowa 523, 134 N.W. 538 (1912).

Code 1897 did not require jury to assess damages to be composed of same members as in previous years. Gray v. Iowa Cent. R. Co., 129 Iowa 68, 105 N.W. 359 (1905).

Party had right to have compensation determined by competent tribunal. Ragatz v. City of Dubuque, 4 Iowa 343, 4 Clarke 343 (1857).

4. Bias or prejudice.

Bias or prejudice of commissioners to assess damages from their previous services as such did not vitiate the proceedings. Price v. Town of Earlham, 175 Iowa 576, 157 N.W. 238 (1916).

On appeal it is immaterial whether sheriff was agent of railroad, or whether jury expressed opinions adverse to rights of owners. Mississippi & M. R. Co. v. Rosseau, 8 Iowa 373, 8 Clarke 373 (1859).

5. Fees and costs.

Compensation of sheriff. Robb v. A. K. & D. M. R. Co., 44 Iowa 440 (1876).

6. Settlement.

Where easement had been taken by condemnation and land was entered into, alleged settlement of damages was not contract involving real estate within statute of frauds, and trial court properly admitted evidence of claimed settlement. Cunningham v. Iowa-Illinois Gas & Elec. Co., 243 Iowa 1377, 55 N.W.2d 552 (1952).

7. Amount of award.

Condemnation award on appeal less than award of commissioners. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Measure of damages in eminent domain proceedings is the property's reasonable market value at the "time of taking." Heldenbrand v. Executive Council of Iowa, for Use and Benefit of State, 218 N.W.2d 628 (Iowa 1974).

Measure of recovery where part of property is taken in condemnation proceeding. Townsend v. Mid-America Pipeline Co., 168 N.W.2d 30 (Iowa 1969).

Plaintiff not entitled to severance damages on basis of partial taking of single unit composed of two tracts. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Damage award not excessive. Hostert v. Iowa State Highway Commission, 250 Iowa 253, 93 N.W2d 773 (1959).

8. Evidence.

Value of removable product resulting in complete depletion of value of land is proper evidence in proving before and after value. Townsend v. Mid-America Pipeline Co., 168 N.W.2d 30 (Iowa 1969).

Unity of property required to compel condemnor to take both properties is quite different and much more difficult to establish than unity which would permit evaluation of whole for purpose of establishing severance damages. Hutchinson v. Maiwurm, 162 N.W.2d 408 (Iowa 1968).

Record of commissioners' proceedings in highway condemnation case established that commissioners had substantially complied with statutory requirements and given due consideration to all elements of damages, even though they had not closely examined farm buildings and other portions of farm not taken. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

9. Misconduct.

To justify new trial because of misconduct of jurors, it must appear that misconduct was calculated to influence verdict and that it is reasonably probable that it did so. Townsend v. Mid-America Pipeline Co., 168 N.W.2d 30 (Iowa 1969).

472.5 Vacancies (No Annotations)

472.6 Repealed by Acts 1970 (63 G.A.) ch. 1225, § 3.

472.7 Commissioners to Qualify

1. Construction and application.

Compliance with statutory provisions relating to filing of oath of assessment by commissioners is essential to validity of oath. Miller v. Palo Alto Bd. of Sup'rs, 248 Iowa 1132, 84 N.W.2d 38 (1957).

2. Evidence.

Action contesting validity of assessment of damages for taking of property - evidence insufficient to show oath administered. Miller v. Palo Alto Bd. of Sup'rs, 248 Iowa 1132, 84 N.W.2d 38 (1957).

472.8 Notice of Assessment

1. Construction and application.

Notice in condemnation proceedings is commencement of the action. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

Compliance with statutes as to application for appointment of jury and notice of time of viewing premises gave jurisdiction. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

Where application and notice were duly made and owner was present at viewing, took part, and made statements as to value, freeholders had jurisdiction to assess damages. Carlile v. Des Moines & K. C. R. Co., 99 Iowa 345, 68 N.W. 784 (1896).

Public offense not committed where condemnee informs condemnation appraisal commission as to what similarly situated land had recently sold for. O.A.G. April 5, 1965.

2. Persons entitled to notice.

Mortgagee entitled to notice. Severin v. Cole, 38 Iowa 463 (1874).

3. Necessity of notice.

Although condemnees owned two adjacent tracts, one encumbered by federal land bank mortgage, where transmission line right of way was sought by power company, easement did not traverse any portion of land encumbered by mortgage. Federal land bank was not entitled to notice of condemnation. Yoder v. Iowa Power and Light Company, 215 N.W.2d 328 (Iowa 1974).

Owner on whom no notice was served was not bound. Gibson v. Union County, 208 Iowa 314, 223 N.W. 111 (1929).

Where appeal is made on merits it is immaterial whether notice was given. Borland v. Mississippi & M. R. Co., 8 Iowa 148, 8 Clarke 148 (1859).

4. Effect of notice.

By suitable statements in application condemnor may limit rights to be acquired. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

5. Waiver of notice or defects.

Owner not named in notice is not charged with notice of proceedings, but, if he appeals, such objection is waived. Ellsworth v. Chicago & I. W. R. Co., 91 Iowa 386, 59 N.W. 78 (1894).

472.9 Form of Notice

1. Construction and application.

Though there must be strict compliance with statute regulating exercise of eminent domain, such does not necessarily mean literal compliance with notice statute, and substantial conformity is sufficient. SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635 (Iowa 1983).

Notice of condemnation must be given in substantial compliance with statute. Koss v. City of Cedar Rapids, 271 N.W.2d 730 (Iowa 1978).

Company could, by reservation in application and notice, limit condemnation, but failure to do so was not fatal to right of company to have

matter considered on appeal. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

Compliance with statutes as to application for appointment of jury and notice of time of viewing premises gave jurisdiction. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

2. Naming persons.

Plaintiffs shown to hold record legal title to personal property alleged to have been damaged, destroyed, or reduced in value pursuant to condemnation are entitled to notice. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Failure to name and serve contract vendors and mortgagee constituted substantive error and rendered eminent domain proceedings and award a nullity. Bourjaily v. Johnson County, 167 N.W.2d 630 (Iowa 1969).

Persons must be named if their land is to be taken. Birge v. Chicago M. & St. P. R. Co., 65 Iowa 440, 21 N.W. 767 (1884).

3. Description of land.

Condemnation notice for transmission line substantially complied with statute for notice required to describe the land in such a manner as to be clearly identified. SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635 (Iowa 1983).

Notice describing land to be taken as a certain number of feet on each side of center line of railroad "as same is located, staked and marked," was sufficient. Lower v. Chicago B. & O. R. Co., 59 Iowa 563, 13 N.W. 718 (1882).

4. Persons entitled to object.

Koss v. City of Cedar Rapids, 271 N.W.2d 730 (Iowa 1978).

472.10 Signing of Notice (No Annotations)

472.11 Filing of Notices and Return of Service (No Annotations)

472.12 Notice to Nonresidents

1. Construction and application.

Condemnation statutes required strict construction and strict compliance, and service of notice must comply with R. C. P. 60. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.d 905 (1946).

2. Affidavit as to personal service.

To justify notice by publication under R. C. P. 60, an affidavit must be filed with sheriff that personal service cannot be had on owner in Iowa. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

3. Sufficiency of notice.

Notice by publication to holder of legal title, and "all other persons interested," did not charge holder of tax sale certificate with notice of proceedings. Cochran v. Independent School Dist. of Council Bluffs, 50 Iowa 663 (1879).

472.13 Service Outside State (No Annotations)

472.14 Appraisement - Report

1. Construction and application.

In this section, the legislature intended to include as compensable, damages to personal property on land owned or leased by condemnee and used in connection with property taken by eminent domain proceedings, regardless of whether it is actually located on the land condemned. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1969).

Only valid and legal appraisement can sustain taking on highway condemnation. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Presence and participation of landowner at viewing conferred jurisdiction on freeholders to assess damages. Carlisle v. Des Moines & K. C. R. Co., 99 Iowa 345, 68 N.W. 784 (1896).

2. Proceedings in general.

Landowner dissatisfied with assessment by condemnation commissioners and who desires to appeal to district court must substantially follow procedure prescribed by this chapter. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

State has right to diminish its condemnation during trial. Henderson v. Iowa State Highway Commission, 260 Iowa 891, 151 N.W.2d 473 (1967).

In condemnation proceedings, it was proper for each expert witness to state what he considered was principal element of value of property, and to give little or no value to other elements. Kaperonis v. Iowa State Highway Commission, 251 Iowa 1166, 104 N.W.2d 458 (1960).

It is duty of sheriff's jury to personally examine premises. City of Des Moines v. Layman, 21 Iowa 153 (1866).

There must be a full, intelligent and competent inquiry into question of individual loss or damage. Walters v. Houck, 7 Iowa 72, 7 Clarke 72 (1858).

3. Issues.

Question of right to condemn for purposes named was not concern of commissioners. Forbes v. Delashmutt, 68 Iowa 164, 26 N.W. 56 (1885).

4. Damages - in general.

Owner of remainder area not entitled in condemnation proceeding to recover for damages caused by taker's use of property acquired from adjoining landowners. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975).

In eminent domain proceedings, where parties differ as to highest and best use, they are entitled to present evidence of market value based on their differing theories of highest and best use. Vine St. Corp. v. City of Council Bluffs, 220 N.W.2d 860 (Iowa 1974).

Duty of sheriff's jury to assess condemnee's damages according to notice given and application filed with sheriff. Henderson v. Iowa State Highway Commission, 260 Iowa 891, 151 N.W.2d 473 (1967).

Owner of property may be entitled to damages for taking for public use, even though he has parted with his title and ownership before award is paid. Crawford v. City of Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1964).

Separate item of damages not required to be found for each element of value included in condemnation award. Kaperonis v. Iowa State Highway Commission, 251 Iowa 1166, 104 N.W.2d 458 (1960).

5. Measure of damages, in general.

Evidence of mineral deposits is only a permissible consideration and not a yardstick for measuring damages. Nedrow v. Michigan-Wisconsin Pipe Line Co., 245 Iowa 763, 61 N.W.2d 687 (1954).

6. Before and after taking, in general, measure of damages.

Measure of damages for partial taking is difference in actual, or fair market value of property immediately before and after condemnation. Reeder v. Iowa State Highway Commission, 166 N.W.2d 839 (Iowa 1969).

Use of pencil and paper in computation is not proof of use of improper unit rule in measure of damage. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Where all property was taken, reasonable market value of property immediately before condemnation was measure of damages. Kaperonis v. Iowa State Highway Commission, 251 Iowa 1166, 104 N.W.2d 458 (1960).

Basis of award was difference between reasonable market value of entire tract immediately before the condemnation and of the remaining portion after the taking. Hall v. City of West Des Moines, 245 Iowa 458, 62 N.W.2d 734 (1954).

Difference in value of entire farm should be considered. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628 (1932).

Damages not to be awarded be assessment of a series of specific items. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

Proper to consider effect which proper use of condemned strip will have on remainder. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Only question involved is value before and after the taking. Eggleston v. Town of Aurora, 233 Iowa 559, 10 N.W.2d 104 (1943).

7. Fair, reasonable, market value, measure of damages.

Market value of property condemned is true test in condemnation proceedings. Redfield v Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

Fair value may be more or even less than owner's investment. Foster v. U.S., 145 F.2d 873 (1945).

8. Time of taking, measure of damages.

Instruction that amount recoverable by lessee for destruction or reduction in value of personal property on taking was fair and reasonable value of such personal property to the extent that the same was destroyed, damaged, or reduced in value was reversibly erroneous. Nidy & Co. v. State, 189 N.W.2d 583 (1971).

Measure of damages for condemned land is its reasonable market value at time of taking. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963). Kaperonis v. Iowa State Highway Commission, 251 Iowa 415, 100 N.W.2d 901 (1960).

Measure of damages is value as a whole in condition it was in at date of condemnation. Ranck v. City of Cedar Rapids, 134 Iowa 563, 111 N.W. 1027 (1907).

Benefits to owner should be excluded. Bennett v. City of Marion, 106 Iowa 628, 76 N.W.844 (1898).

9. Remote, contingent and speculative, measure of damages.

Not to be considered as evidence of value of condemned property. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

In condemnation proceedings, excluding evidence concerning price paid by owner for entire tract eight years previously, was not an abuse of discretion. Hall v. City of West Des Moines, 245 Iowa 458, 62 N.W.2d 734 (1954).

10. Leaseholds, measure of damages.

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

Measure of damage to leaseholder ordinarily its market value. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

Benefits to owner should be excluded. Sater v. Burlington & Mt. P. Plank Road Co., 1 Iowa 386 (1855).

11. Land as entity, or separate lots, parts, or tracts, damages.

Owners of land condemned for road relocation not entitled to recover as part of condemnation award for damage to remainder of land when occupied road was elevated in conjunction with relocation, resulting in drainage pattern and flooding. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975).

Damage from loss of lateral support due to construction of new road was not within contemplation of original award, and owners could compel new condemnation. Mapes v. Madison County, 252 Iowa 395, 107 N.W.2d 62 (1961).

Two tracts of land contiguous to each other, owned by same person and not used in connection with each other considered as separate tracts. Hoeft v. State, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008 (1936).

Damages not normally measured on whole of two separately owned tracts. Duggan v. State, 214 Iowa 230, 242 N.W. 98 (1932).

Where it appeared that plaintiff never acquired ground from which right of way over one of two tracts was taken, it was presumed that sheriff's jury took into account only appropriation over other tract. Hall v. Wabash R. Co., 141 Iowa 250, 119 N.W. 927.

Where two lots are used as one, property owner entitled to damages for injury to property as a whole. Cummins v. Des Moines & St. L. R. Co., 63 Iowa 397, 19 N.W. 268 (1884).

12. Unauthorized, unlawful or negligent acts, damages.

When damage to property owner arises by reason of defects or negligence in connection with building of new road, damage suffered is not included in original condemnation allowance. Mapes v. Madison County, 252 Iowa 395, 107 N.W.2d 62 (1961).

Damages resulting from unauthorized or unlawful acts or from neglect to perform duty to fence are to be redressed in proper action. Fleming v. Chicago, D. & M. R. Co., 34 Iowa 353 (1872). King v. Iowa Midland R. Co., 34 Iowa 458 (1872).

Jury must not permit damages for improper or unlawful use of highway. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).

Owner cannot recover damages for improper construction of improvement. Richardson v. City of Centerville, 137 Iowa 253, 114 N.W. 1071 (1908).

13. Amount of damages - in general.

All of condemnee's property substantially interfered with by a taking in condemnation proceeding should originally be considered by the condemnation commission. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1969).

Where evidence shows a compensible loss to both real estate and personal property due to condemnation, it is proper to permit the jury to consider each as a separate cause and to render verdicts accordingly. Id.

14. Real estate, amount of damages.

Awards not excessive. Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 292, 122 N.W.2d 323 (1963).

Jury award of $20,500 for condemnation of leasehold was not excessive. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

This section does not permit addition of consequential damages to the before and after value. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

Owner of furnishings sold prior to any taking not entitled to allowance for personal property destroyed or damaged. Gaar v. Iowa State Highway Commission, 252 Iowa 1374, 110 N.W.2d 558 (1961).

When a condemnee has no compensible rights, the highway commission is unauthorized to disburse public money to him. Manrique v. Iowa State Highway Commission, 252 Iowa 553, 107 N.W.2d 432 (1961).

Award not so excessive as to indicate passion and prejudice. Korf v. Fleming, 32 N.W.2d 85, 3 A. L. R.2d 270 (1948).

Defining "just compensation" as sum which would make owner whole was not prejudicial error. Witt v. State, 223 Iowa 156, 272 N.W. 419 (1937).

Award held not excessive. Besco v. Mahaska County, 200 Iowa 684, 205 N.W. 459.

Award not so excessive as to indicate prejudice. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

15. Matters considered in determining damages.

Damages to condemned land are assessed once and for all and presumed to include all present and future damages. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975).

Proceeding to determine value of portion of farm condemned for highway purposes. Harmsen v. Iowa State Highway Commission, 251 Iowa 1351, 105 N.W.2d 660 (1960).

Evidence of royalty income of owners and presence of mineral deposits properly admitted as bearing on value of farm. Nedrow v. Michigan-Wisconsin Pipe Co., 245 Iowa 763, 61 N.W.2d 687 (1954).

In condemnation proceedings, damages are not limited to value of land taken, but include all matters, present or future, that necessarily and proximately affect market value of tract. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

16. Decrease in value, matters considered in determining damages.

Decrease in value caused by percolation of water from reservoir or condemned portion may be considered. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628.

Effect on value of remaining property and extent of inconvenience may be considered. Bennett v. City of Marion, 106 Iowa 628, 76 N.W. 844 (1898).

17. Finality of determination, matters considered in determining damages.

For market value evidence in eminent domain proceeding, assessment valuation by property tax is heresay. Vine Street Corporation v. City of Council Bluffs, 220 N.W.2d 860 (Iowa 1974).

Damages, when once assessed include all injuries which may result for all time to come from construction and operation of improvement. Lage v. Pottawattamie County, 232 Iowa 944, 5 N.W.2d 161 (1942).

18. Separate estates or interests, matters considered in determining damages.

Interests of landlord and tenant in condemned real estate are several, and it is proper to value each estate or interest separately. Batcheller v. Iowa State Highway Commission, 101 N.W.2d 30 (Iowa 1960).

19. Unusual damages, matters considered in determining damages.

Unusual changes or those made necessary by artificial conditions, or which inflict special damage are not presumed to have been contemplated when land was acquired from owners. Liddick v. City of Council Bluffs, 232 Iowa 197, 5 N.W.2d 361 (1942).

20. Necessities of public, matters considered in determining damages.

Necessities of public cannot be taken into consideration in fixing value of property taken. U.S. v. Foster,C.C.A., 131 F.2d 3, (1942), certiorari denied, 63 S.Ct. 760, 318 U.S. 767, 87 L.Ed. 1138. U.S. v. Buescher, C.C.A., 131 F.2d 3 (1942), certiorari denied, 63 S.Ct. 760, 318 U.S. 767, 87 L.Ed. 1138.

21. Profits, personal property, crops, buildings, matters considered in determining damages.

A condemnee is entitled to compensation for damage to, destruction of, or reduction in value of personal property even if it is not located on the condemned land, as long as it was used in connection with a business operated on that land. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973).

Losses incident to necessity of selling personal property by owner are not elements to include in fixing fair market value. Foster v. U.S., 145 F.2d 873 (1945).

One occupying land under a leasehold upon which he has personal property used exclusively with his condemned land may recover for resulting reduction in value of his personal property in order to be made whole. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1969).

Profit of a business is to uncertain to be accepted in condemnation case as evidence of usuable value of property. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

Commissioners had substantially complied with statutory requirements and given due consideration to all elements of damages, even though they had not closely examined farm buildings and other portions of farm not taken. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

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

Value of growing crops on land taken was included in the award of damages. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

Evidence of royalty income of owners and presence of mineral deposits properly admitted as bearing on value of farm. Nedrow v. Michigan-Wisconsin Pipe Line Co., 245 Iowa 763, 61 N.W.2d 687 (1954).

Losses incident to necessity of selling personal property by owner are not elements to include in fixing fair market value. Foster v. U. S., C. C. A., 145 F.2d 873 (1945).

Evidence that leasehold was profitable is admissible to illustrate value of premises for rent. Korf v. Fleming, 32 N.W.2d 85, 3 A. L. R.2d 270 (1948).

Value of growing crops lost by condemnation admissible. Bracken v. City of Albia, 194 Iowa 596, 189 N.W. 972 (1922). Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Cost of rebuilding structure to quality and condition prior to taking and loss sustained by being deprived of its use when such loss was the immediate and necessary consequence, should be considered. Freeland v. City of Muscatine, 9 Iowa 461 (1859). Kahn v. City of Muscatine, 9 Iowa 461 (1859).

Value of buildings on land condemned considered in determining compensation. O.A.G. 1930, p. 184.

22. Uses and adaptability of land, matters considered in determining damages.

Trial court justified in permitting collateral attack on zoning ordinance by owners of property against which city brought eminent domain action. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

In eminent domain proceeding, where condemnor conceded the existing use was not the highest and best use of the property, condemnor's evidence of market value based on one use did not have probative value in establishing market value based on an unrelated use. Vine St. Corp. v. City of Council Bluffs, 220 N.W.2d 860 (Iowa 1974).

Where there was evidence of industrial development in the territory, question of adaptability for industrial uses could be considered. Hall v. City of West Des Moines, 245 Iowa 458, 62 N.W.2d 734 (1954).

Value determined by consideration of uses to which property is adapted and all circumstances that affect such value. Korf v. Fleming, 32 N.W.2d 85, 3 A.L.R.2d 270 (1948).

Compensation payable in view of physical condition of premises, present use and improvement, and fitness and desirability for other future uses. Hubbell v. City of Des Moines, 183 Iowa 715, 167 N.W. 619 (1918).

23. Most advantageous and valuable use, uses and adaptability of land, matters considered in determining damages.

Jury may consider all uses to which land is adapted and may award compensation on basis of most advantageous and valuable use. U.S. v. Foster, C.C.A., 13 F.2d 3 (1904). U.S. v. Buescher, C.C.A., 131 F.2d 3 (1904).

24. Comparable use, uses and adaptability of land, matters considered in determining damages.

The market value of a leasehold is to be appraised by considering what it is worth as improved by the tenant and includes such elements as location, accessibility, possible uses, improvements and fixtures and their use. Nidy & Co. v. State, 189 N.W.2d 583 (Iowa 1971).

Use of condemned lot, which was owned jointly by husband and wife in connection with two other lots, which were owned individually by husband and which had been condemned in separate proceeding, could be considered in fixing fair market value of jointly-owned lot. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

25. Particular use, uses and adaptability of land, matters considered in determining damages.

Fact that farm is operated differently from condemned farm does not render its sale price inadmissible as comparable sale if it is otherwise sufficiently similar to subject property. Crozier v. Iowa - Illinois Gas & Elec. Co., 165 N.W.2d 833 Iowa (1969).

Owner may show property to be peculiarly adaptable to particular purpose for which taken. Tracy v. City of Mt. Pleasant, 165 Iowa 435, 146 N.W. 78 (1914).

26. Reasonable use, uses and adaptability of land, matters considered in determining damages.

Condemned property must be evaluated, with its potentialities and its highest and best reasonable uses, as it was immediately before the taking. Crist v. Iowa State Highway Comm., 255 Iowa 615, 123 N.W.2d 424 (1963).

Owner of property condemned is entitled to have the jury informed of all the capabilities of the property as to the business or use if any to which it has been devoted and any use to which it might reasonably be adapted or applied. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

27. Lawful and proper use, uses and adaptability of land, matters considered in determining damages.

In proceeding to condemn land for relocation of a highway, an instruction to the jury to assume that the highway and access road upon completion would be used in a lawful and proper manner was unnecessary. Bryan v. Iowa State Highway Commission, 251 Iowa 1093, 104 N.W.2d 562 (1960).

28. Industrial use, uses and adaptability of land, matters considered in determining damages.

Where there was evidence of industrial development in the territory, question of adaptability for industrial uses could be considered. Hall v. City of West Des Moines, 245 Iowa 458, 62 N.W.2d 734 (1954).

29. Rental income, uses and adaptability of land, matters considered in determining damages.

Rental income not to be taken as sole test of market value, but is only one of the elements to be taken into consideration. Kaperonis v. Iowa State Highway Commission, 100 N.W.2d 901 (Iowa 1960).

30. Rights acquired, uses and adaptability of land, matters considered in determining damages.

In assessing damages, it is not what the condemnor intends to do, but what it acquires the right to do, that determines the quantum of damages. Henderson v. Iowa State Highway Commission, 260 Iowa 891, 151 N.W.2d 473 (1967).

31. Present intention, uses and adaptability of land, matters considered in determining damages.

Fact that condemnor has no present intention of exercising all rights acquired or probability that its use may be a limited one are not proper matters for consideration in fixing compensation. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

32. Benefits, matters considered in determining damages.

Appreciation in value of owner's adjacent land cannot be considered in estimating damages. Koestenbader v. Pierce, 41 Iowa 204 (1875).

Advantages resulting to owner not to be considered. Israel v. Jewett, 29 Iowa 475 (1870).

33. Interest.

Where land and possession are taken prior to payment of damages interest should be allowed on award. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

34. Findings, award, and report.

Award not so excessive as to permit interference by Supreme Court. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Evidence did not establish that awards in condemnation proceedings were excessive. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

Total damage suffered by condemnee is allowed in a single jury award, and it is presumed that all proper elements upon which evidence is accepted are evaluated and considered in that award. Kaperonis v. Iowa State Highway Commission, 251 Iowa 1166, 104 N.W.2d 458 (1960).

Condemnor entitled, on demand, to have assessment on tract, if entitled to consequential damages, separated from assessment on tract subject to improvement. Duggan v. State, 214 Iowa 230, 242 N.W. 98 (1932).

Assessment of damages in lump sum to two tracts taken was harmless where court directed and jury found damages to each tract separately. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

Damages to tenants in common should be assessed separately if their respective interests can be ascertained. Ruppert v. Chicago, O. & St. J. R. Co., 43 Iowa 490 (1876).

Authority to set aside findings of commissioners will not be sustained on doubtful implications. Hiatt v. City of Keokuk, 9 Iowa 438 (1859).

35. Notice of award.

Mailing of notice of award, properly addressed, with proper postage raised rebuttable presumption that it was received by him. Gregory v. Kirkman Consol. Independent School Dist., 186 Iowa 914, 173 N.W. 243 (1919).

36. Objections to commissioners and award.

Objections could not be considered for first time on appeal. Scott v. Frank, 121 Iowa 218, 96 N.W. 764 (1903).

Objections to jurisdiction of sheriff's jury are not waived by an appeal from their award of damages. Slough v. Chicago & N. W. R. Co., 71 Iowa 641, 33 N.W. 149 (1887).

37. Presumptions and burden of proof.

Taxpayer has no duty to protest under evaluation of his property, and failure to do so would thus not constitute an admission concerning the value of his property. Vine St. Corp. v. City of Council Bluffs, 220 N.W.2d 860 (Iowa 1974).

Burden was upon alleged lessees to prove that they would suffer damage if highway commission was not required to condemn their leasehold and compensate them after commission purchased premises from owners. Hawbaker v. Iowa State Highway Commission, 253 Iowa 573, 113 N.W.2d 296 (1962).

Proceeding to determine value of strip of land condemned for highway purposes resulting in proposed creek channel change. Harmsen v. Iowa State Highway Commission, 251 Iowa 1351, 105 N.W.2d 660 (1960).

38. Enhancement of value.

In proceeding to condemn realty for highway purposes, admitting evidence of enhancement of value by making of the improvement is proper. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

39. Leases.

Lessee's loss by condemnation of right to use leasehold improvements which it paid for and which were not removable was realistic element of value which lessee lost by condemnation. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

Interests of lessor and lessee were several and not joint and award to one would in no way affect or prejudice other's rights in condemnation case. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Damages award for condemnation of leasehold to be decided upon particular facts of each case under consideration. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Right of lessee to compensation for taking of leasehold interest by eminent domain cannot be obliterated by agreement between owner and highway commission. Hawbaker v. Iowa State Highway Commission, 253 Iowa 573, 113 N.W.2d 296 (1962).

40. Cost of property.

Witnesses cannot testify as to cost of buildings and equipment as part of damage to a leasehold, even if buildings and equipment are completely destroyed or disposed of. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

41. Comparable land or location.

Trial court's action in permitting evidence as to sales price of nearby farms which were similar in size, use, location and character to farm involved in condemnation proceeding was not an abuse of discretion. Crozier v. Iowa - Illinois & Elec. Co., 165 N.W.2d 833 (Iowa 1969).

Size, use, location and character of land and time, mode and nature of sale of other lands have a bearing on admissibility thereof in condemnation proceedings. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Admission of testimony in condemnation case of price paid by condemnor for other land in same project or amount fixed by its appraisers has value of other land in same project was prejudicial error. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Evidence of sales of comparable property is admissable as substantive evidence of fair market value of subject property. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Extent of comparability and wait and credit to be given evidence of other sales in a condemnation proceeding is for the jury. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Evidence of comparable sales. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Trial court properly admitted evidence that lessees could find no comparable location on which to continue their restaurant business after condemnation of their leasehold for highway purposes. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Public offense not committed where condemnee writes condemnation appraisal commission to inform it what similarly situated land owned by condemnee had recently sold for. O.A.G. April 5, 1965.

42. Witnesses.

For additional annotations, see I.C.A.

43. Reduction in value.

For additional annotations, see I.C.A.

44. Actual or market value.

"Fair market value of land" is the price a willing buyer under no compulsion to buy would pay and a willing seller under no compulsion to sell

would accept. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Value of removable product, resulting in complete depletion of value, is proper evidence in proving before and after value. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

45. Time of appraisement.

Appraisal made one year before date of condemnation of land admissible when evidence showed that conditions on date of condemnation as to location, use and general condition of property was the same as the year before. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

46. Admissibility.

Trial court has discretion as to admission of testimony concerning appraisal of land made some time prior to condemnation. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Four-year lapse between date of condemnation and valuation placed on property by condemnor's expert witness did not render inadmissible his valuation testimony. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975).

47. Purchase price.

Prices condemnees had recently paid for two portions of partially condemned tract were properly to be considered on question of value of tract at time of condemnation. In re Primary Road No. Iowa 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

48. Denial or loss of access.

Landowners were entitled to damages for loss of access where proceeding instituted by condemnor specifically condemned all rights of direct access to a street and provided that no rights of direct access should inure. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

49. Future improvements.

Contemplated future improvements by condemnor were not a proper element for consideration of damages in a condemnation proceeding, even though testimony relative thereto was admitted. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

50. Earnings and income from property.

Evidence of gross income and projected gross income from business was in admissible in condemnation proceeding. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

51. Access.

While access to highway may not be entirely cut off, an owner is not entitled, as against the public, to access to his land at all points between it and the highway. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

Question of fact whether a property owner abutting condemned property has been denied access that is reasonable and convenient. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

52. Partial taking.

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

53. Moving expenses.

472.15 Guardianship (No Annotations)

472.16 Power of Guardian (No Annotations)

472.17 When Appraisement Final

1. Construction and application.

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

Only by process of appeal does district court obtain jurisdiction. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Soldiers and Sailors Civil Relief Act would safeguard appeal rights of soldier owners, if they wished to assert appeal rights. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

Damages as awarded by commissioners are final until on appeal or otherwise decision is reversed or changed. McCrory v. Griswold, 7 Iowa 248, 7 Clarke 248 (1858).

472.18 Notice of Appraisement - Appeal of Award

1. Validity.

Presumed constitutional. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

2. Construction and application.

In public utility condemnation, there can be two appealable determinations: overruling new trial motion and attorney fee award. Sykes v. Iowa Power and Light Co., 262 N.W.2d 551 (Iowa 1978).

In public utility condemnation, landowners had thirty days to appeal denial of new trial, but time ran unaffected by unrelated motion to reconsider where motion was only for attorney fees, supreme court was without jurisdiction to review district court on merits. Id.

Appeal procedure to be strictly followed. Ross v. Linn County Bd. of Sup'rs, 182 N.W.2d 121 (Iowa 1970).

3. Procedure of Appeal.

Appeal does not lie from decision of sheriff's commission in Iowa to the Federal District Court. Chicago, R. I. & P. R. Co. v. Kay, 107 F. Supp. 895, affirmed in part and reversed in part on other gounds, 204 F.2d 290, 346 U.S. 574, 98 L.Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078 (1952).

Appeal is taken by merely servicing written notice that appeal has been taken. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (Iowa 1932).

If owner is aggrieved by award he should have appealed as provided by statute. McCrory v. Griswold, 7 Iowa 248, 7 Clarke 248 (1858). Connolly v. Griswold, 7 Iowa 416, 7 Clarke 416 (1858).

Appeal rights of soldier-owners safeguarded by Soldiers and Sailors Civil Relief Act. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

Injunction arresting condemnation proceedings prior to assessment of damages or time for appeal was improperly invoked. Minear v. Plowman, 197 Iowa 1188, 197 N.W. 67 (1924).

Statutory provisions for appeal must be pursued. Thorson v. City of Des Moines, 194 Iowa 565, 188 N.W. 917 (1922).

Appeal does not lie from part of entire award of damages assessed on two tracts to one person. Cedar Rapids, I.F. & N.W. R. Co. v. Chicago, M. & St. P. R. Co., 60 Iowa 35, 14 N.W. 76 (1882).

Relevant matters overlooked by the condemnation commission can and should be brought before the district court in an appeal petition. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1969).

This section prescribes time limit and procedure by which appeal may be taken. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

Legislature had power to prescribe terms and conditions upon which condemnations may be made, including reasonable terms and conditions upon which landlord may perfect his appeal to district court. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Section 472.14 applies only to proceedings by condemnation commission and does not apply to proceedings in court when appeal is taken from commissions award. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

4. Right to Appeal.

Legislature has power to prescribe and fix terms and conditions upon which condemnations may be made, including reasonable terms and conditions upon which landowner may perfect his appeal to the district court. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Notice must be given for statutory right of appeal. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

Right to appeal or to have a judicial determination of damages in condemnation case is limited by reasonable and proper statutory procedure for protecting an appeal to the district court. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Failure to serve an adverse party within the time provided by this section is fatal to the jurisdiction of the district court. Scoular - Bishop Grain Co. v. Iowa State Highway Commission, 258 Iowa 1003, 140 N.W.2d 115 (1966).

Right to appeal is purely statutory. Kremar v. Independent School Dist. of Cedar Rapids, 192 Iowa 734, 185 N.W. 485 (1921).

Settlement with one tennant in common does not deprive others of right of appeal. Ruppert v. Chicago, O. & St. J. R. Co., 43 Iowa 490 (1876).

Appeal lay from action of supervisors establishing a private road. Bankhead v. Brown, 25 Iowa 540 (1868).

5. Time for appeal.

Court cannot extend time within which appeal may be taken from condemnation award. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

6. Persons who may or must appeal.

Condemnees special appearance did not raise issue of waiver by condemnor of right to appeal compensation. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

No appeal from award could be taken by a purchaser of the land who had not been made a party to the proceeding before the commissioners. Connable v. Chicago, M. & St. P. R. Co., 60 Iowa 27, 14 N.W. 75 (1882). Cedar Rapids, I.F. & N.W. R. Co., 60 Iowa 35, 14 N.W. 76 (1882).

District court did not acquire jurisdiction by appeal taken by person not a party to the proceeding. Gibson v. Union County, 208 Iowa 314, 223 N.W. 111 (1929).

Where railroad appealed the landowner did not have to take an appeal in order to procure greater damages. McKinnon v. Cedar Rapids & I. C. R. & Light Co., 126 Iowa 426, 102 N.W. 138 (1905).

Contract vendees who were served in condemnation proceeding were "interested parties" and had standing to raise issue that proceedings were nullity for failure of condemnor to serve contract vendors and mortgagee. Bourjaily v. Johnson County, 167 N.W.2d 630 (Iowa 1969).

7. Parties on appeal.

A mortgagee is an adverse party upon whom notice of appeal must be served when a condemnation award is appealed to the district court. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

Plaintiffs' appeal could not be dismissed on ground that certain other persons with an interest in the land in question were not joined in plaintiffs' appeal. Bales v. Iowa State Highway Commission, 249 Iowa 57, 86 N.W.2d 244 (1957).

Party to whom land had subsequently been conveyed could not, as an intervenor, be made a party to an appeal. Connable v. Chicago, M. & St. P. R. Co., 60 Iowa 27, 14 N.W. 75 (1882). Cedar Rapids, I.F. & N.W. R. Co. v. Chicago, M. & St. P. R. Co., 60 Iowa 35, 14 N.W. 76 (1882).

Where after appraisement owner died, administratrix was proper party to be substituted in his place for appeal instead of heirs. Conklin v. City of Keokuk, 73 Iowa 343, 35 N.W. 444 (1887).

Where owner failed to claim damages before supervisors, he could not be made a party on appeal. Hanrahan v. Fox, 47 Iowa 102 (1877).

Where damages were assessed jointly to two owners, appeal could not be taken without uniting the other or making him a party thereto. Chicago, R. I. & P. R. Co. v. Hurst, 30 Iowa 73 (1870).

8. Separate or joint appeals.

Where award is made to owner and mortgagee jointly, owner may appeal without joining mortgagee. Lance v. Chicago, M. & St. P. R. Co., 57 Iowa 636, 11 N.W. 612 (1882). Dixon v. Rockwell, S. & D. R. Co., 75 Iowa 367, 39 N.W. 646 (1888).

Where owner and tennant were made parties in condemnation proceedings and owner alone was awarded damages, neither was bound to join the other in an appeal. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 106 N.W. 129 (1905).

9. Jurisdiction - in general.

Subject matter jurisdiction cannot be conferred or ousted by parties or procedures of particular litigation. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Jurisdiction of subject matter is power to hear and determine cases of general class to which proceeding belongs and is unrelated to rights of parties on merits of case. Id.

It was not necessary for district court to have in personum jurisdiction of landowners to try sole issue of condemnation amount. Id.

Proceeding on appeal from allegedly excessive condemnation award, in which condemnee filed special appearance challenging jurisdiction of court, was a special proceeding not triable in equity or de novo in appellate court. Spencer Concrete Products Co. v. City of Spencer, 254 Iowa 87, 116 N.W.2d 455 (1962).

Under statute, city council could not set aside report of commissioners. Hiatt v. City of Keokuk, 9 Iowa 438 (1859).

10. Notice requirement, jurisdiction.

Failure to serve notice of appeal on condemnation commission withing thirty days of assessment - district court without jurisdiction. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

To envoke appellate jurisdiction of district court in condemnation case, this section must be followed and notice of appeal given in substantial compliance with its terms. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

If district court review is desired by either party to condemnation proceeding, notice thereof must be given in substantial compliance with the statutes. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

11. District court, jurisdiction, in general.

In an appeal from an award of a condemnation commission, the district court hears the matter de novo and has jurisdiction over matters improperly considered or overlooked by the condemnation commission. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604 (Iowa 1969).

12. Appellate jurisdiction, district court, jurisdiction.

Only by process of appeal does district court obtain jurisdiction over both subject matter and parties in a condemnation case. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

Failure to notify sheriff of appeal to district court in condemnation proceeding would defeat jurisdiction of district court to proceed with the review. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

The district court is an appellate court in condemnation cases. Schoular - Bishop Grain Co. v. Iowa State Highway Commission, 258 Iowa 1003, 140 N.W.2d 115 (1966).

District court had appellate jurisdiction of causes originating in county court, justices court and appeals from condemnation awards. Runner v. City of Keokuk, 11 Iowa 543 (1861).

13. Concurrent jurisdiction, district court, jurisdiction.

District court had concurrent jurisdiction with circuit court of appeals. City of Ottumwa v. Derks, 32 Iowa 506 (1871).

14. State district court, district court, jurisdiction.

Where appeal has been perfected and jurisdiction of state court is involved, proceeding then can be removed to U.S. District Court by defendant. Chicago, R. I. & P. R. Co. v. Stude, 346 U.S. 574 (1954).

15. Notice - in general.

Right of appeal is waived when condemnor, with knowledge of circumstances, voluntarily and intentionally pays award other than under § 472.25. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Where either party, within 30 days of time of assessment, filed with clerk of district court, his claim for appeal, with bond, appeal would not be dismissed for reason that other party did not receive notice within 30 days of the assessment. Dubuque & P. R. Co. v. Crittenden, 5 Iowa 514, 5 Clarke 514 (1857).

Notice of appeal is in no sense "original notice" for commencing civil action. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (1932).

Provision providing for notice applies to all types of condemnation proceedings. Crawford v. Iowa State Highway Commission, 247 Iowa 736, 76 N.W.2d 187 (1956).

16. Parties entitled, notice.

A condemned tract encumbered by mortgage of federal land bank for easement of transmission line was not involved in portion encumbered by the bank and bank had no interest in land being sought for easement. Yoder v. Iowa Power and Light Co., 215 N.W.2d 328 (Iowa 1974).

Where real estate taxes on condemned land were not fully paid, county as lien holder was entitled to notice of condemnee's appeal from condemnation award. Reeder v. City of Cedar Rapids, 201 N.W.2d 71 (Iowa 1972).

Failure of condemnor to serve contract vendors within time provided by this section was fatal to jurisdiction of district court. Griffel v. Norther Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

Test applied in determining whether one is adverse party who must be given notice of appeal. Bisenius v. Palo Alto County, 256 Iowa 196, 127 N.W.2d 128 (1964).

Where report of commissioners was brought before district court 14 months after filing appeal bond, it was error to try cause anew and assess damages without notice of appeal to company. Burlington & M. R. R. Co. v. Sinnamon, 9 Iowa 293 (1859).

17. Written notice.

Appeal is taken by merely serving written notice that appeal has been taken. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (Iowa 1932).

18. Service of notice.

Failure to serve mortgagee within the 30-day period deprived the district court of jurisdiction. Scoular - Bishop Grain Co. v. Iowa State Highway Commission, 140 N.W.2d 115 (Iowa 1966).

R.C.P. 49, on commencement of action for purposes of computing limitations by giving notice to sheriff, is not applicable to proceeding for condemnation of leasehold interest. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Absent statutory regulation on manner of appeal, any act sufficient to indicate intent to appeal was sufficient as notice. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

19. Effect of no jurisdiction, notice.

Failure to serve adverse party in condemnation proceeding within time provided by this section authorizes interested party to appeal from assessment to district court is fatal to jurisdiction of district court. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

20. Appeal bond.

In case of appeal by landowner no bond was necessary. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

There was no error in filing bond with clerk instead of sheriff. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1865).

21. Persons named and notified.

Test usually applied in determining whether one is an "adverse party" who must be given notice of appeal is whether he will be prejudiced or adversely affected by reversal or modification of judgment appealed from. Bales v. Iowa State Highway Commission, 249 Iowa 57, 86 N.W.2d 244 (1957).

Notice of appeal not served on sheriff conferred no jurisdiction on district court. Thorson v. City of Des Moines, 194 Iowa 565, 188 N.W. 917 (1922).

Notice of appeal served on sheriff was insufficient where proceedings had been instituted before county superintendent of schools. Kremar v. Independent School District of Cedar Rapids, 192 Iowa 734, 185 N.W. 485 (1921).

That sheriff was named on notice of appeal served on defendant and sheriff did not prejudice defendant or make sheriff party of action. Buckmiller v. Creston W. & D. M. Ry. Co., 164 Iowa 502, 146 N.W. 447 (1914).

It was proper on appeal to serve notice of appeal on county school superintendent instead of sheriff. Haggard v. Independent School District of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Under provision permitting service on "agent", service could be made on railroad company's civil engineer. Jamison v. Burlington & W. R. Co., 69 Iowa 670, 29 N.W. 774 (1886).

Notice of appeal accepted by deputy sheriff where directed to do so by sheriff, in writing, signed by sheriff's name, is sufficient. Waltmeyer v. Wisconsin, I. & N. R. Co., 64 Iowa 688, 21 N.W. 139 (1884).

It was not essential that service also be made on sheriff. Hahn v. C. O., & St. J. R. Co., 43 Iowa 333 (1876).

22. Limitations.

Failure to serve an adverse party within time provided by this section governing appeals from condemnation awards is fatal to district court's jurisdiction. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

Failure to appeal within time provided by law is fatal to jurisdiction of appellate court. Bisenius v. Palo Alto County, 256 Iowa 196, 127 N.W.2d 128 (1964).

Where notice was not given within time required by statute district court did not obtain jurisdiction. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Time for appeal runs from time assessment is actually made and reduced to writing, and in a legitimate way brought to notice of the parties. Jamison v. Burlington & W. R. Co., 69 Iowa 670, 29 N.W. 774 (1886).

23. Certiorari.

Certiorari is available in condemnation cases involving jurisdictional questions, substantial departure from statutory requirements, and other illegalities by lower tribunal, board or commission. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Certiorari to review proceedings to establish road was limited to steps taken after a former decree was entered. Miller v. Kramer, 154 Iowa 523, 134 N.W. 538 (1912).

Certiorari lies to review case where appraisers had no jurisdiction. Abney v. Clark, 87 Iowa 727, 55 N.W. 6 (1893).

Where there is remedy by appeal certiorari will not lie. Cedar Rapids, I.F. & N.W. Ry. Co. v. Whelan, 64 Iowa 694, 21 N.W. 141 (1884).

Court will not consider errors or irregularities dependent on facts not set out in petition. Everett v. Cedar Rapids & M. Ry. Co., 28 Iowa 417 (1870).

Where proceedings of commissioners are irregular such should be brought up for review by certiorari to district court. Runner v. City of Keokuk, 11 Iowa 543 (1861).

Three separate owners of distinct parcels of land, could not join for writ, when object was to ascertain damages. Chambers v. Lewis, 9 Iowa 583 (1859).

Where damages were given for removal of a road, appeal was proper remedy to obtain reversal on ground that no cause for damages known to law had been shown. Spray v. Thompson, 9 Iowa 40 (1859).

24. Effect of appeal.

Rule that action commences with delivery of notice to sheriff is not applicable in determining whether or not appeal has been served within statutory period provided for in condemnation appeals. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

Right to compensation for property taken for public use is guaranteed by the constitution, but property owner is only entitled to it in manner prescribed by law, and if an appeal is not taken, the commissioner's award stands. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Condemnation proceedings are administrative in nature until appeal taken to state district court when it becomes a civil action before a judicial body. Chicago, R. I. & P. R. Co. v. Stude, 74 S.Ct. 290, 346 U.S. 574 (1954).

Objections to jurisdiction of sheriff's jury not waived by appeal from award of damages. Slough v. Chicago & N. W. R. Co., 71 Iowa 641, 33 N.W. 149 (1887).

Notice of appeal constitutes presumptive evidence that assessment has been made. Hahn v. Chicago, O. & St. J. R. Co., 43 Iowa 333 (1876).

25. Attorneys' fees.

General eminent domain statute providing for taxing of attorney fees did not entitle landowner, who on appeal had increased highway condemnation award of damages, to tax his attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

Landowners were not entitled to attorney's fees for services rendered on trial under count of petition seeking such relief before trial of issue under second count as to damages to be awarded. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (19520, 35 A.L.R.2d 1306.

26. Federal court, removal.

Prior to appeal being taken in state court, railroad could not remove appeal directly to Federal Court. Chicago, R. I. & P. R. Co. v. Kay, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U.S. 924, 98 L. Ed. 1078 (1952).

27. Review.

Question of whether landlord and tenant were required to serve notice of appeal from condemnation assessment upon joint award mortgagee did not become moot due to mortgage being payed off and release where release was more than four months after award and two and one-half months after landlord and tenant attempted appeal. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

District court's findings of fact on hearing of special appearances attacking jurisdiction of district court had status of jury verdict and were binding on supreme court if supported by substantial evidence. Griffel v. Northern Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

District court is appellate court in condemnation cases. Bisenius v. Palo Alto County, 256 Iowa 196, 127 N.W.2d 128 (1964).

Refusal to award a new trial to condemnor which claimed that verdict was excessive was abuse of discretion. In re Primary Road No. Iowa 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

Trial court in action by state highway commission to condemn leasehold for highway purposes properly rejected commission's requested instruction in view of record which did not sustain commission's contention as to testimony of witnesses in reference to including renewal of lease in considering appraisal of damages. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Landowner claiming on appeal from award in eminent domain proceeding that the amount awarded by the trial court was grossly out of proportion to value as shown by evidence assumed a heavy burden. Kaperonis v. Iowa State Highway Commission, 100 N.W.2d 901 (Iowa 1960).

Where district court, without objection of the parties tried the case without a jury, its decision had effect of jury verdict and Supreme Court could not determine appeal de novo but was limited to review of claimed errors. Cunningham v. Iowa-Illinois Gas & Electric Co., 243 Iowa 1377, 55 N.W.2d 552 (1952).

28. Settlement.

On appeal from assessment, trial court properly ordered contract of settlement be specifically performed. Cunningham v. Iowa-Illinois Gas & Electric Co., 243 Iowa 1377, 55 N.W.2d 552 (1952).

29. Interest.

Except where landowner alone appeals to the district court and recovers less than the condemnation award, he is entitled to interest from the date of taking possession. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

30. Evidence.

Evidence of value of mortgaged property was immaterial for purpose of determining whether joint condemnation award mortgagee was an adverse party within statute authorizing appeal by interested party upon notice to adverse party. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

Evidence of amount paid by condemnor to other condemnees in same project was inadmissible. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

In proceeding to condemn realty for highway purposes, holding a previous opinion involving the same proceeding that certain exhibits were comparable propertys became the law of the case, and the Supreme Court could not consider the admission of such exhibits as error on subsequent appeal. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

Permitting adjoining landowners appealing to the district court from assessment of damages by the condemnation commissioners to adopt the evidence of the other upon the trial was not improper. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

31. Presumptions and burden of proof.

Legislature would have specifically altered judicial interpretation of legislative intention if it so desired. Kenkel v. Iowa State Highway Commission, 162 N.W.2d 762 (Iowa 1968).

In view of direct attacks upon jurisdiction of court to entertain condemnor's appeal, condemnor had burden of proving jurisdiction. Griffel v. Northern Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

Burden rests with appellant to show that parties not served with notice of appeal would not be adversely affected by reversal or modification of judgment. Bisensius v. Palo Alto County, 256 Iowa 196, 127 N.W.2d 128 (1964).

32. Discretion.

Order granting new trial in condemnation proceeding in which jury fixed damages for taking portion of property at less than that testified to by any expert witness was not an abuse of discretion. Larew v. Iowa State Highway Commission, 254 Iowa 1089, 120 N.W.2d 462 (1963).

33. Mineral deposits.

Amount and value of recoverable mineral deposits were not only proper but necessary elements to be considered in determining before and after value of property underlaid with sand and gravel. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

34. New trial.

Trial court's denial of condemnee's motion for new trial on ground of inadequacy of verdict was not an abuse of discretion. Crozier v. Iowa-Illinois Gas & Elec. Co., 165 N.W.2d 833 (Iowa 1969).

Trial court in condemnation case properly awarded new trial because of inadequacy of verdict coupled with possible errors in the proceedings. In re Primary Road No. Iowa 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

35. Adverse party, in general.

Joint - award mortgagee was "adverse party" upon whom notice of appeal by mortgagor from condemnation award was required to be served. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

"Adverse party" is one who will be prejudiced or adversely affected by reversible or modification of judgment appealed from. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

A mortgagee is an "adverse party" upon whom notice of appeal must be served when a condemnation award is appealed. Id.

For additional annotations, see I.C.A.

36. Special appearance.

For annotations, see I.C.A.

37. Pleadings.

For annotations, see I.C.A.

38. Jury questions.

Sufficient evidence existed in condemnation case to warrant submitting of an instruction on a change in zoning of landowners' property. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

39. Instructions.

For annotations, see I.C.A.

40. Dismissal.

For annotations, see I.C.A.

472.19 Service of Notice - Highway Matters

1. Validity.

Presumed constitutional. Harrington v City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

2. Construction and application.

Jurisdiction of district court in condemnation cases is appellate only, and notice required by § 472.18 authorizing appeal by interested party is a notice of appeal. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

If district court review is desired by either party to condemnation proceeding, notice thereof must be given in substantial compliance with the statutes. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

This section applies only to appeals having reference to highway commission. Crawford v. Iowa State Highway Commission, 247 Iowa 736, 76 N.W.2d 187 (1956).

Only by process of appeal does district court obtain jurisdiction. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Compliance with statute regulating appeal is sufficient. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932).

This section furnished civilian co-owners a method of serving notice of appeal on soldier co-owners and justified denial of stay sought on ground that co-owners could not perfect appeal for inability to serve notice on soldiers. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

3. Service.

Question of whether landlord and tenant were required to serve notice of appeal from condemnation assessment upon joint award mortgagee did not become moot due to mortgage being paid off and released where release was more than four months after award and two and one-half months after landlord and tenant attempted appeal. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

Substantial compliance is sufficient as to type of information given by notices of appeal to district court in condemnation cases, but requirements of this section as to "manner of service" must be strictly followed. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

Service on sheriff was not necessary in a highway commission condemnation case. Crawford v. Iowa State Highway Commission, 247 Iowa 736, 76 N.W.2d 187 (1956).

R.C.P. 49, on commencement of action for purposes of computing limitations by giving notice to sheriff, is not applicable to proceeding for condemnation of leasehold interest. Mazzoli v. City of Des Moines, 245 Iowa 571, 63 N.W.2d 218 (1954).

Sheriff not a party to the action. Buckmiller v. Creston, W. & D. M. Ry. Co., 164 Iowa 502, 146 N.W. 447 (1914).

Sheriff not disqualified to serve notice of appeal. Cedar Rapids, I.F. & N.W. R. Co. v. Chicago, M. & St. P. R. Co., 60 Iowa 35, 14 N.W. 76 (1882).

4. Return.

Service of notice of appeal gives jurisdiction, and at any time, sheriff can amend defective return so as to give court jurisdiction. Buckmiller v. Creston, W. & D. M. Ry. Co., 164 Iowa 502, 146 N.W. 447 (1914).

5. Adverse party.

"Adverse party" within § 472.19 authorizing appeal by interested party from condemnation assessment upon serving notice upon adverse party is one who will be prejudiced or adversely affected by reversal or modification of

judgment appealed from. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

A mortgagee is an "adverse party" on whom notice of appeal must be served when condemnation commission award is appealed to district court, whether such proceedings are instituted by the highway commission or others. Scoular - Bishop Grain Co. v. Iowa State Highway Commission, 258 Iowa 1003, 140 N.W.2d 115 (1966).

6. Jurisdiction.

Statutes of time limitation and procedure for appeal taken from compensation commission award do not confer personal jurisdiction but give district court power to determine appeal. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Jurisdiction of district court in condemnation cases is appellate only. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

Where landowner and tenant did not serve notice of appeal from condemnation award on joint award of mortgagee, district court did not have jurisdiction of appeal. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

If one fails to follow legally prescribed procedure in giving notice of appeal in condemnation case, the district court obtains no jurisdiction. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

7. Special appearance.

Notice of appeal to district court in condemnation proceeding did not substantially comply with statute, so that condemnor's special appearance was properly sustained. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

8. Failure to give notice.

District court had duty to refuse, on its own motion, to sustain condemnees' appeal from condemnation award for failure to satisfy notice requirements. Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332 (Iowa 1968).

472.20 Sheriff to File Certified Copy

1. Construction and application.

Appeal from award of sheriff's jury lies only to district court of state. Chicago, R. I. & P. R. Co. v. Kay, D.C., F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 338, rehearing denied, 74 S.Ct. 347 U.S. 924, 98 L. Ed. 1078 (1952).

Sheriff need not actually file transcript until case is reached for trial. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (1932).

Appellant's failure to file transcript until case reached for trial not a fatal defect. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Not requisite that report of jury be filed in appellate court. Hahn v. Chicago, O. & St. J. R. Co., 43 Iowa 333 (1876).

Failure to file papers until first day of next term after appeal was taken insufficient ground for dismissal of appeal. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

472.21 Appeals - How Docketed and Tried

1. Construction and application.

Proceeding administrative till appeal is taken. Chicago, R. I. & P. R. Co. v. Stude, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 346 U.S. 924, 98 L. Ed. 1078 (1954).

Provision that appeal shall be tried as ordinary proceeding is applicable to notice of appeal. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (Iowa 1932).

Soldiers and Sailors Civil Relief Act would amply safeguard appeal rights of soldier landowner. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

Compliance with statutes gave jurisdiction. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925).

2. Appearance.

Special appearance raises only jurisdictional issues. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Appearance by company to object to service of notice of appeal operated as a general appearance. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

3. Consolidating appeals.

Separate appeals were properly consolidated. Genco v. Northwestern Mfg. Co., 203 Iowa 1390, 214 N.W. 545 (1927).

Where separate appeals were taken it was not error to refuse consolidation on company's refusal to agree to rendition of separate verdicts. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

4. Dismissal and affirmance.

Where condemnees contested right of condemnor to dismiss appeal from award, they could not at the same time successfully assail jurisdiction to make award. Felker v. Iowa State Highway Commission, 255 Iowa 886, 124 N.W.2d 435 (1963).

Highway commission was not entitled to dismissal of condemnation action, wherein condemnees had appealed, on ground that condemnees had failed to prove title. In re Primary Road No. Iowa 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

Condemnor may dismiss its appeal. Hanley v. Iowa Electric Co., 187 Iowa 590, 174 N.W. 345 (1919).

Partition of premises pending appeal does not dismiss it. Ruppert v. Chicago, O. & St. J. R. Co., 43 Iowa 490 (1876).

Payment of filing fees. Robertson v. Eldora Railroad & Coal Co., 27 Iowa 245 (1869).

5. Rejection of award.

Court's rejection of award disposed of it as statutory award, and left it open for action as common-law award. Bureker v. Jefferson County, 201 Iowa 251, 208 N.W. 115 (1926).

6. Settlement or waiver of rights.

Waiver is an affirmative defense and is not jurisdictional. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Right acquired by condemnation may be waived during pendency of appeal to court. De Penning & Iowa Power & Light Co., 33 N.W.2d 503 (1948).

7. Change of venue.

Plaintiff was not prejudiced by overruling of motion for change of venue where when verdict was reached he did not complain. Neddermeyer v. Crawford County, 190 Iowa 883, 175 N.W. 339 (1919).

8. Removal of causes.

Removal possible when requisite grounds appear. Chicago, R. I. & P. R. Co. v. Stude, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U.S. 924, 98 L. Ed. 1078 (1954).

When appeal is perfected it can be removed to Federal Court. Hagerla v. Mississippi River Power Co., 202 F. 771 (1912).

Where cause had been appealed it was subject to removal. Myers v. Chicago N. W. R. Co., 118 Iowa 312, 91 N.W. 1076 (1902).

9. Issues and extent of review and relief.

Sole issue for determination in condemnation appeal is amount of damages owed by condemnor by reason of taking. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

It is for the legislature to initially determine whether condemnation of private property is for a public use. Simpson v. Low-Rent Housing Agency of Mount Ayr, 224 N.W.2d 624 (Iowa 1974).

Failure to limit condemnation not fatal to right of company to have matter considered on appeal. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

Where parties proceed as if damages are to be assessed separately to owner and tenant, objections to this should be raised prior to time for instructing jury. Wilson v. Fleming, 31 N.W.2d 393, motion denied, 32 N.W.2d 798 (1948).

District Court acts in appellate capacity and its power to review is circumscribed only by presumption in favor of action of condemning body in exercising its legislative discretion. Porter v. Board of Sup'rs of Monona County, 238 Iowa 1399, 28 N.W.2d 841 (1947).

Authority to condemn may be subject of appeal. Town of Alvord v. Great Northern Ry. Co., 179 Iowa 465, 161 N.W. 467 (1917).

Where company did not enter, but instead condemned the property, it cannot set up in appeal, breach of agreement to donate right of way. Burrell v. Waterloo, C. F. & N. Ry. Co., 173 Iowa 441, 155 N.W. 809 (1916).

Appeal by either party brings question of damages for review de novo. Wolfe v. Iowa Ry. & Light Co., 173 Iowa 277, 155 N.W. 324 (1915).

Where plaintiff contested only damages he could not deny right to condemn because of his refusal to consent. Dennis v. Independent School Dist. of Walker, 166 Iowa 744, 148 N.W. 1007 (1914).

In proceeding for license for construction of dam plaintiff was not prejudiced by order requiring it to have damages assessed. Iowa Power Co. v. Hoover, 166 Iowa 415, 147 N.W. 858 (1914).

On appeal, issues raised are not different from those presented to sheriff's jury. Hall v. Wabash R. Co., 141 Iowa 250, 119 N.W. 927 (1909).

Where company appealed landowner could be awarded larger damages. McKinnon v. Cedar Rapids & I. C. R. & Light Co., 126 Iowa 426, 102 N.W. 138 (1905).

Question of whether taking should be allowed not determinable by the sheriff's jury. Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 91 Iowa 16, 58 N.W. 918 (1894).

Court having decided that it had no jurisdiction properly refused to entertain other objections and determine what rights of parties would be if properly presented to the court. Slough v. Chicago & N. W. R. Co., 71 Iowa 641, 33 N.W. 149 (1887).

Appeal from report of commissioners took case to District Court for trial on merits of report. Runner v. City of Keokuk, 11 Iowa 543 (1861).

When case was properly in district court on appeal, it was there for trail on the merits. Mississippi & M. R. Co. v. Rosseau, 8 Iowa 373, 8 Clarke 373 (1859).

Appeal brought cause to district court on its merits and it became immaterial whether appellate had notice. Borland v. Mississippi & M. R. Co., 8 Iowa 148, 8 Clarke 148.

10. Trial.

Court's refusal to allow plaintiff to cross-examine on matters developed on direct examination, but not in dispute, not an abuse of discretion. Watters v. Platt, 184 Iowa 203, 168 N.W. 808 (1918).

Court could, in absence of statutory provisions, adopt a procedure not inconsistent with parties' constitutional rights. Jones v. School Board of Liberty Tp., 140 Iowa 179, 118 N.W. 265 (1908).

On appeal defendant not prejudiced by examination of jurors on their voir dire, of amount of award by sheriff's jury, merely for purposes of identifying case. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Not a violation of constitution to refuse jury trial in condemnation proceeding. In re Bradley, 108 Iowa 476, 79 N.W. 280 (1889).

Plaintiff entitled to have his damages found by a jury on appeal. Deaton v. Polk County, 9 Iowa 594 (1859).

11. Burden of proof.

Burden of proving a zoning ordinance unreasonable, arbitrary, capricious or discriminatory is upon the one ascerting the invalidity. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Burden of proof is on the condemnee - plaintiff, irrespective of which party first takes the appeal to the district court. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

Plaintiff in appeal in condemnation proceeding has burden of proof to show value of property taken. Iowa Development Co. v. Iowa State Highway Commission, 122 N.W.2d 323 (Iowa 1963).

In view of direct attacks upon jurisdiction of court to entertain condemnor's appeal, condemnor had burden of proving jurisdiction. Griffel v. Northern Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

Owner assumes burden of proof on appeal. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

When condemnor alleged ownership in certain persons they did not have to prove title. Tracy v. City of Mt. Pleasant, 165 Iowa 435, 146 N.W. 78 (1914).

12. Evidence.

Trial courts are permitted wide latitude of discretion in admitting opinions of valuation witnesses in appeals from condemnation awards. Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975).

Admission of hearsay evidence of assessed valuation was reversible error. Vine St. Corp. v. City of Council Bluffs, 220 N.W.2d 860 (Iowa 1974).

Objection that testimony was inadmissable must be interposed at time the testimony was admitted. Foster v. U.S., 145 F.2d 873 (1945).

Admission of evidence that owner lived in another state not prejudicial. Purdy v. Waterloo, C. F. & N. Ry. Co., 172 Iowa 676, 154 N.W. 881 (1915).

Where defendant denied plaintiff's title to part of land affected and certain questions were asked of defendant's attorney, tending to show title,

their exclusion was not prejudicial error. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

13. Questions of law or fact.

Jury was entitled to expert opinion regarding value of property without alleged illiegal zoning restraint. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Location of corner established by government survey was question of fact for court sitting without jury. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

14. Instructions.

City ordinances establishing control access facilities on all state highways within corporate limits of the city, including highway which crossed tract of landowners involved in condemnation proceedings, would not lead jury to believe that city had already limited landowners' right of access to highway and that State Highway Commission was thus not required to pay therefor. Linge v. Iowa State Highway Commission, 260 Iowa 1226, 150 N.W.2d 642 (1967).

In proceedings to condemn a tract of land for relocation of highway, requested instruction that jury should not allow damages for taking of owner's direct access unless the access provided was not reasonable and not free and convenient was properly refused. Bryan v. Iowa State Highway Commission, 251 Iowa 1093, 104 N.W.2d 562 (1960).

Failure of court to explain term "if necessary" in instruction, was not error where no issue as to necessity had been raised. Hoeft v. State, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008 (1936).

15. Rehearing and new trial.

Reopening case tried to court for material testimony was not error. Fair v. Ida County, 204 Iowa 1046, 216 N.W. 952 (1927).

16. Review in appellate court.

Where city in eminent domain action did not make objection to testimony on ground that it constituted a collateral attack on zoning ordinance, city's motion at close of evidence to strike and withdraw all evidence of alternate value of landowners' property as if no zoning ordinance were present, because such evidence constituted collateral attack on the ordinance, did not preserve city's objection for review. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Legislature has power to prescribe terms and conditions upon which landlord may perfect his appeal to district court. Harrington v. City of Keokuk, 258 Iowa 1043, 141 N.W.2d 633 (1966).

District court's findings of fact on hearing of special appearances attacking jurisdiction of district court had status of jury verdict. Griffel v. Northern Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

Ruling on prior appeal that plat was admissible as to each of tracts condemned was law of case. Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 292, 122 N.W.2d 323 (1963).

Appeals in condemnation cases are to be tried as other civil cases. Id.

Motion for change of venue overruled. Neddermeyer v. Crawford County, 190 Iowa 883, 175 N.W. 339 (1919).

Where court made mistake of one tenth of an acre and company offered to add to damages value of such piece, judgment should not be reversed on that ground. Hoyt v. Chicago, M. & St. P. R. Co., 117 Iowa 296, 90 N.W. 724 (1902).

Judgment reversed where plaintiff claimed roadway running east, when in fact agreement was for one running west and mistake was undiscovered till after appeal. White v. Farlie, 67 Iowa 628, 25 N.W. 837 (1885).

Appeal lies to Supreme Court from order overruling motion to set aside verdict and quash writ in condemnation proceeding. Burham v. Thompson, 35 Iowa 421 (1872).

17. Jurisdiction.

Railroad had no right to appeal to federal court directly. Chicago, R. I. & P. R. Co. v. Stude, 204 F.2d 116 (1953), rehearing denied, 204 F.2d 954, affirmed, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 346 U.S. 924, 98 L. Ed. 1078.

Subject matter jurisdiction cannot be conferred or ousted by acts of parties or procedures employed in particular litigation. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

District court's decision that it had no jurisdiction of appeal by landowner and tenant who failed to serve notice of appeal did not deprive landowner and tenant of fair compensation for easement taken. Merritt v. Interstate Power Co., 153 N.W.2d 489 (Iowa 1967).

In absence of service upon contract vendors of notice of appeal from condemnation commission's award in favor of contract vendors and purchasers, district court lacked jurisdiction of the appeal against vendors. Griffel v. Northern Natural Gas Co., 257 Iowa 1140, 136 N.W.2d 265 (1965).

18. Jury trial.

There is no constitutional protection in respect to jury trial available to State Highway Commission in condemnation case if Commission fails to demand jury trial. Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 292, 122 N.W.2d 323 (1963).

19. Pleadings.

Condemnor could not dismiss appeal without consent of condemnees. Felker v. Iowa State Highway Commission, 255 Iowa 886, 124 N.W.2d 435 (1963).

472.22 Pleadings on Appeal

1. Construction and application.

Regarding right to appeal by landowner in condemnation proceeding. Simpson v. Low-rent Housing Agency of Mt. Ayr, 224 N.W.2d 624 (Iowa 1974).

Condemnor could not dismiss appeal without consent of condemnees. Felker v. Iowa State Highway Commission, 255 Iowa 886, 124 N.W.2d 435 (1963).

Railroad had no right of appeal to federal court directly. Chicago, R. I. & P. R. Co. v. Stude, 204 F.2d 116 (1953), rehearing denied, 204 F.2d 954, affirmed, 74 S. Ct. 290, 346 U.S. 574, 98 L. Ed. 338, rehearing denied, 74 S. Ct. 512, 346 U.S. 924, 98 L. Ed. 1078.

Compliance with statute regulating appeals is sufficient. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (Iowa 1932).

Soldiers and Sailors Civil Relief Act would protect rights of soldier-owner. Gilbride v. City of Algona, 237 Iowa 20, 20 N.W.2d 905 (1946).

Provision that petition on appeal should specify items of damage did not alter measure of damages. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862 (1937).

To effectuate appeal, petition provided for by statute was to be filed in appellate court, on which a report in nature of a bill of exceptions could be made. City of Ottumwa v. Derks, 32 Iowa 506 (1871).

On appeal to district court there was no error in filing a petition in district court. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1864).

2. Limitations.

Requirement that on owner's appeal, petition be filed on or before the first day of the term was procedural, not jurisdictional. O'Neal v. State, 214 Iowa 977, 243 N.W. 601 (1932). Williams v. State, 243 N.W. 604 (1932). J. F. Wilcox & Sons v. City of Omaha, 220 Iowa 1131, 264 N.W. 5 (1936).

3. Petition.

Condemnees seeking general compensation for the taking of land pleaded loss of access to railroad and sewer. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

Pleader required to state specifically items of damage and amount thereof. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

This section did not require amount of each separate item to be stated, only total amount claimed. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862 (1937).

4. Answer.

Company condemning strip could waive its right of access to strip over remainder of farm by answer to petition on appeal. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

Refusal to permit defendant to plead or prove matters relating to manner of construction of improvement tending to minimize damages not error where such matters had gotten before the jury in one way or another. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

Affirmative defenses not pleaded could not be used. Mason v. Iowa Cent. Ry. Co., 131 Iowa 468, 109 N.W. 1 (1906).

Objection that appellee failed to properly file transcript and pay docket fee in prescribed time, was properly submitted on motion to dismiss. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905).

Where answer alledged that plaintiff had, for a consideration, made and delivered a deed for the right of way and defendant offered deed in evidence, objections that it was neither original nor copy was properly overrruled. Taylor v. Cedar Rapids & St. P. R. Co., 25 Iowa 371 (1868).

5. Amendments.

Petition may be amended by increase in amount claimed. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Owners of dam could amend petition for license to show that owner had waived right to damages or had settled. Wapsipinicon Power Co. v. Waterhouse, 186 Iowa 524, 167 N.W. 623 (1918).

6. Evidence.

Burden of proof is on the condemnee - plaintiff, irrespective of which party first takes the appeal to the district court. Heins v. Iowa State Highway Commission, 185 N.W.2d 804 (Iowa 1971).

Evidence of use of condemned property in conjunction with other properties was admissible. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

7. Dismissal.

Condemnees contested right of condemnor to dismiss appeal from award. Felker v. Iowa State Highway Commission, 255 Iowa 886, 124 N.W.2d 435 (1963).

472.23 Question Determined

1. Construction and application.

Entry of judgments on jury verdicts in consolidated public utility condemnation proceeding constituted appealable final adjudication. Sykes v. Iowa Power and Light Company, 263 N.W.2d 551 (Iowa 1978).

Presumption was that on trial adequate damages would be awarded. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

In event of injustice in fixing of damages by commissioners remedy is by appeal for hearing before a jury. Price v. Town of Earlham, 175 Iowa 576, 157 N.W. 238 (1916).

2. Agreements, stipulations and waiver.

Issue of waiver cannot be raised by special appearance. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Because evidence of agreement showed it to be a compromise it was not admissible. Miller v. Iowa Elec. Light & Power Co., 34 N.W.2d 627 (1949).

If damages may be avoided by waiver or stipulation, such waiver should be received and acted upon. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

Acceptance of such part of award over which there is no controversy on appeal does not waive right of appeal to that part in controversy. Globe Machinery & Supply Co. v. City of Des Moines, 156 Iowa 267, 136 N.W. 518 (1912).

3. Sale pending condemnation.

One who sells while condemnation proceedings are pending is entitled to damages finally awarded as against his vendee. Crawford v. City of Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1964).

4. Damages - in general.

Whether, in determining just compensation for land taken by eminent domain, evidence of other sale of land is admissible in determining value of such land must be left to sound discretion of trial court. Business Venture, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

It was not necessary for district court to have in personam jurisdiction of landowners in order to try sole issue of amount of condemnation damages. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Court makes proper order in regard to interest. Reed v. Chicago, M. & St. P. Ry. Co., 25 F. 886 (1885).

Where proposed elevation of new road was clearly shown in blueprints in original condemnation proceeding, and award exceeded value of land taken, owners were not entitled to compel new condemnation brought on ground that elevation of highway damaged them. Mapes v. Madison County, 252 Iowa 395, 107 N.W.2d 62 (1961).

Owner was permitted to prove damage to entire farm, though it consisted of more land than described in his notice of appeal. Dudley v. Minnesota & N. W. R. Co., 77 Iowa 408, 42 N.W. 359 (1889).

5. Persons entitled to damages.

Owner of property may be entitled to damages for taking for public use, even though he has parted with his title and ownership before award is paid. Crawford v. City of Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1964).

Where record title holder contracted to sell to equitable owners and all were plaintiffs on appeal instruction that issue was damages all plaintiffs were entitled to recover was not objectionable on theory that equitable owners alone were entitled to recover. Eggleston v. Town of Aurora, 233 Iowa 559, 10 N.W.2d 104 (1943).

6. Land as entity, or separate lots, parts or tracts, damages.

Where evidence was sufficient to warrant jury in finding that property consisted of either one or two tracts, permitting jury to assess against each separately not error where jury assessed against each separately not error where jury assessed against entire tract. Hoeft v. State, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008 (1936).

Permitting witnesses to show valuation based on separate parcels of one farm was prejudicial error. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).

Owner entitled to recover damages to farm as a whole despite the fact only a part of farm was described in condemnation proceedings. Cook v. Boone Suburban Electric R. Co., 122 Iowa 437, 98 N.W. 293 (1904).

Court properly refused to submit interrogatories, asking opinion of jury as to damages to separate parts of the farm. Winklemans v. Des Moines N. W. Ry. Co., 62 Iowa 11, 17 N.W. 82 (1883).

7. Minimizing damages.

Owner under no duty to minimize damages. Wilson v. Fleming, 31 N.W.2d 393 (1948), motion denied, 32 N.W. 2d 798. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

8. Interest as damages.

Date from which interest should be allowed on condemnation award was matter for trial court in condemnation proceeding. Schrader v. Sioux City, 167 N.W.2d 669 (Iowa 1969).

Matter of interest is duty of court. Harris v. Green Bay Levee and Drainage Dist. No. 2, Lee County, 246 Iowa 416, 68 N.W.2d 69 (1955).

Interest computed from time of possession. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (1948).

Where amount of interest was merely matter of computation trial court could add interest to the verdict. Beal v. Iowa State Highway Commission, 209 Iowa 1308, 230 N.W. 302 (1930).

Interest at six percent may be allowed from time railroad was constructed, the action being in trespass. Darst v. Ft. Dodge, D. M. & S. Ry. Co., 194 Iowa 1145, 191 N.W. 288.

Where date of possession is undisputed, question of allowance of interest was for court. Lough v. Minneapolis & St. L. R. Co., 116 Iowa 31, 89 N.W. 77 (1902).

Where award was affirmed on appeal to Supreme Court and owner received award from sheriff, and costs were paid, it was then too late to have court allow interest. Jamison v. Burlington & W. R. Co., 87 Iowa 265, 54 N.W. 242 (1893).

Where court did not mention interest it is presumed jury did not add interest to its verdict and court could allow interest on excess of verdict over commissioners award. Hollingsworth v. Des Moines & St. L. R. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Failing to raise issue of interest on appeal owner could not, after payment of amount awarded, maintain separate action for interest. Hays v. Chicago, M. & St. P. R. Co., 64 Iowa 753, 19 N.W. 245 (1884).

Interest allowable on damages found to date of trial. Hartshorn v. Burlington, C. R. & N. R. Co., 52 Iowa 613, 3 N.W. 648 (1879).

9. Unlawful or negligent acts, damages.

When damage to property owner arises by reason of defects or negligence in connection with building of new road, damage suffered is not included in original condemnation allowance. Mapes v. Madison County, 252 Iowa 395, 107 N.W.2d 62 (1961).

Damage caused by overflow due to negligent construction of culvert cannot be deemed to have been considered when right of way was acquired. Hunt v. Iowa Cent. R. Co., 86 Iowa 15, 52 N.W. 668, 14 Am. St. Rep. 473 (1892).

Damages for negligent construction may be recovered in later action. Miller v. Keokuk & D. M. R. Co., 63 Iowa 680, 16 N.W. 567 (1883).

10. Amount of damages.

Sole issue for determination in condemnation appeal is amount of damages owed by condemnor by reason of taking. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Total of specified amounts of loss resulting from condemnation is improper as proof of damages. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Award to condemnees not excessive. Newland v. Linn County Bd. of Sup'rs, 256 Iowa 424, 127 N.W.2d 625 (1964). Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Award for taking strip of land along side of farm for highway purposes and for damages to remainder of farm was not inadequate. Trachta v. Iowa State Highway Commission, 49 Iowa 374, 86 N.W. 849 (1958).

Evidence sufficient to sustain award. Miller v. Iowa Electric Light & Power Co., 34 N.W.2d 627 (1949).

Awards not excessive under evidence. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

Award not so excessive as to indicate passion and prejudice. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

Verdict indicated plaintiff did not have a fair trial. Neddermeyer v. Crawford County, 190 Iowa 883, 175 N.W. 339 (1919).

11. Payment of damages.

Judgment for costs in favor of condemnor on appeal may be set up against condemnation award. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Absent a statute court could fix time within which award should be paid. City of Des Moines, Iowa, v. Des Moines Water Co., 230 F. 570, 144 C. C. A. 624 (1916).

12. Matters considered as to damages - in general.

By virtue of changing circumstances, a zoning ordinance may come to operate as an arbitrary and unreasonable restraint. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Although installation of median strips for purpose of regulating flow of traffic is within exercise of police power, particular action of condemning authority in exercise of that power must be proper and reasonable and must not amount to taking of property without due process of law. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

In establishing fair market value, landowner entitled to show any factor that would impress a willing buyer purchasing farm. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

Landowner in condemnation case entitled to show any factors that would impress a willing buyer in purchasing property. Jones v. State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Evidence too speculative to be considered. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 258 Iowa 897, 140 N.W.2d 714 (1966).

Damages to be determined as of date of condemnation. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Right to lateral support is a proprietary right which owner does not part with when adjacent land is acquired for highway purposes. Mapes v. Madison County, 252 Iowa 395, 107 N.W.2d 62 (1961).

Testimony of estimates of value in a condemnation case must be left to discretion of judge. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Though company failed to limit its rights in condemnation it could have the matter considered on appeal. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

Mere purchase of other land to take place of that condemned could not be considered. Schoonover v. Fleming, 32 N.W.2d 99 (1948).

All facts which would naturally influence a person of ordinary prudence desiring to purchase may be considered. Korf v. Fleming, 32 N.W.2d 85, 3 A. L. R.2d 270 (1948).

Consideration of tracts as separate. Cutler v. State, 224 Iowa 686, 278 N.W. 327 (1938).

Refusal to permit condemnor to show distance of farm from various market centers and character of roads was not error. Moran v. Iowa State Highway Commission, 223 Iowa 936, 274 N.W. 59 (1937).

Evidence tending to show specific items of damage admissible as bearing on value. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862 (1937).

Testimony on specific sum required to hire help to drive cattle across highway inadmissible as speculation. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

Award of damages is conclusively presumed to include all damages, present and future resulting from proper use of condemned land. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628 (1932).

Refusing to permit cross-examination of value witness regarding distance of landowner's farm to market and type of road was error. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1931).

Evidence of location, use for which improvements were constructed, character and condition of machinery and cost of removal and installment elsewhere, admissible as descriptive of injury suffered though not to be considered as substantive elements of damage. Des Moines Wet Wash Laundry v. City of Des Moines, 197 Iowa 1082, 198 N.W. 486, 34 A. L. R. 1517 (1924).

Testimony of witness that his valuation was partly based on appearance of place not objectionable. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Award of damages is conclusively presumed to include all damages, present and future, resulting from proper use of condemned land. Wissmath Packing Co. v. Mississippi River Power Co., 179 Iowa 1309, 162 N.W. 846, L. R. A. 117F. 790 (1917).

Deducing valuation from consideration of prices of properties in the "neighborhood." Youtzy v. City of Cedar Rapids, 150 Iowa 53, 129 N.W. 351 (1911).

Evidence that situation was well adapted to and valuable for a particular business had bearing on value of property. Ranck v. City of Cedar Rapids, 134 Iowa 563, 111 N.W. 1027 (1907).

Hypothetical questions to witnesses to consider surrounding circumstances as they saw them after construction, and situation of farm as seen, and location of road with reference to a lake were not improper, when witnesses were directed to assume proper construction and adequate crossing. Quinn v. Iowa & St. L. Ry. Co., 131 Iowa 680, 109 N.W. 209 (1906).

13. Benefits, matters considered as to damages.

Generally, damage and benefits resulting from separate works which do not form part of continuous improvement cannot be assessed in the same proceeding. Crawford v. City of Des Moines, 255 Iowa 861, 124 N.W.2d 868 (1964).

Refusal to permit defendant to cross-examine expert on value, unless question excluded benefits, was error. Dean v. State, 211 Iowa 143, 232 N.W. 36 (1930).

Advantages resulting from improvement cannot be considered. Israel v. Jewett, 29 Iowa 475 (1870).

14. Buildings and improvements, matters considered as to damages.

Realtor's determination of before value of condemned portion of farm by valuing land and improvements separately and rounding off total was proper. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Commissioners substantially complied with statutory requirements and gave due consideration to all elements of damages, even though farm buildings not closely examined. Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964).

Contemplated future improvements not a proper element for consideration of damages in a condemnation proceeding. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Jury award for condemnation of leasehold on which business was conducted was not excessive where lessees had constructed a building plus improvements. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Evidence of cost of relocating septic tank removed when highway was improved was inadmissible where necessity for relocation of tank was due in part to improper location in the first instance. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

Evidence of separate values of needed improvements is not admissible as an independent item of damage in a condemnation case. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Exclusion of evidence showing farm could be more efficiently operated by removal of buildings, and such cost of removal was not reversible error. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied 32 N.W.2d 798.

Refusal to permit owner to testify on separate value of dwelling house was not error. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948).

Testimony that buildings would eventually have to moved not objectionable as immaterial and irrelevant. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

15. Comparable lands or sales, matters considered as to damages.

Evidence of sales of comparable property is admissible as substantive evidence of fair market value of subject property. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Extent of comparability and weight and credit to be given evidence of other sales in a condemnation proceeding is for the jury. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Proximity of comparable lands. In re Primary Road Iowa No. 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

Evidence of comparable sales is competent as substantive evidence in condemnation cases. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

16. Fences, bridges, crossings, cattle ways, etc., matters considered as to damages.

Admission of testimony as to inadequacy of cattleway not reversible error. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Cost of removing and replacing fence cannot be recovered for as such and jury should be so instructed. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

Instruction on damages for constructing drainage ditch not erroneous as permitting jury to consider cost of bridges. Kerr v. Tysseling, 239 N.W. 233 (1931).

Error in admitting cost of fencing was not cured by instruction. Dean v. State, 211 Iowa 143, 233 N.W. 36 (1930).

Error to admit cost of constructing adequate cattle pass. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

Failure or refusal to provide proper crossing not matter for consideration of jury. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

17. Future use of land, matters considered as to damages.

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

Plan or subjective intent to use property for a particular purpose in the future was admissible evidence. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

Considerable latitude allowed in admission of evidence of capabilities of land affected by condemnation. In re In re Primary Road No. 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

Condemned property must be evaluated with its potentialities and its highest and best reasonable uses, as it was immediately before the taking. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Condemnee may properly show burdens or detriments to his remaining land. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

To warrant admission of testimony of value of land taken for purposes other than for which actually used, regard must be had for conditions and wants of community as may be reasonably expected in immediate future. U.S. v. Foster, C. C. A., 131 F.2d 3 (1942), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138. U.S. v. Buescher, C. C. A., 131 F.2d 3 (1942), certiorari denied, 63 S. Ct. 760, 318 U.S. 767, 87 L. Ed. 1138.

Damages must be paid for rights appropriated though full use thereof may not be immediately contemplated. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

Whether value of property for use for which condemned, may be separately proven is matter of court's discretion depending on particular facts. Tracy v. City of Mt. Pleasant, 165 Iowa 435, 146 N.W. 78 (1914), modified on other grounds, 148 N.W. 637.

17.5 Highest and best use, matters considered as to damages.

City's objection to jury instruction relating to best use of land taken by city by eminent domain was not based on theory that such instruction constituted collateral attack on city's zoning. City did not preserve objection based on such theory. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Owners were entitled to present evidence in condemnation proceeding concerning the highest and best use of property being taken. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

17.7 Zoning restrictions.

Where zoning ordinance has been shown to produce an unreasonable restraint on a property's use, the ordinance may be disregarded in an eminent domain hearing. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

18. Inconveniences, annoyances, dangers, etc., matters considered as to damages.

Danger, or fear of danger, resulting from the exercise of condemnation rights may be shown as affecting market value. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

Evidence of substantial impairment of "free and convenient" access previously existing for commercial property was proper. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

Circuity of travel to reach landowner's property, occasioned by a median ditch dividing four lanes of travel, was not compensable. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

No loss of access to secondary road when access was as free after vacation of portion of road as before. Christensen v. Bd. of Sup'rs of Woodbury County, 253 Iowa 978, 114 N.W.2d 897 (1962).

Permitting jury to consider danger to children in fixing damages, not error. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

Jury may consider annoyance, danger and inconvenience resulting in use and enjoyment. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628 (1932).

Testimony of danger to crops and occupants properly admitted under instruction to consider such only as affecting market value. Evans v. Iowa Southern Utilities Co. of Delaware, 205 Iowa 283, 218 N.W. 66 (1928).

19. Minerals, matters considered as to damages.

Amount and value of recoverable mineral deposits were proper elements to be considered in determining before and after value of property underlaid with sand and gravel. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Evidence of mineral deposits admissible as bearing on value. Doud v. Mason City & F. D. R. Co., 76 Iowa 438, 41 N.W. 65 (1888).

20. Measure of damages - in general.

Property's reasonable market value at the "time of taking" which is the date upon which the condemnation commission views the premises and fixes the damages to which condemnee is entitled. Heldenbrand v. Executive Council of Iowa, for use and benefit of State, 218 N.W.2d 628 (Iowa 1974).

Use of pencil and paper in computation is not proof of use of improper unit rule in measure of damage. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Basic rule as to measure of damages in eminent domain case is constant, and when there is a partial taking, measure is difference in value before and after taking. Id.

Right of owner to recover not to be measured by generosity, necessity or estimated advantage or fear or dislike of litigation which may have induced others to part with title to their realty. Steensland v. Iowa-Illinois Gas & Elec. Co., 242 Iowa 534, 47 N.W.2d 162 (1951).

Inconvenience and damage to land as a whole affect value. Schoonover v. Fleming, 32 N.W.2d 99 (Iowa 1949).

Proper measure is difference in market value just before taking and market value after taking. Korf v. Fleming, 32 N.W.2d 85, 3 A. L. R.2d 270 (1948).

Difference between reasonable value before and immediately after. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862 (1937).

Owner may show difference in value before and after taking. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

Where there is evidence that the taking depreciated market value of farm as a whole, value of land appropriated is not alone, measure of damages. Watkins v. Wabash R. Co., 137 Iowa 441, 113 N.W. 924 (1907).

Permitting witnesses to state value of farm before, and that after taking it lost a value of so much per acre, was not error where witness afterwards gave a value of farm as a unit. Ball v. Keokuk & N. W. Ry. Co., 74 Iowa 132, 37 N.W. 110 (1888).

It is proper to ask plaintiff how much less his farm was worth immediately after the taking than it was worth immediately before, not taking into account any benefits. Harrison v. Iowa M. R. Co., 36 Iowa 323 (1873).

21. Actual or market value of property, measure of damages.

Evidence of sale price of comparable real estate is admissible upon issue of fair market value in condemnation proceedings. Yoder v. Iowa Power & Light Co., 215 N.W.2d 328 (Iowa 1974).

Proper basis for award of damages was difference in fair market value immediately before and immediately after condemnation. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

"Fair market value of land" is the price a willing buyer under no compulsion to buy would pay and a willing seller under no compulsion to sell would accept. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Measure of damages for condemned land is its reasonable market value at time of taking. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963). Skaff v. Sioux City, 255 Iowa 49, 120 N.W.2d 439 (1963).

Measure of damage by condemnation is difference between fair and reasonable market value before and immediately after appropriation. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

Market value of land, together with improvements, taken as a whole and not separately, is to be shown, and value of improvements, apart from land, may not be shown. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Proper measure is difference in market value just before taking and market value after taking. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

"Market value" of farm is matter of approximation at best. Cory v. State, 214 Iowa 222, 242 N.W. 100 (1932).

Where there is evidence that the taking depreciated market value of farm as a whole, value of land appropriated is not alone, measure of damages. Watkins v. Wabash R. Co., 137 Iowa 441, 113 N.W. 924 (1907).

22. Diminution in value of land, measure of damages.

Condemnee is damaged to extent his property is diminished in value by condemnation. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Every element which can fairly enter into question of value and which an ordinary prudent man would consider before forming judgment in making a purchase should be considered. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

23. Partial condemnation, measure of damages.

Correct measure of damages in partial taking is difference in fair market value of subject property immediately before and immediately after condemnation. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Fact that portion of property was already subject to easement in favor of condemnor was not to be overlooked. In re Primary Road No. Iowa 141, 255 Iowa 711, 122 N.W.2d 141 (1963).

Sole measure of damages in cases of partial taking is difference in reasonable market value before and after taking. Freshwater v. Wildman, 254 Iowa 404, 117 N.W.2d 910 (1962).

Owner of farm, strip of which was condemned for highway, may show increased burden thereon because of additional hazard. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932).

Award of damages to remaining real estate in condemnation cases is conclusively presumed to include all damages, present and future, resulting from property use of condemned portion for purpose for which it was condemned. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628 (1932).

24. Profits, measure of damages.

Profit of a business is too uncertain to be accepted in condemnation case as any evidence of the usable value of property. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

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

25. Value of property - in general.

Evidence as to the before and after value of leasehold was inadmissible in condemnation proceeding. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

26. Leasehold estate, value of property.

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

Court's discretion to evaluate valuations given by experts. Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 292, 122 N.W.2d 323 (1963).

Value of removable product, resulting in complete depletion of value, is proper evidence in proving before and after value. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

That landowner has given a lease on the property may be considered in determining compensation for property taken. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

In proceeding to condemn short term farm leasehold, profits lost are not recoverable by way of damages. Korf v. Fleming, 239 Iowa 501, 32 N.W.2d 85 (1948).

Testimony as to value of land partially based on appearance was not objectionable. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Wide discretion in trial court in considering valuation testimony. Youtzy v. City of Cedar Rapids, 150 Iowa 53, 129 N.W. 351 (1911).

27. Loss estimates, value of property.

In condemnation proceedings, estimates of losses are not used to arrive at after value, but after value is used to determine actual loss. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

28. Purchase price, value of property.

Whether original purchase price of property being condemned is too remote is in court's discretion. In re Primary Road No. Iowa 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

29. Trial in general.

Court's comment that land value had nothing to do with the case resulted in no prejudice. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

In condemnation proceeding for strip of ground for highway purposes, trial court's statement of issues was not objectionable, as being a mere copy of the pleading. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

Improper to refer to amount of award appealed from but can be remedied by instruction. Ball v. Keokuk & N. W. R. Co., 74 Iowa 132, 37 N.W. 110 (1888).

30. Evidence - in general.

Substantial competent evidence that regulatory measure entirely deprived landowner of reasonable and convenient access. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Speculative matters are not to be considered as evidence of value of condemned property. Johnson County Broadcasting Corp. v. Iowa State Highway Commission, 256 Iowa 1251, 130 N.W.2d 707 (1965).

Where only issue in condemnation case was value of property held by fee owners who had given leasehold interest to others, evidence confined to damage to whole estate was improper. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

In condemnation proceedings, evidence of other similar sales need not be identical, but must have a resemblance to be admissible. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

In proceeding to condemn land bordering navigable stream evidence of government surveyor's field notes showing meander lines was inadmissible; they not being legal boundaries. Hubbell v. City of Des Moines, 166 Iowa 581, 147 N.W. 908, Ann. Cas. 1916E. 592 (1914).

Absent showing to contrary it is assumed that assessment of condemnation commissioners is in accord with his good faith judgment. Moran v. Iowa State Highway Commission, 223 Iowa 936, 274 N.W. 59 (1937).

Incompetent evidence as to cost of constructing larger cattle pass could not be said to be harmless. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

In condemnation of land for sewer disposal plant admission of testimony concerning odors from another plant was not prejudicial. Bracken v. City of Albia, 194 Iowa 596, 189 N.W. 972 (1922).

In proceeding to assess damages for construction of electric line, admission of cross-examination of defendant's witness as to certain matters concerning electric lines, held not prejudicial. Foley v. Iowa Electric Co., 193 Iowa 128, 185 N.W. 13 (1921).

Where witness stated what his property in neighborhood sold for, and over objection, was allowed to state value of improvements on property, there was no prejudice to defendant where these values corresponded to price sold for. Haggard v. Independent School District of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

On appeal report of appraisers is not conclusive. Deaton v. Polk County, 9 Iowa 594 (1859).

31. Opinion evidence.

In determining just compensation of land taken by eminent domain, sales of land not comparable to the land being taken may also furnish a foundation for an expert's opinion testimony. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Cross examiner may learn of ability of witness to judge in premises, and what he takes into consideration in arriving at decision. Sater v. Burlington & Mt. P. Plank Road Co., 1 Iowa 386 (1855). Henry v. Dubuque & P. R. Co., 2 Iowa 288 (1855).

Prices paid for realty in locality not controlling criterion of "market value" of a particular farm. Equitable Life Assur. Soc. of U.S. v. Carmody, 131 F.2d 318 (1942).

Evidence of comparable sales may be used to test qualification of an opinioned witness in a condemnation proceeding. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Corporate officer who was competent to testify in condemnation case as to value of corporation's tract of land in industrial district could also express an opinion as to value of adjoining tract. Iowa Development Co. v. Iowa State Highway Commission, 255 Iowa 292, 122 N.W.2d 323 (1963).

Proceeding to determine value of farm-land condemned. Harmsen v. Iowa State Highway Commission, 251 Iowa 1351, 105 N.W.2d 660 (1960).

Opinion stated by witness as to whether additional trouble in driving stock over highway would affect value of farm was not prejudicial. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939).

Admission of testimony of how much less land was worth, after taking than before, was improper, as calling for opinion of witness concerning amount of damages. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Permitting witness for defendant to testify that farm was not damaged by change in highway was without prejudice. Neddermeyer v. Crawford County, 190 Iowa 883, 175 N.W. 339 (1920).

Where half lot was condemned, it was proper to allow witness to be asked what value of half lot in question would be worth to rest of owner's property. Haggard v. Independent School Dist. of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Reversible error to allow witness to state what were damages caused by the taking. Hartley v. Keokuk & N. W. R. Co., 85 Iowa 455, 52 N.W. 352 (1892).

It was proper to ask witness to "state how embankements affect communication with different sides of railroad" as question did not call for opinion of witness. Smalley v. Iowa P. R. Co., 36 Iowa 571 (1873).

Opinions as to value must be confined to premises over which right of way is taken. Henry v. Dubuque & P. R. Co., 2 Iowa 288, 2 Clarke 288 (1855).

Personal knowledge of the land or right of way is necessary for witnesses to testify as to value. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1864).

32. Burden of proof, evidence.

Burden of proving zoning ordinance unreasonable, arbitrary, capricious or discriminatory is upon the one asserting the invalidity. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Owners of condemned property had burden of establishing case and showing that their property had the reasonable market value claimed. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Burden of showing legal services rendered in condemnation proceeding and value thereof rests on the claimant. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

In proceeding to condemn realty for highway purposes, where condemnor claimed error in admitting evidence of sale price of other land when it was enhanced in value by benefit of the highway, burden was on condemnor to show enhancement of value was considered and affected the claimed comparable sales. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

Burden of proof on owner in appeal. Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 N.W. 685 (1932). Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W. 979 (1925).

33. Exclusion of evidence.

Objection of condemnor to testimony of expert witnesses for condemnees as to sales prices of several separate tracts. Sustained. Yoder v. Iowa Power & Light Co., 215 N.W.2d 328 (Iowa 1974).

Answer to question of value that "we had $48,811 into it" was properly stricken as unresponsive. Foster v. U.S., 145 F.2d 873 (1945).

Testimony by landowners' experts in condemnation case as to separate valuations they placed on separate portions of condemned land should have been excluded where landowners always farmed the land as a unit. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Evidence in condemnation proceeding of resolutions entered into between town and highway commission properly excluded. In re Primary Road No. Iowa 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

Exclusion on cross examination of witness to value of farm before and after taking, of how much he paid for a farm crossed by a railroad bought by him at auction, not an abuse of discretion. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

Excluding evidence that several farms intersected by railroad sold at good prices not an abuse of discretion. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

Photographs of property a distance away properly excluded for remoteness. Hubbell v. City of Des Moines, 166 Iowa 581, 147 N.W. 908, (1914).

Where assessment record did not show value owner put on his property exclusion of return not regarded as error. Haggard v. Independent School Dist. of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Where witness stated grounds of estimate of value, some of which were not proper, it was not error to refuse to exclude all as defendant could have asked jury be instructed on such. Smalley v. Iowa Pac. R. Co., 36 Iowa 571 (1873).

Evidence of value of other lots in vicinity is properly rejected where no similarity between lots and condemned property is shown. Hollingsworth v. Des Moines & St. L. R. Co., 63 Iowa 443, 19 N.W. 325 (1884).

34. Admissibility of evidence, generally.

Evidence of offer to purchase should be accepted only in absence of evidence of comparable sales. Hardaway v. City of Des Moines, 166 N.W.2d 578 (Iowa 1969).

Admissibility of collateral facts in support of estimates of value is matter which must largely be left to discretion of presiding judge. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Evidence of contract sales price admissible, but contract should not be based on speculation as to prospects of development of tracts sold. Redfield v. Iowa State Highway Commission, 252 Iowa 1256, 110 N.W.2d 397 (1961).

In condemnation proceedings, defendant could not complain of the receipt of plat or other evidence because of lack of timely objection upon the trial. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

35. Admissible evidence.

Regarding evidence of land value in city's condemnation of land by eminent domain. Business Ventures Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

Evidence of existence of median strips was admissible to show effect of loss or impairment of access on value of service station. Simkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Admitting photographs of exterior and interior views of condemned business realty taken within four months after condemnation was not reversible error. Hardaway v. City of Des Moines, 166 N.W.2d 578 (Iowa 1969).

In eminent domain proceeding, evidence concerning recent bona fide offer to purchase land in question was admissible. Id.

Evidence of cost of equipment purchased several years before condemnation was admissible. In re Primary Road No. Iowa 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

In condemnation case involving widening of highway so as to take filling station driveway which had extended into right of way pursuant to license from town, proof of nature and extent of property owners' rights and use of the right of way was properly admitted. Id.

Testimony as to comparable sales is admissible. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Sales of gas station on property condemned were admissible evidence. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

Photographs taken of railroad cut admissible as bearing on inconvenience and damages suffered by tenant from construction in operation of farm. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

Assessment rolls signed by owner admissible to show value of tract. Duggan v. State, 214 Iowa 230, 242 N.W. 98 (1932).

Admission of original petition for damages after filing of amended petition increasing claim, not prejudicial, where petitioners testified fully as to all elements of damage asserted. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Evidence of value of land at time of trial was not incompetent because it should have been confined to time immediately after taking, where there was no showing of change in value of farm lands since taking. Kosters v. Sioux County, 195 Iowa 214, 191 N.W. 993 (1923).

Photographs of property a distance away properly excluded for remoteness. Hubbell v. City of Des Moines, 166 Iowa 581, 147 N.W. 908 (1914), 908 Ann. Cas. 1916E, 592.

36. Inadmissible evidence.

In increased award proceeding for partial taking of service station for highway construction, err in admitting testimony offered through plaintiff's witnesses relating to median strips was cured by jury instruction. Simpkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Admissions against interest. U.S. v. Foster, C.C.A. 131 F.2d 3 (1942). U.S. v. Buescher, C.C.A. 131 F.2d 3 (1942).

Witness may be asked selling price of land similarly situated to test knwoledge and competence as expert, but such testimony is not admissible as substantive evidence of value of property in controversy. Watkins v. Wabash R. Co., 137 Iowa 441, 113 N.W. 924 (1907). Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937).

Evidence of value of other lots in vicinity is properly rejected where no similarity between lots and condemned property is shown. Cummins v. Des Moines & St. L. R. Co., 63 Iowa 397, 19 N.W. 268 (1884). Hollingsworth v. Des Moines & St. L. R. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Permitting cross examination as to amount paid for farm some years theretofore not prejudicial error, in that the fact that sale was remote went to weight rather than admissibility. Foster v. U.S., C.C.A. 145 F.2d 873 (1945).

Generally, unaccepted offer for purchase of condemned property should not be received as evidence of value. Hardaway v. City of Des Moines, 166 N.W.2d 578 (Iowa 1969).

Evidence of amount paid by condemnor to other condemnees in same project is inadmissible, since the price paid in such instance is result of a compromise. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Testimony that median ditch dividing a four lane highway necessitated circuity of travel to reach landowners property was improperly admitted. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Evidence of separate values of needed improvements is not admissible as an independant item of damage in a condemnation case. Trachta v. Iowa State Highway Commission, 249 Iowa 374, 86 N.W.2d 849 (1958).

Price paid for property cannot be shown where purchase is so remote as to have no bearing on value at time of condemnation. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948).

Permitting witness who testified as to value, to testify as to sale price of other nearby farms was prejudicial error. Maxwell v. Iowa State Highway Commission, 223 Iowa 936, 274 N.W. 59 (1937).

Evidence as to what railroad paid for other lands not similarly situated was inadmissible. Simons v. Mason City & Ft. D. R. Co., 128 Iowa 139, 103 N.W. 129 (1905). Hollingsworth v. Des Moines & St. L. Ry. Co., 63 Iowa 443, 19 N.W. 325 (1884).

Evidence of value of land sold 10 or 12 years before not competent to prove value at time of trial. Everett v. Union Pac. R. Co., 59 Iowa 243, 13 N.W. 109 (1882).

37. Witnesses - in general.

Valuation witness in condemnation proceeding may support his valuation by relating matters which affected his judgment. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Witness who had testified to improper measure of damage in condemnation proceeding. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Witness may testify as to what other lands in vicinity sold for and what he heard others say as to prices they received to show his knowledge of land

in vicinity. Winklemans v. Des Moines N.W. R. Co., 62 Iowa 11, 17 N.W. 82 (1883).

38. Expert witnesses.

Valuation expert in condemnation case may accredit his testimony by showing that separate parcels are reasonably adaptable to specific uses, an expert may be cross-examined as to valuation he placed on such parcels to test his credibility, knowledge and basis of opinion. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Considerable latitude allowed in cross-examination of experts, including those who testify to property values. In re Primary Road No. Iowa 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

Whether sinking of well would be helpful in operation of farm was not matter calling for expert opinion. Korf v. Fleming, 32 N.W.2d 85, (Iowa 1948).

In testing expert's knowledge defendants had right to question expert concerning value of separate tracts in farm. Dean v. State, 211 Iowa 143, 233 N.W. 36 (1930).

Opinion of expert as to value based on non existent facts was of no value. Tracy v. City of Mt. Pleasant, 148 N.W. 637 (Iowa 1914).

Questions of whether cutting of certain ditches was necessary was proper subject for expert testimony. Guinn v. Iowa & St. L. R. Co., 125 Iowa 301, 101 N.W. 94 (1904).

Where persons are shown to be familiar with value of land in question they may testify as to value before and after the taking. Britton v. Des Moines, O. & S. R. Co., 59 Iowa 540, 13 N.W. 710 (1882).

39. Qualifications of witnesses.

Witness qualified to testify as to market value on showing that he was real estate broker and had grown up on a farm in vicinity and had sold 20 or 25 farms in the county. Foster v. U.S., C.C.A. 145 F.2d 873 (Iowa 1945).

Permitting person engaged in real estate business to express opinion on behalf of condemnees as to his before-condemnation valuation of farm was not improper. Newland v. Linn County Bd. of Sup'rs, 256 Iowa 424, 127 N.W.2d 625 (1964).

Farmers and landowners competent to testify on value of land. Evans v. Iowa Southern Utilities Co. of Delaware, 205 Iowa 283, 218 N.W. 66 (1928).

Witnesses were qualified to express opinion as to value of property in controversy. Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W. 979 (1925).

Witness must be shown to be familiar with local conditions. Tracy v. City of Mt. Pleasant, 154 Iowa 435, 146 N.W. 78 (1914), modified on other grounds, 148 N.W. 637.

Circumstances warranted court in finding that witnesses knew of date of location of improvement and were competent to testify. Pingrey v. Cherokee & D. R. Co., 78 Iowa 438, 43 N.W. 285 (1889).

General objection goes to testimony not to competency of witness to express an opinion. Ball v. Keokuk & N. W. R. Co., 74 Iowa 132, 37 N.W. 110 (1888).

Whether witness discloses sufficient knowledge to testify as to damages largely matter of discretion of court. Small v. Iowa P. R. Co., 36 Iowa 571 (1873).

Personal knowledge of the land or right of way is necessary for witnesses to testify as to value. Grinnell v. Mississippi & M. R. Co., 18 Iowa 570 (1864).

40. Cross-examination of witnesses.

Scope of cross-examination of value witnesses largely in discretion of court, though considerable latitude is usually allowed. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948). Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

As to value placed on land on listing for trading purposes. Foster v. U.S., C.C.A. 145 F.2d 873 (1945).

Cross-examination testimony of plaintiff's value witness as to whether or not he expressed opinion on reasonable value of other land before and after railroad went through, properly excluded. Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948), motion denied, 32 N.W.2d 798.

Permitting cross-examination of expert on value who had been member of condemnation commission as to whether his assessment correctly expressed his judgment as to damages sustained by plaintiff, not cause for reversal. Moran v. Iowa State Highway Commission, 23 Iowa 936, 274 N.W. 59 (1937).

Excluding cross-examination of plaintiff on value of farm and livestock sworn to become tax assessor was error in view of plaintiffs testimony. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1931).

Witness who testified as to value of land for purpose condemned could be asked on cross-examination as to purposes for which he thought the property available and its market value for such purposes. Tracy v. Mt. Pleasant, 165 Iowa 435, 146 N.W. 78 (1914), modified on other grounds, 148 N.W.2d 637.

Where defendant's objection to evidence of value per acre was sustained, defendant could not complain that on cross-examination it was not allowed to show value per acre of land taken. Westbrook v. Muscatine N. & S. R. Co., 115 Iowa 106, 88 N.W. 202 (1901).

Value witness may be cross-examined on value of lots in vicinity to test knowledge of values. Snouffer v. Chicago & N. W. R. Co., 105 Iowa 681, 75 N.W. 501 (1898).

Distinction in condemnation cases between questions permissible on direct examination and to those permissible on cross-examination has been abrogated with respect to testimony of comparable sales. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

Curtailing cross-examination of expert witness as to how much parcel, if no condemnation had occurred, would have sold for per acre was nonprejudicial in proceeding to condemn portion of farm. Newland v. Linn County Bd. of Sup'rs, 256 Iowa 424, 127 N.W.2d 625 (1964).

41. Instructions - in general.

Instruction in condemnation case on possibility of a future change in zoning of landowners' property. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Difference between opinion testimony and substantive evidence is a proper subject for jury instruction in a condemnation proceeding. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

In action to condemn leasehold for highway purposes, trial court properly refused to give instruction that jury was not to consider the matter of court costs, interest, or lessees' attorneys fees in awarding damages. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Court need not instruct on each particular claimed element of damage. Eggleston v. Town of Aurora, 233 Iowa 559, 10 N.W.2d 104 (1943).

Where it appears that witnesses have included in their estimate of value consequences too remote, it was duty of court to instruct jury to disregard such considerations. Sater v. Burlington & Mt. P. Plank-Road Co., 1 Iowa 386, 1 Clarke 386 (1855).

42. Definitions, instructions.

In instructing jury regarding fair and reasonable market value of condemned property, it is proper to define fair and reasonable market value as the "cash price". Hardaway v. City of Des Moines, 166 N.W.2d 578 (Iowa 1969).

Instruction defining "just compensation" as payment of such sum as would make owner whole, not prejudicial. Witt v. State, 223 Iowa 156, 272 N.W.419 (1937).

43. Failure to instruct.

Owner's valuation witness concerning apprehension of prospective purchaser because of trimmed trees and clearance light did not relate to aircraft flight path over owner's farm, trial court properly refused jury instruction that no aviation easement over the farm was acquired by condemnation of clearance easement. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

Failure to instruct jury on present value of leasehold interest was not improper. Interstate Finance Corp. v. Iowa City, 260 Iowa 270, 149 N.W.2d 308 (1967).

44. Cure of error by instruction.

Did court's instructions remove prejudicial error in admitting testimony of alleged property loss due to median strip in front of service station. Simpkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

In condemnation proceeding, failure to limit jury to specific elements of damage pleaded was not error in view of instruction that measure of damages was difference between reasonable value of property immediately before condemnation and immediately thereafter. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937).

For additional annotations, see I.C.A.

45. Erroneous instructions.

Trial court erred in submitting instructions with reference to date of trial as time for fixing fair and just compensation to landowners, even though evidence of valuation by condemnor and condemnee was directed to value property at time of trial rather than at time of taking. Heldenbrand v. Executive Council of Iowa, 218 N.W.2d 628 (Iowa 1974).

Instruction on comparable sales was improper were there was no evidence on subject, but question of propriety was not presented in absence of exceptions. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Although evidence of comparable sales is of high probative quality in determining damges in a condemnation proceeding, an instruction to that effect is not proper. In re Primary Road 1-80, 256 Iowa 43, 126 N.W.2d 311 (1964).

Instruction relating to comparable sales was error where plaintiffs' evidence related only to construction costs of new service stations. Wicks v. Iowa State Highway Commission, 254 Iowa 998, 119 N.W.2d 781 (1963).

Instruction, in condemnation proceeding as to ascertaining market value of property sought to be condemned, was erroneous under evidence. Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W.979 (1925).

Instruction assuming that owner has right to cross railroad, superior to right of railroad to use it for its purposes was properly refused. Clayton v. Chicago, I. & D. R. Co., 67 Iowa 238, 25 N.W. 150 (1885).

46. Particular instructions.

Damages instruction, by use of words "intrisic or actual value to an owner," was not unclear and did not permit award based on sentiment. Comstock v. Iowa State Highway Commission, 254 Iowa 1301, 121 N.W.2d 205 (1963).

Trial court in condemnation proceeding by state highway commission properly instructed jury that measure of damages for condemnation of leasehold was the fair and reasonable market value of the unexpired term of the lease with building, fixtures and other personal property located thereon immediately before the appropriation less the rental reserved for remainder of lease and less reasonable value of any personal property removed by lessees after the condemnation. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Instruction on measure of damages to tenant did not indicate a double recovery for damage to his interest was recoverable. Wilson v. Fleming, 31 N.W.2d (Iowa 1948), motion denied, 32 N.W.2d 798.

Not error to charge jury that they have right to weight and judge opinions expressed by their own judgment and experience and observation with respect to such matters. Cutler v. State, 224 Iowa 686, 278 N.W. 327 (1938).

In view of proper instruction on measure of damages it was not error to instruct that real right of which owner is deprived is right to undistrubed possession, for which he is to be compensated. Maxwell v. Iowa State Highway Commission, 223 Iowa 159, 271 N.W. 883 (1937), 118 A.L.R. 862.

Use of term "value" instead of "fair and reasonable market value" in instruction was not error in view of other instructions. Hoeft v. State, 221 Iowa 694, 266 N.W. 571 (1936), 104 A.L.R. 1008.

Instruction to consider character of land, number of acres taken, location of highway, etc., in fixing damages, not erroneous as emphasizing speculation. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Trial court's discrepancy in misdescribing land in submitting issue not prejudicial error. Sherwood v. Reynolds, 213 Iowa 539, 239 N.W. 137 (1931).

Instruction on saleability of land involved not erroneous. Neddermeyer v. Crawford County, 190 Iowa 883, 175 N.W. 339 (1919).

Where judge instructed jury that it was not bound by return of sheriff jury and named the figure, and jury returned much larger verdict, there was no error. Bell v. Chicago, B. & Q. R. Co., 74 Iowa 343, 37 N.W. 768 (1888).

47. Jury questions.

In determining just compensation for land taken by eminent domain, evidence of comparable sales is admissible as substantive evidence of value, and it is for jury to determine weight and credit of such evidence. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

The extent to which owners' farm had been damaged or reduced in value was ultimate fact to be determined by the jury in condemnation proceeding. Dolezal v. City of Cedar Rapids, 209 N.W.2d 84 (Iowa 1973).

Sufficient evidence existed in condemnation case to warrant submitting of an instruction on a change in zoning of landowners' property. Jones v. Iowa State Highway Commission, 259 Iowa 616, 144 N.W.2d 277 (1966).

Where valuation witness retracted valuation based on improper method and then gave same value purportedly arrived at by proper method, it was for jury to determine whether similarity in after values arrived at was contrived. Martinson v. Iowa State Highway Commission, 257 Iowa 687, 134 N.W.2d 340 (1965).

Whether property owners had been denied reasonable access to their business property by highway improvement was properly submitted to jury. In re Primary Road No. 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

Amount allowed for condemned property is peculiarly within province of jury. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Refusal to require jury to award in gross and then apportion it between owner and tenant was not error. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

48. View of premises.

It is within discretion of court to permit view of premises. Draker v. Iowa Electric Co., 191 Iowa 1376, 182 N.W. 896 (1921).

It was proper to instruct that view was to better enable jury to understand testimony and more intelligently apply it to issues, that they must consider the evidence in light of such view, but determine facts from evidence alone. Guinn v. Iowa & St. L. R. Co., 131 Iowa 680, 109 N.W. 209 (1906).

Action of court in refusing a view will not be disturbed on appeal where no abuse of discretion appears. King v. Iowa Midland R. Co., 34 Iowa 458 (1872).

Jury not authorized to base verdict on view, as its object is to better enable them to apply the testimony. Close v. Samm, 27 Iowa 503 (1869).

49. Attorney's fees.

In awarding attorney fees in condemnation proceedings, trial court has considerable discretion although the exercise must be reasonable and not arbitrary. Schrader v. Sioux City, 167 N.W.2d 669 (Iowa 1969).

50. Judgment and award.

No personal judgment rendered. Mason City & Ft. Dodge R. Co. v. Boynton, 158 F. 599, 85 C.A.A. 421 (1907).

Not established that verdict was result of passion and prejudice. Crozier v. Iowa-Illinois & Elec. Co., 165 N.W.2d 833 (Iowa 1969).

Award for condemned property not so excessive as to permit interference by Supreme Court. Crist v. Iowa State Highway Commission, 255 Iowa 615, 123 N.W.2d 424 (1963).

Judgment entry in condemnation proceeding wherein court entered judgment for a specified amount with specified interest, and an allowance of cost and attorneys' fees, was a final judgment from which an appeal could have been taken. Neff v. Iowa State Highway Commission, 253 Iowa 98, 111 N.W.2d 293 (1962).

Evidence did not establish that awards in condemnation proceedings were excessive. Iowa Development Co. v. Iowa State Highway Commission, 252 Iowa 978, 108 N.W.2d 487 (1961).

There was no judgment in favor of owner so as to entitle him to mandamus to compel city to levy and pay same where injunction requiring city to pay award or furnish bond in case of appeal had been issued. Wheatley v. City of Fairfield, 221 Iowa 66, 264 N.W. 906 (1936).

It was improper to enter judgment on appeal, and it would be set aside and case stand affirmed as to award of jury and attorney fees awarded by court. Richardson v. City of Centerville, 137 Iowa 253, 114 N.W. 1071, (1908).

Where three appeals were consolidated for trial and two were settled, the third remained unaffected. Mason v. Iowa Cent. Ry. Co., 131 Iowa 468, 109 N.W. 1 (1906).

Where company appealed owner might properly be awarded larger damages. McKinnon v. Cedar Rapids & I. C. R. & Light Co., 126 Iowa 426, 102 N.W. 138 (1905).

It was error to enter judgment for amount of damages. Haggard v. Independent School District of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Order of court regarding payment did not constitute a defense to owner's action for restitution on failure of sheriff to pay award over to owner. Burns v. Chicago, Ft. M. & D. M. R. Co., 110 Iowa 385, 81 N.W. 794 (1900).

Judgment entered in usual form of judgment in action of debt, had no greater effect than if entered in conformity to statutes. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523, 89 Am. Dec. 550 (1866).

51. New trial.

Trial court in condemnation case properly awarded new trial because of inadequacy of verdict coupled with possible errors in proceedings. In re Primary Road No. 141, 256 Iowa 380, 127 N.W.2d 566 (1964).

Trial court has larger discretion rather to grant new trial for award of excessive damages than reviewing court. Besco v. Mahaska County, 200 Iowa 684, 205 N.W. 459 (1925).

52. Scope of review - in general.

City's objection that expert witnesses' opinions without regard to zoning of property value city which sought to expropriate, constituted incompetent irrelevant evidence, was lacking in specificity and would not serve to preserve error based on trial court's adverse ruling. Business Ventures Inc. v. Iowa City, 234 N.W.2d 376 (Iowa 1975).

City preserved right to complain on appeal regarding challenged evidence in proceeding for taking service station property. Simpkins v. City of Davenport, 232 N.W.2d 561 (Iowa 1975).

Statutes establishing time limit and procedure by which appeal may be taken from compensation commission award are a means of giving district court power to hear and determine appeal. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Court must correctly state the law and confine the law to factual situation appearing in the record, and a misstatement of the law in an instruction to the jury is reversible error. Heldenbrand v. Executive Council of Iowa for Use and Benefit of State, 218 N.W.2d 628 (Iowa 1974).

Only question involved in eminent domain procedure is the value of the property taken, and the only appeal that can be taken is from the award of damages. Stellingwerf v. Lenihan, 249 Iowa 179, 85 N.W.2d 912 (1957).

Where value is disputed and there is competent evidence from which jury could reach verdict it did, Supreme Court will not interfere. Stoner v. Iowa State Highway Commission, 227 Iowa 115, 287 N.W. 269 (1939). Miller v. Iowa Elec. Light & Power Co., 34 N.W.2d 627 (Iowa 1949).

Damages, if sustained by evidence, will not be interfered with, in absence of indications of passion and prejudice. Schoonover v. Fleming, 32 N.W.2d 99 (Iowa 1948).

Supreme Court could disregard owner's claim to interest where such claim was not called to attention of trail court and record did not disclose date possession was entered into. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (1948).

Court on appeal cannot review exercise of discretion of condemning body when such body acts within its authority and determination is fairly made. Porter v. Board of Sup'rs of Monona County, 238 Iowa 1399, 28 N.W.2d 841 (1947).

Supreme Court will reverse for excessive damages where record clearly shows verdict to be so. Luthi v. Iowa State Highway Commission, 224 Iowa 678, 276 N.W. 586 (1938).

Reviewing tribunal will not substitute its judgment for that of jury as to amount of damages. Millard v. Northwestern Mfg. Co., 200 Iowa 1063, 205 N.W. 979 (1925).

Amount allowed is peculiarly within province of jury. Longstreet, 200 Iowa 723, 205 N.W. 343 (1925). Korf v. Fleming, 32 N.W.2d 85, 3 A.L.R.2d 270 (1948).

Answer, while improper, should have been properly objected to. Kukkuk v. City of Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

Discretion of trial court in defining boundaries of neighborhood within which property values will be considered not reversible unless abuse is shown. Youtzy v. City of Cedar Rapids, 150 Iowa 53, 129 N.W. 351 (1911).

Return of assessment properly excluded where it did not show what value owner put on property. Haggard v. Independent School Dist. of Algona, 113 Iowa 486, 85 N.W. 777 (1901).

Where record of appeal did not contain description of the property it was presumed that finding of trial court on question of what lands were considered was correct. Mississippi & M. R. Co. v. Byington, 14 Iowa 572 (1863).

53. Verdict or award, scope of review.

When § 472.25 providing means by which condemnor may deposit award with sheriff in order to obtain immediate possession of condemned property is inapplicable in condemnation case, only judgment entered on appeal is for costs. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Error in allowing testimony as to value of property at time of trial was properly preserved for appeal. Heldenbrand v. Executive Council of Iowa, for Use and Benefit of State, 218 N.W.2d 628 (1974).

Amount allowed is peculiarly within province of jury. Korf v. Fleming, 32 N.W.2d 85 (Iowa 1948).

Verdict of jury, supported by substantial evidence, though it be conflicting, must be sustained. Foster v. U.S., 145 F.2d 873 (1945).

Unless amount awarded by jury is shown to be so extravagant so as to be wholly unreasonable Supreme Court will not interfere. Miller v. Iowa Elec. Light & Power Co., 34 N.W.2d 627 (1949).

Supreme Court will not disturb verdict merely because it is liberal. Cutler v. State, 224 Iowa 686, 278 N.W. 327 (1938).

Supreme Court will reverse for excessive damages where record clearly shows verdict to be so. Luthi v. Iowa State Highway Commission, 224 Iowa 678, 276 N.W. 586 (1938).

Jury's verdict should not be interfered with in absence of showing of passion and prejudice. Kemmerer v. Iowa State Highway Commission, 214 Iowa 136, 241 N.W. 693 (1932).

Award not disturbed on appeal unless wholly unfair and unreasonable. Wheatley v. City of Fairfield, 213 Iowa 1187, 240 N.W. 628 (1932).

Where award was sustained by the evidence it could not be attacked on appeal, there being no claim of passion and prejudice. Burgess v. Bremer County, 189 Iowa 168, 178 N.W. 389 (1920).

472.24 Reduction of Damages

1. Construction and application.

This section providing that if amount of damages awarded by commissioners is decreased on trial the appeal, reduced amount only shall be paid to landowner, as reference to amount of verdict only, and does not involve interest on delayed payment to landowner. Strange Bros. Hide Co. v. Iowa State Highway Commission, 250 Iowa 450, 93 N.W.2d 99 (1959).

Judgment entered in usual form of judgment for debt had no greater effect than if entered in conformity with statutes. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523 (1886), 89 Am. Dec. 550.

2. Delay in paying compensation.

Under this section jury may award damages for delay in making compensation and it is immaterial that such damages are denominated as "interest." Noble v. Des Moines & St. L. R. Co., 61 Iowa 637, 17 N.W. 26 (1883).

3. Cost, interest and attorney's fees.

In action be state highway commission to condemn leasehold for highway purposes, trial court properly refused to give requested instruction that jury was not to consider the matter of court costs interest or lessees' attorneys fees in awarding. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Where highway commission deposited amount of award in favor of property owner with court and took immediate possession of property and appealed from the award, property owner was entitled to interest on award from date highway commission took possession although it filed a cross appeal, even though amount of award was decreased on appeal. Strange Bros. Hide Co. v. Iowa State Highway Commission, 250 Iowa 450, 93 N.W.2d 99 (1959).

Even after final determination of appeal from assessment damages, condemnor may decline to take property and pay damages awarded, although in such event he must pay costs and damages actually suffered by owner, including reasonable attorney fees. De Penning v. Iowa Power & Light Co., 239 Iowa 950, 33 N.W.2d 503 (1948).

Where on appeal, verdict was smaller, owner was not allowed interest from time of taking. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948).

4. Jury verdict.

Amount of verdict is peculiarly question for jury and neither trial court nor reviewing court should interfere. Newland v. Linn County Bd. of Sup'rs, 256 Iowa 424, 127 N.W.2d 625 (1964).

Jury verdict in condemnation case should not be disturbed because of its size unless it is flagrantly excessive. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

5. New trial.

Prior verdicts rendered upon substantially the same evidence in the same case are proper consideration for court in passing on motion for a new trial on basis of inadequacy or excessive of award. Larew v. Iowa State Highway Commission, 257 Iowa 64, 130 N.W.2d 688 (1965).

Refusal to award new trial to condemnor which claimed that verdict was excessive was abuse of discretion. In re Primary Road No. Iowa 141, 255 Iowa 711, 124 N.W.2d 141 (1963).

6. Remittitur.

Trial court ordering a remittitur or a new trial in an eminent domain case should show something beyond its mere unsupported statement that the verdict is inadequate or excessive. Larew v. Iowa State Highway Commission, 257 Iowa 64, 130 N.W.2d 688 (1965).

472.25 Right to Take Possession of Lands

1. Validity.

Article 1, Section 18, not violated by permitting condemner to enter pending appeal after damages assessed have been deposited with sheriff. Peterson v. Ferreby, 30 Iowa 327 (1870).

Taking before payment cannot be authorized by legislature. Henry v. Dubuque & P. R. Co., 10 Iowa 540 (1859).

2. Construction and application.

Condemnor had right of possession of leased property after damages assessed by compensation commission were deposited with sheriff. Appeal did not interfere with that right, since condemnor did not take physical possession and therefore was entitled to collect rent until it took lessee's interests by compensating it in amount of judgment. City of Des Moines v. Geller Glass and Upholstery Inc., 319 N.W.2d 239 (Iowa 1982).

Trial court had and continued to have personal jurisdiction to enter judgment against defendant condemnees, who without order of court, in violation of statute received condemnation fund, which had been deposited by condemnor with sheriff, for payments in excess of amount determined on appeal. Iowa Dept. of Transp. v. Read, 261 N.W.2d 533 (Iowa 1978).

Condemnor does not waive right of appeal by depositing award with the sheriff. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Proceeding before sheriff is administrative. Chicago, R. I. & P. R. Co. v. Stude, 74 S.Ct. 290, 346 U.S. 574, 98 L. Ed. 338 (1954), rehearing denied, 74 S. Ct. 512, 347 U.S. 924, 98 L. Ed. 1078.

Condemnation proceedings do not afford protection, at least against temporary occupation by crossing which railroad may not have right to construct. Chicago, B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 91 Iowa 16, 58 N.W. 918 (1894).

The only question involved in eminent domain procedure is the value of the property taken and the only appeal that can be taken is from the award of damages. Stellingwerf v. Lenihan, 249 Iowa 179, 85 N.W.2d 912 (1957).

A right acquired by condemnation may be waived during pendency of appeal to court from appraisement of damages. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

3. Deposit or payment of damages.

Judgment entered on appeal is only for costs when award deposited with sheriff in order to obtain possession of condemned property is inapplicable in condemnation case. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Where highway commission deposited amount of award in favor of property owner with court and took immediate possession of property and appealed from the award, property owner was entitled to interest on award from date highway commission took possession although it filed a cross appeal, even though amount of award was decreased on appeal. Strange Bros. Hide Co. v. Iowa State Highway Commission, 250 Iowa 450, 93 N.W.2d 99 (1959).

Payment must be in money, and a waiver of rights is not partial payment but a limitation on damages. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

After having condemned and paid damages, condemnor cannot assert in action for breach of agreement to convey right of way, that owner wrongfully received such damages. Waterloo, C. F. & N. Ry. Co. v. Burrell, 184 Iowa 689, 169 N.W. 53 (1918).

Award to owner for anticipated damages gives no right to take the land until security is given on payment made. Griffeth v. Drainage Dist. No. 41 in Pocahontas County, 182 Iowa 1291, 166 N.W. 570 (1918).

Sheriff is bound to retain damges for landowner. Bannister v. McIntire, 112 Iowa 600, 84 N.W. 707 (1900).

Under laws of 1853 payment of damages assessed was condition precedent to right of railroad to enter and appropriate land. Henry v. Dubuque & P. R. Co., 10 Iowa 540 (1859).

Right of appeal is waived when condemnor, with knowledge of circumstances, voluntarily and intentionally pays award other than under this section providing means by which condemnor may deposit award with sheriff in order to obtain immediate possession of condemned property and it does not matter whether payment occurs before or after notice of appeal is given. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

4. Acceptance of deposit.

If condemnor highway commission intended to proceed under this section providing means by which condemnor may deposit award with sheriff in order to obtain immediate possession of condemned property or if condemnor intended to condition or limit delivery of checks to condemnees, it had duty to instruct sheriff accordingly. State ex rel. Iowa State Highway Commission v. Read, 228 N.W.2d 199 (Iowa 1975).

Landowners' acceptance of railway's deposit with sheriff of amount awarded landowners in proceeding to condemn strip of land for right of way would bar landowner's right to appeal. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948).

Where, without knowledge of defendant, plaintiff accepted money from sheriff, while plaintiff's appeal was defeated thereby, court had jurisdiction on defendant's appeal, and plaintiff had right to contest amount of recovery. Burns v. Chicago, Ft. M. & D. M. R. Co., 102 Iowa 7, 70 N.W. 728 (1897).

5. Possession.

Deposit with sheriff of sum awarded owner entitled railroad to take possession and proceed with improvement. Hayes v. Chicago, R. I. & P. Ry. Co., 30 N.W.2d 743 (Iowa 1948).

Instruction that jury should not be influenced by fact that company took possession after condemnation against will of owner was not erroneous. Purdy v. Waterloo, C. F. & N. Ry. Co., 172 Iowa 676, 154 N.W. 881 (1915).

Agreement pending appeal held to not amount to sale by owner to railroad, nor confer authority to take possession. Irish v. Burlington Southwestern R. Co., 44 Iowa 380 (1876).

Entering judgment in usual form of judgment for debt only gives the company right to enter upon payment of sum assessed. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523, 89 Am. Dec. 550 (1866).

Appropriation by company prior to payment rendered it a trespasser. Henry v. Dubuque & P. R. Co., 10 Iowa 540 (1859).

6. Injunction.

Decree providing injunction unless award was paid or appeal taken was a "final decree", condemnor having appealed, and injunction could not issue on condemnee's motion. City of Fairfield v. Dashiell, 217 Iowa 474, 249 N.W. 236 (1933).

Injunction proper in conditioning its operation on failure to pay owner. Scott v. Price Bros., 207 Iowa 191, 217 N.W. 75 (1927).

Injunction will issue to prevent appropriation and use where land was condemned for unlawful purpose. Forbes v. Delashmutt, 68 Iowa 164, 26 N.W. 56 (1927).

Injunction will issue to prevent appropriation until damages have been ascertained and paid. Horton v. Hoyt, 11 Iowa 496 (1861).

Owner was entitled to injunction pending appeal. Trustees of Iowa College v. City of Davenport, 7 Iowa 213, 7 Clarke 213 (1858).

Injunction will issue to prevent appropriation until damages have been ascertained and paid. Ragatz v. City of Dubuque, 4 Iowa 343, 4 Clarke 343 (1856).

7. Actions for deposit or payment.

Suit against sheriff by owner for failure to pay over the award. Bannister v. McIntire, 112 Iowa 600, 84 N.W. 707 (1900).

8. Interest.

Condemnee entitled to interest earned on lesser than land ajudged to be worth, when condemnation award paid into court, pending resolution of condemnee's challenge. City of Sac City v. Bentsen, 329 N.W.2d 675 (Iowa Ct. App. 1982).

Owner cannot maintain separate action to recover interest on amount deposited with sheriff by condemnor. Jamison v. Burlington & W. R. Co., 78 Iowa 562, 43 N.W. 529 (1889).

9. Rent.

Condemnor cannot collect rents from owners in lawful possession in condemned lands and buildings. O.A.G. April 20, 1970.

10. Settlement.

Settlement of owner's damages not a contract involving realty within contemplation of statute of frauds. Cunningham v. Iowa-Illinois Gas & Elec. Co., 243 Iowa 1377, 55 N.W.2d 552 (1952).

11. Flood control projects.

City or town authorized to cooperate in federal flood control projects. O.A.G. July 20, 1967.

12. Court order.

Newmire v. Maxwell, 161 N.W.2d 74 (Iowa 1968).

13. Summary judgment.

In condemnation appeal, in which condemnor asserted wrongful dispursement to condemnees of condemnation award funds which had been deposited with sheriff, material issue of fact existed as to whether sheriff received letter, allegedly accompanying checks, containing instructions limiting payment of award, precluding summary judgment. Iowa Department of Transp. v. Read, 262 N.W.2d 533 (Iowa 1978).

14. Attorney fees.

No basis for Supreme Court to award attorney fees to defendant condemnees' attorney on appeal to Supreme Court in condemnatin award appeal. Iowa Dept. of Transp. v. Read, 262 N.W.2d 533 (Iowa 1978).

15. Appeal.

Condemnor did not waive its right to appeal condemnation award by depositing award with sheriff prior to giving notice of appeal. Iowa Dept. of Transp. v. Read, 262 N.W.2d 533 (Iowa 1978).

16. Oral leasehold.

Oral leasehold is compensible property interest when taken through eminent domain. City of Des Moines v. Geller Glass and Upholstery, 319 N.W.2d 239 (Iowa 1982).

472.26 Dispossession of Owner

1. Construction and application.
Newmire v. Maxwell, 161 N.W.2d 74 (Iowa 1968).

472.27 Erection of Dam - Limitation

1. In general.
City or town is authorized to cooperate in federal flood control projects. O.A.G. July 20, 1967.

472.28, 472.29 Repealed by Acts 1959 (58 G.A.) ch. 318, § 2.

472.30 Additional Deposit

1. Construction and application.
Because condemnor did not increase deposit after district court judgment increased award over compensation commission's award, condemnor did not have right to possession. Condemnee fee owners entitled to rent in lieu of increased damages. Condemnee's right to rent must be reduced by extent compensation was received through other means; interest paid to condemnees offset against rents. City of Des Moines v. Geller Glass and Upholstery, 319 N.W.2d 239 (Iowa 1982).
Condemnor may not take possession without abandoning its appeal, return property to owner, in whatever condition it then might be, to avoid making additional deposit required by increase in award on appeal. Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510 (Iowa 1978).
Provision of this section that if court increases damages, whole amount of damages shall be paid or deposited with sheriff, cannot be dispensed with by giving a supersedeas bond. Downing v. Des Moines N. W. R. Co., 63 Iowa 177, 18 N.W. 862 (1884).

2. Appeal.
For annotations, see I.C.A.

472.31 Payment by Public Authorities (No Annotations)

472.32 Removal of Condemnor

1. Construction and application.
Federal court to which appeal was removed, could not properly direct marshall to oust railroad until damages were paid since Code of Iowa gave injured party a remedy. Reed v. Chicago, M. & St. P. Ry. Co., 25 F. 886 (1885).

472.33 Costs and Attorney Fees

1. Validity.
Owner could not object to classification allowing attorney's fees in certain condemnation proceedings and denying such when brought by the state. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).
Provisions authorizing attorney's fees was constitutional. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).
Where company exercised power it was precluded from questioning constitutionality of attorney's fees provision. Gano v. Minneapolis & St. L. R. Co., 114 Iowa 713, 87 N.W. 714 (1901).

2. Construction and application.

In ascertaining right of condemnee to recover costs following condemnor's abandonment by eminent domain, court bound to construe section as it existed prior to amendment which was enacted after proceedings instituted. Atherton v. State Conservation Commission, 203 N.W.2d 620 (Iowa 1973).

Recovery of attorney's fees in a condemnation proceeding is wholly contingent upon landowner's recovery of damages in a larger amount than awarded by the condemnation commission. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Court not authorized to make allowance for fees and expenses of expert witnesses in condemnation case. City of Ottumwa v. Taylor, 251 Iowa 618, 102 N.W.2d 376 (1960).

Provision of this section does not require taxation to the condemnor of all costs occasioned by the appeal except where the award of a sheriff's commission is increased by the jury verdict. Keeney v. Iowa Power & Light Co., 250 Iowa 887, 96 N.W.2d 918 (1959).

Provisions of § 677.5, relating to taxation of costs accruing after a rejected offer to confess judgment in a larger amount then was later allowed upon trial of an appeal from a condemnation award apply to such a proceeding. Tilton v. Iowa Power & Light Co., 250 Iowa 583, 94 N.W.2d 782 (1959).

Code Supp. 1907, section 771 included by reference Code 1897, section 2007 providing that costs taxable against city should include costs of appeal if damages were increased. Globe Machinery & Supply Co. v. City of Des Moines, 156 Iowa 267, 136 N.W. 518 (1912).

3. Costs on appeal - in general.

Fee contract between condemnee and condemnee's attorney is ignored by district court in establishing fees in a condemnation appeal. Carmichael v. Iowa State Highway Commission, 219 N.W.2d 658 (Iowa 1974).

In action by state highway commission to condemn leasehold for highway purposes, trial court properly refused to give requested instruction that jury was not to consider or take into account the matter of court costs, interest, or lessees' attorneys fees in awarding damages. Estelle v. Iowa State Highway Commission, 254 Iowa 1238, 119 N.W.2d 900 (1963).

Provision of this section gave district court no authority to allow fees for condemnee's attorney, notwithstanding that while the appeal was pending the condemnor had offered to confess judgment in an amount less than the amount awarded by commission or in district court. Keeney v. Iowa Power & Light Co., 250 Iowa 887, 96 N.W.2d 918 (1959).

Trial in district court was continuation on condemnation proceedings within Code 1897, relating to taxation of costs on offer to confess judgment. Draker v. Iowa Electric Co., 191 Iowa 1376, 182 N.W. 896 (1921).

Where owner obtained verdict in two trials on appeal increasing award it was improper to tax him with costs in either trial. McCaskey v. Ft. Dodge, D. M. & S. Ry. Co., 154 Iowa 652, 135 N.W. 6 (1912).

Purchaser of railway liable for costs incurred in appeals pending on date of purchase. Frankel v. Chicago, B. & P. R. Co., 70 Iowa 424, 30 N.W. 679 (1886), rehearing denied, 70 Iowa 424, 32 N.W. 488.

Where award was same on appeal owner was entitled to judgment for costs. Hanrahan v. Fox, 47 Iowa 102 (1877).

4. Apportionment of costs on appeal.

Whether costs should be apportioned in condemnation cases depends upon the circumstances of each case. Strange Bros. Hide Co. v. Iowa State Highway Commission, 250 Iowa 450, 93 N.W.2d 99 (1959).

Condemnor waiving some rights on appeal may be required to pay portion of costs if waiver has prejudiced plaintiff by making for smaller recovery. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

Under Code 1873 costs were to be apportioned by court. Noble v. Des Moines & St. L. R. Co., 61 Iowa 637, 17 N.W. 26 (1883).

Where condemnor appealed and verdict was smaller court could, under general rules of law, direct part of costs to be taxed to condemnor. Jones v. Mahaska County Coal Co., 47 Iowa 35, (1877).

5. Attorney's fees - in general.

This section is not strictly construed as in derogation of common law. Riverbend Farms, Inc. v. M and P Missouri River Levee District, 324 N.W.2d 460 (Iowa 1982).

Where city took and retained condemned property, condemnee was properly denied damages, costs and attorney fees occurred in mandamus action to require city to make additional deposit of adjudged compensation with sheriff. Virginia Manor, Inc. v. City of Sioux City, 276 N.W.2d 406 (Iowa 1979).

Award of fees in condemnation award was for client, not attorney, and they were free to make own fee contract. Carmichael v. Iowa State Highway Commission, 219 N.W.2d 658 (Iowa 1974).

Not taxable as costs unless authorized by statute. Woodcock v. Wabash Ry. Co., 135 Iowa 559, 113 N.W. 347 (1907). Wilson v. Fleming, 239 Iowa 918, 232 N.W.2d 798 (1948).

Trial court's refusal to fix and award attorney fees to condemnees in connection with first and second trials, on ground that ultimate recovery could not be determined until case had been finally disposed of on appeal, was not error. Jones v. Iowa State Highway Commission, 185 N.W.2d 746 (Iowa 1971).

Recommendations of state bar association advisory schedule of minimum fees not binding. In re lands, 153 N.W.2d 706 (Iowa 1967).

Neither attorney fees nor fees and expenses of expert witnesses are embraced within the term "just compensation" for land taken by eminent domain. City of Ottumwa v. Taylor, 251 Iowa 618, 102 N.W.2d 376 (1960). Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1930).

Condemnor not liable for fees for condemnee's attorney for preparation for trial, and for the trial where verdict on appeal from commissioner's award was for an amount lower than that for which condemnor had offered to confess judgment. Tilton v. Iowa Power & Light Co., 250 Iowa 583, 94 N.W.2d 782 (1959).

Attorney fees were not allowed for proceeding before commerce commission. Reter v. Davenport, R. I. & N. W. Ry. Co., 243 Iowa 1112, 54 N.W.2d 863 (1952), 35 A.L.R.2d 1306).

Owners appealing were entitled to have attorney fees for two trials taxed as costs against defendant. McCaskey v. Fort Dodge, D. M. & S. Ry. Co., 154 Iowa 652, 135 N.W. 6 (1912).

In proceeding to recover value of property appropriated by railroad, attorney fees are allowable. Clark v. Wabash R. Co., 132 Iowa 11, 109 N.W. 309 (1906).

Error to tax attorney fee on appeal, and apportion same between parties where verdict was much less than commissioner's award. Wormley v. Mason City & Fort D. R. Co., 120 Iowa 684, 95 N.W. 203 (1903).

Fees for services rendered in other suits to protect owner's property could not be allowed. Mellichar v. City of Iowa City, 116 Iowa 390, 90 N.W. 86 (1902).

6. Amount of attorney's fees.

Attorney fee awards approximating only 29 percent of sum represented by jury verdicts returned were inadequate and unrealistic. Sykes v. Iowa Power & Light Co., 263 N.W.2d 551 (Iowa 1978).

"Reasonable fee" for condemnees' counsel. In re lands, 153 N.W.2d 706 (Iowa 1967).

Mere comparison of amounts of sheriff's jury and court's jury award in condemnation proceedings does not determine whether attorney fees should be allowed to the condemnee. Henderson v. Iowa State Highway Commission, 260 Iowa 891, 151 N.W.2d 473 (1967).

Fixing of attorney's fee not an abuse of discretion. Condemnation of Certain Land for Urban Renewal Project Number 1 "River Hills" in City of Des Moines, 254 Iowa 769, 119 N.W.2d 187 (1963).

Attorney fee award was within court's reasonable discretion. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Allowance not excessive. Danker v. Iowa Power & Light Co., 249 Iowa 327, 86 N.W.2d 835 (1958).

Fee held not to be excessive. Wilson v. Fleming, 239 Iowa 718, 31 N.W.2d 393 (1928).

7. Determination of attorney's fees.

Effects of inflation should not be overlooked. Sykes v. Iowa Power & Light Co., 263 N.W.2d 551 (Iowa 1978).

In fixing fee, court may hear testimony as to value of an attorney's services. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928). Hall v. Wabash R. Co., 133 Iowa 714, 110 N.W. 1039 (1907).

Provision of this section for taxing of attorney fees did not entitle landowner, who on appeal had increased highway condemnation award of damages, to tax his attorney fees, since highway condemnation procedure was specifically provided for in another chapter which did not provide for taxing of attorney fees. Frost v. Cedar County Bd. of Sup'rs, 163 N.W.2d 432 (Iowa 1968).

Determination of reasonable attorney fees. In re lands, 153 N.W.2d 706 (Iowa 1967). Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

Decreased purchasing power of money may properly be considered in fixing attorneys fees. Wilson v Fleming, 239 Iowa 718, 31 N.W.2d 393 (1928).

Court, without jury, authorized to fix attorney's fees for which condemnor was liable. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).

Fee may be determined by court. Richardson v. City of Centerville, 137 Iowa 253, 114 N.W. 1071 (1908).

8. Dismissal of proceedings, attorney's fees.

Condemnor dismission proceedings prior to trial of appeal, liable for reasonable attorney's fees incurred by owner for services rendered on appeal. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).

Assessment of costs against company was proper where settlement, in effect, gave owner more than did commissioners. Heath v. Mason City & Ft. D. R. Co., 94 N.W. 467 (1903).

A corporation, which on appeal by property owner from a commissioners' award in condemnation proceedings, dismisses proceeding, is liable for appellant's attorney's fees. Mellichar v. City of Iowa City, 116 Iowa 390, 90 N.W. 86 (1902).

9. Quantum merit, attorney's fees.

Where amount of attorney fee is determined by a contingent arrangement, there can be no recovery on quantum meruit. Carmichael v. Iowa State Highway Commission, 219 N.W.2d 658 (Iowa 1974).

Absent express contract, attorney and client should be free to seek fair settlement of their problems by such action as is available under quantum meruit. In re lands, 153 N.W.2d 706 (Iowa 1967).

10. State's liability, attorney's fees.

State could not be assessed attorney fees on abondonment of condemnation proceedings. Fitzgerald v. State, 220 Iowa 547, 260 N.W. 681 (1935), followed in. Corso v. State, 260 N.W. 685.

State may allow attorney's fees in some situations while withholding them in others. Welton v. Iowa State Highway Commission, 211 Iowa 625, 233 N.W. 876 (1931).

Attorney fees not an element of just compensation. Nichol v. Neighbour, 202 Iowa 406, 219 N.W. 281 (1926).

11. Supreme Court, attorney's fees.

This section does not authorize allowance of attorney's fees for services on appeal to Supreme Court. Wilson v. Fleming, 239 Iowa 918, 32 N.W.2d 798 (1948).

District Court, after affirmance of judgment on appeal, could not tax attorney's fees or costs of appeal to Supreme Court. Woodcock v. Wabash Ry. Co., 135 Iowa 559, 113 N.W. 347 (1907).

12. Miscellaneous fees.

In allowing condemnee in eminent domain proceeding sum for fees and expenses of expert witnesses, district judge acted "illegally" within meaning of R. C. P. 306. City of Ottumwa v. Taylor, 251 Iowa 618, 102 N.W.2d 376 (1960).

Where notice of appeal from award in condemnation proceedings was served by a person other than an officer, his fees therein could not be taxed as costs. Conway v. McGregor & M. R. Co., 43 Iowa 32 (1876).

13. Review.

In public utility condemnation, landowner had thirty days to appeal denial of new trial motion, but time period ran unaffected by unrelated motion to reconsider where motion was in substance, only for attorney fees award. Supreme Court without jurisdiction to review proceedings on merits. Sykes v. Iowa Power and Light Co., 263 N.W.2d 551 (Iowa 1978).

Supreme Court will not interfere with trial court's discretionary action in matter of attorney's fees recoverable unless there has been abuse of discretion. In re lands, 153 N.W.2d 706 (Iowa 1967).

Trial court has considerable discretion in fixing attorney's fees. Nelson v. Iowa State Highway Commission, 253 Iowa 1248, 115 N.W.2d 695 (1962).

A judgment entry in condemnation proceeding wherein court entered judgment for a specified amount with specified interest, and an allowance of costs and attorney's fees, was a final judgement from which an appeal could have been taken. Neff v. Iowa State Highway Commission, 253 Iowa 98, 111 N.W.2d 293 (1962).

District court's ruling dividing general court costs equally between condemnor and condemnee would not be disturbed. Keeney v. Iowa Power & Light Co., 250 Iowa 887, 96 N.W.2d 918 (1959).

472.34 Refusal to Pay Final Award

1. Validity.

Provision of this section authorizing attorney's fees was constitutional. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).

2. Construction and application.

Condemnee's claim for damages may not properly be joined with condemnee's action for mandamus to compel condemnor to make deposit. Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510 (Iowa 1978).

Court, on appeal, could not render personal judgment against condemnor for damages. Mason City & Fort Dodge R. Co. v. Boynton, 158 F. 599, 85 C.C.A. 421 (1907).

Even after final determination condemnor may dismiss, but must pay costs and damages suffered by owner including reasonable attorney's fees. De Penning v. Iowa Power & Light Co., 239 Iowa 950, 33 N.W.2d 503 (1948).

Judgment assessing damages does not bind condemnor to take land and pay damages assessed. Gear v. Dubuque & S. C. R. Co., 20 Iowa 523, 89 Am. Dec. 550 (1866).

3. Dismissal of proceedings.

Condemnor dismissing proceeding after appeal, but prior to trial was liable for reasonable attorney's fee for services rendered on appeal. Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333 (1928).

Company, never having paid damages or entered on land could dismiss proceedings, paying costs. Burlington & M. R. Co. v. Sater, 1 Iowa 421, 1 Clarke 421 (1855).

4. Abandoment of proceedings.

Condemnor may abandon condemnation at any time. Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510 (Iowa 1978).

Abandonment renders condemnor liable for costs and damages actually suffered by landowner and reasonable attorney's fee. Wheatley v. City of Fairfield, 221 Iowa 66, 264 N.W. 906 (1936).

This section authorizes recovery of damages and attorney fees on abandonment after appeal but prior to hearing on appeal. Ford v. Board of Park Com'rs of City of Des Moines, 148 Iowa 1, 126 N.W. 1030 (1910).

Condemnor can abandon proceeding even after verdict with liability for costs. Klopp v. Chicago, M. & St. P. Ry. Co., 142 Iowa 474, 119 N.W. 373 (1909).

Right to abandon contemplates good faith and complete surrender of the project so far as land involved is concerned. Robertson v. Hartenbower, 120 Iowa 410, 94 N.W. 857 (1903).

Where assessment exceeds value of public improvement it may be abandoned. Hiatt v. City of Keokuk, 9 Iowa 438 (1859).

5. Waiver of rights.

A right acquired by condemnation may be waived during pendency of appeal. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (1948).

6. State's liability.

State could not be assessed attorney's fees on abandonment of proceedings. Fitzgerald v. State, 220 Iowa 547, 260 N.W. 681 (1935), followed in. Corso v. State, 260 N.W. 685.

7. Attorney's fees.

Costs and expenses reasonably necessary in preparation and in defense against condemnation which was abandoned after appeal had been taken to district court were recoverable and liability for reasonable attorney's fees paid or incurred by landowner was not limited to services rendered on appeal to the district court; overruling Iowa Electric Co. v. Scott, 206 Iowa 1217, 220 N.W. 333. Atherton v. State Conservation Commission, 203 N.W.2d 620 (Iowa 1973).

8. Damages.

In absence of statute and showing of unreasonable delay no action lies for abandonment of proceedings. Ford v. Board of Park Com'rs of City of Des Moines, 148 Iowa 1, 126 N.W. 1030 (1910).

Abandonment is good defense to any claim for additional damages on appeal from award. Hastings v. Burlington & M. R. R. Co., 38 Iowa 316 (1874).

9. Refund to condemnor.

On abandonment land reverts to owner, and condemnor is not entitled to damages awarded and paid by condemnor for him to sheriff. Hastings v. B. & M. R. Co., 38 Iowa 316 (1874).

472.35 Sheriff to File Record (No Annotations)

472.36 Clerk to File Record (No Annotations)

472.37 Form of Record - Certificate (No Annotations)

472.38 Record of Proceedings (No Annotations)

472.39 Fee for Recording (No Annotations)

472.40 Failure to Record - Liability (No Annotations)

472.41 Presumption (No Annotations)

472.42 Eminent Domain - Payment to Displaced Persons (No Annotations)

472.43 Chief Justice to Prepare Instructions (No Annotations)

472.44 Taking Property for Highway - Buildings and Fences Moved (No Annotations)

472.45 Condemnation for Road or Street - Mailing Copy of Appraisal (No Annotations)

472.46 Special Proceedings to Condemn Existing Utility (No Annotations)

472.47 Court of Condemnation (No Annotations)

472.48 Procedure (No Annotations)

472.49 Notice - Service (No Annotations)

472.50 Powers of Court - Duty of Clerk - Vacancy (No Annotations)

472.51 Costs - Expenses (No Annotations)

472.52 Renegotiation of Damages

1. Construction and application.

Easements obtained by public utilities by purchase or condemnation are not subject to renegotiation within five years; the renegotiation provision applys only to construction or maintenance damages that were not apparent at the time of settlement and not to easements. O.A.G. October 26, 1972.

472.53 Procedure for Homesteading Projects (No Annotations)

Chapter 473A

Metropolitan or Regional Planning Commissions

473A.1 Authority of Governing Bodies - Joint Commission

1. Construction and application.

Political subdivisions creating regional planning commission and independent political instrumentality are not oblidged to assume commission's liabilities and debts. O.A.G., May 20, 1980.

Public monies controlled by regional planning commissions do not have to be placed in public depositories pursuant to chapter 453 of the Code nor are they protected by the state sinking fund under chapter 454. O.A.G., November 18, 1974.

473A.2 Membership (No Annotations)

473A.3 Organization (No Annotations)

473A.4 Powers and Duties

1. In general.

Provision of this section, "a plan or plans of the [joint planning] commission may be adopted, added to, and changed from time to time by a majority vote of the planning commission", codifies common law rule and authorizes joint planning commissions to make decisions by a majority rather than requiring majority approval of all members of commission. City of Hiawatha v. Regional Planning Commission of Linn County, 267 N.W.2d 31 (Iowa 1978).

473A.5 Plans Distributed (No Annotations)

473A.6 Filing Documents with Commission (No Annotations)

473A.7 Construction of Provisions

1. In general.

A county regional planning commission formed under chapter 473A may join a multicounty regional planning commission under chapter 28E. O.A.G., July 30, 1973.

473A.8 Contracts for Planning (No Annotations)

Chapter 477

Telegraph and Telephone Lines and Companies

477.1 Right of Way

1. Validity.

Company not denied constitutional rights by statutory requirement prescribing franchise to maintain local exchange. City of Cherokee v. Northwestern Bell Telephone Co., 199 Iowa 727, 202 N.W. 886 (1925).

Code 1897 held to not deprive company which has franchise of its property without due process of law. Shaver v. Iowa Telephone Co., 175 Iowa 607, 154 N.W. 678 (1915).

Unconstitutionality for failure to provide compensation to abutting owners was objection personal to owners. State v. Nebraska Telephone Co., 127 Iowa 194, 103 N.W. 120 (1905).

2. Construction and application.

Procedure provided for determination of damages in section 472.1 et seq. relative to taking of private property for public use by condemnation, is not exclusive. Hagenson v. United Tel. Co. of Iowa, 164 N.W.2d 853 (Iowa 1969).

The Iowa State Highway Commission may authorize a telephone company to place an underground cable along the untraveled portion of a controlled access highway, within primary road system of the state, without consent from abutting landowner who holds the underlying fee in such highway. O.A.G. March 13, 1970.

Company given right to place lines in city streets. Iowa Telephone Co. v. City of Keokuk, D. C., 226 F. 82 (1915).

Telephone companies are quasi-public in character and subject to state control. State v. Northwestern Bell Telephone Co., 214 Iowa 1100, 240 N.W. 252 (1932).

Code 1851 had reference only to telegraphic communications. City of Cherokee of Northwestern Bell Telephone Co., 199 Iowa 727, 202 N.W. 886 (1925).

Where company acquired perpetual right to use highways, such right was subject to police power and constitution and statutes of the state. Shaver v. Iowa Telephone Co., 175 Iowa 607, 154 N.W. 678 (1916), 678 Am. Cas. 1917E, 539.

Suit in equity could be maintained to enjoin trespass because of inadequacy of legal remedy where without right another company connected with plaintiff's lines. Dumont v. Peet, 152 Iowa 524, 132 N.W. 955 (1911).

Company authorized to adopt reasonable rules and regulations for transaction of its business. Huffman v. Marcy Mut. Telephone Co., 143 Iowa 590, 121 N.W. 1033 (1909), 23 L. R. A., N.W. 1010.

3. Streets, rights in.

Where road was never condemned by governmental authority as a public road, nor was it ever informally dedicated to public use by owners of the land it traversed the telephone which laid underground cable on theory that the road was a public one was put to proving a public road by common-law dedication or by prescription. Hagenson v. United Tel. Co. of Iowa, 209 N.W.2d 76 (Iowa 1973).

Grant of perpetual franchise to maintain lines in streets, fixing conditions of exercise and rates to be charged was against public policy. Iowa Telephone Co. v. City of Keokuk, D.C., 226 F. 82 (1915).

Company constructing lines in cities and towns acquires perpetual franchise for use and occupation. City of Osceola v. Middle States Utilities Co., 219 Iowa 192, 257 N.W. 340 (1934).

Company was empowered to use such city streets as required to meet demands of public. State v. Nebraska Telephone Co., 127 Iowa 194, 103 N.W. 120 (1905).

4. Municipal franchise.

The legislative franchise under Code of 1873 to occupy streets and alleys with telephone lines was not waived or abandoned by city's grant of franchise to telephone company in 1895 and the company's acceptance of such franchise, where city did not have the power in 1895 to grant such a franchise. City of Emmetsburg v. Central Iowa Telephone Co., 250 Iowa 768, 96 N.W.2d 455 (1959).

Where company had statutory perpetual franchise, legislature could not grant city, when it adopted commission government, power to revoke. Iowa Telephone Co. v. City of Keokuk, D. C., 226 F. 82 (1915).

Evidence established perpetual franchise and city could not interfere except in exercise of police power. City of Audubon v. Northwestern Bell Telephone Co., 232 Iowa 79, 5. N.W.2d 5 (1942).

Consolidated company, one of whose predecessors accepted purported franchise by city ordinance, not estopped to claim under legislation perpetual franchise. City of Osceola v. Middle States Utilities co., 219 Iowa 192, 257 N.W. 340 (1934).

Limitation of ten years to franchise fixed by ordinance held valid. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Company held not authorized to maintain local exchange without first obtaining franchise. City of Cherokee v. Northwestern Bell Telephone Co., 199 Iowa 727, 202 N.W. 886 (1925).

Franchise not necessary under Code 1897 to erect and maintain toll line in a town. Talmadge v. Town of Washta, 183 Iowa 792, 167 N.W. 596 (1918).

Legislative grant, when accepted cannot be added to by city. City of Des Moines v. Iowa Telephone Co., 181 Iowa 1282, 162 N.E. 323 (1917).

Company accepting charter from city not having such authority, not estopped to claim rights in street. State v. Chariton Telephone Co., 173 Iowa 497, 155 N.W. 968 (1916).

Right to operate under franchise through streets subject to police power of city. Shaver v. Iowa Telephone Co., 175 Iowa 607, 154 N.W. 678, Ann. Cas. 1917E. 539 (1915).

Code 1897 authorizing construction of lines along public roads limited within municipalities. East Boyer Telephone Co. v. Incorporated Town of Vail, 166 Iowa 226, 147 N.W. 327 (1914).

Town not estopped from relying on invalidity of franchise where company had not acted on it for 10 years. Farmers' Telephone Co. of Quimby v. Town of Washta, 157 Iowa 447, 133 N.W. 361 (1911).

5. Municipal tax or fee.

Ordinance could not be considered regulatory ordinance in determining right to collect percentage of income. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Under pleadings city not entitled to recover on implied contract for use of streets after franchise expired, no facts showing consent being alleged. City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932).

Public service corporation acting under legislative authority which has never been revoked may not be charged rental value for use of streets. City of Des Moines v. Iowa Telephone Co., 181 Iowa 1282, 162 N.E. 323 (1917).

6. Exclusive or concurrent rights.

In action by city for injunction requiring telephone company to remove its lines from city's streets and alleys, wherein telephone company asserted that, its lines having been built prior to October 1, 1897, it secured perpetual rights to use streets and alleys under statutes then in force, evidence disclosed that transfer, by person who built the first lines, to company's predecessor, carried with it legislative franchise to occupy streets and the alleys. City of Emmetsburg v. Central Iowa Tel. Co., 250 Iowa 768, 96 N.W.2d 445 (1959).

7. Extension of right.

Right to extend service as demanded by public necessity was presumed. State v. Nebraska Telephone Co., 127 Iowa 194, 103 N.W. 120 (1905).

8. Rates.

Power to fix rates inheres originally in the state. Iowa Telephone Co. v. City of Keokuk, D. C., 226 F. 82 (1915).

In absence of legislative authority, city had no power to fix rates for company holding perpetual franchise from legislature. City of Osceola v. Middle States Utilities Co., 219 Iowa 192, 257 N.W. 340 (1934).

Temporary injunction restraining company from collecting certain rates would work irreparable injury and should not be sustained. City of Ft. Dodge v. Ft. Dodge Telephone Co., 172 Iowa 638, 154 N.W. 914 (1915).

9. Tort liability.

Trespass action against telephone company. Hagenson v. United Tel. Co. of Iowa, 209 N.W.2d 76 (Iowa 1973).

For additional annotations, see I.C.A.

10. Private wires.

Where company contracted to maintain private wire along its poles, its removal to different pegs on poles, if without substantial interference with efficiency was proper. Anson v. Fobes, 184 Iowa 585, 169 N.W. 35 (1918).

11. Transfer of franchise.

Legislative franchise under the Code of 1873 to occupy streets and alleys with telephone lines was transferable without the assent of the state. City of Emmetsburg v. Central Iowa Tel. Co., 250 Iowa 768, 96 N.W.2d 445 (1959).

477.2 Removal of Lines

1. Construction and application.

Action by city for injunction requiring telephone company to remove its lines. City of Emmetsburg v. Central Iowa Tel. Co., 250 Iowa 768, 96 N.W.2d 445 (1959).

Former construciton of Code 1873, as amended, and Code 1897 held determinative under rule of stare decisis. City of Cherokee v. Northwestern Bell Telephone Co., 199 Iowa 727, 202 N.W. 886 (1925).

Proper authority may order poles or fixtures placed anywhere on highway, subject to superior right of use of highway by public. O.A.G. 1923-24, p. 182.

2. Expense of removal.

Where reconstruction of highway necessitates relocation of line, county or township has no authority to pay for cost of relocation. O.A.G. 1923-24, p. 182.

477.3 Construction - Damages

1. Construction and application.

Under Iowa law, private title to riparian lands run only to high water mark and state owns bed of navigable streams within state; state also owns islands that form. State v. Woods, 333 N.W.2d 490 (Iowa Ct. App. 1983).

Private property may not be taken by a utility without payment of just compensation. Hagenson v. United Tel. Co. of Iowa, 164 N.W.2d 853 (Iowa 1969).

Iowa State Highway Commission may authorize a telephone company to place an underground telephone cable along the untraveled portion of a controlled access highway, within primary road system of the state, without consent from an abutting landowner who holds the underlying fee in such highway. O.A.G March 13, 1970.

Bond of company to obtain permit to place its system under street, held conditioned only on restoration of streets, etc., and not on maintenance of conduits, etc. U.S. Fidelity & Guaranty Co. v. Iowa Telephone Co., 174 Iowa 476, 156 N.W. 727 (1916).

2. Tort liability.

Telephone lines along highway need not, except at points of access, be constructed so high as to clear traffic. Wegner v. Kelly, 182 Iowa 259, 165 N.W. 449 (1917).

Company stringing line along highway is bound to raise them so as not to interfere with landowner regardless of whether he was caught at place not regularly for access. Wegner v. Kelley, 157 N.W. 206 (Iowa 1916), affirmed 182 Iowa 259, 165 N.W. 449.

3. Nuisance.

Wires constructed so as to discommode public are nuisances, though erected under license or permission. Erickson v. Town of Manson, 180 Iowa 378, 160 N.W. 276 (1917).

Chapter 478

Electric Transmission Lines

478.1 Franchise

1. Construction and application.

Legislature may create or destroy rebuttal presumption, but cannot be discriminatory between persons or corporations based on unrelated use or ownership of utility. Calkins v. Adams County Coop Elec. Co., 259 Iowa 245, 144 N.W.2d 124 (1966).

Transmission of electric current for distribution of public is public use for which power of eminent domain may be exercised. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

Chapter 306A pertaining only to controlled access highways, enacted after this chapter pertaining to location of utility lines on highways outside cities and towns, was controlling, if there was a conflict between the two chapters and such conflict could not be fairly reconciled. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

"Public grounds" - defined. Taschner v. Iowa Elec. Light & Power Co., 249 Iowa 673, 86 N.W.2d 915 (1958).

Sections 489.2, 489.3 must be considered with this section. Central States Electric Co. v. Incorporated Town of Randall, 230 Iowa 376, 297 N.W. 804 (1941).

Granting of franchise for location of line does not cast any restriction on use of land of adjacent owner. O.A.G. 1940, p. 364.

2. Necessity of franchise.

Necessity for utility to condemn strip across condemnees' land for electric transmission line right of way purposes. Vittetoe v. Iowa Southern Utilities Co., 255 Iowa 805, 123 N.W.2d 878 (1963).

Town could not erect and maintain line to another town without franchise from State Commerce Commission. Central States Electric Co. v. Incorporated Town of Randall, 230 Iowa 376, 297 N.W. 804 (1941).

Wisdom of permitting highly charged wires along highway is for legislature. Iowa Ry. & Light Corporation v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930). State v. Central States Electric Co., 231 N.W. 467. Central States Electric Co. v. Pocahontas County, 231 N.W. 468.

It is violation of law to erect and operate line without grant from proper authority. O.A.G. 1913-14, p. 182.

3. Power to grant franchise.

State Commerce Commission has jurisdiction to determine necessity of taking particular property by power company. Race v. Iowa Elec. Light & Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

Section 306A.3 authorizing highway authorities to regulate controlled access facilities was subsequently enacted to, and was in irreconcilable conflict with this section authorizing utility commission to grant franchises for erection of electric transmission lines over or across public highways outside of cities and towns, and section 306A.3 pertaining to controlled access highways was therefor controlling. Iowa Power & Light Co. v. Iowa State Highway Commission, 254 Iowa 534, 117 N.W.2d 425 (1962).

City or town has no authority to grant to another city or town a franchise for electric distribution system. Central States Electric Co. v. Incorporated Town of Randall, 280 Iowa 376, 297 N.W. 804 (1941).

Railroad commissioners had power to grant franchise and designate route and location of lines. Iowa Ry. & Light Corporation v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930). State v. Central States Electric Co., 231 N.W. 467. Central States Electric Co. v. Pocahontas County, 231 N.W. 468.

Where line to be on public highway grant from board of supervisors was all that was required but if line to cross public roads or streams then grant from railroad commissioners sufficient. O.A.G. 1913-14, p. 182.

4. Location of poles or lines.

County engineer's act of locating line on highway not illegal because written application not filed with auditor, such requirement being directory could be waived. Swartzwelter v. Iowa Southern Utilities Corporation, 216 Iowa 1060, 250 N.W. 121 (1933).

Where line properly authorized along highway, county engineer could not locate line so that part would overhang adjoining land. Iowa Ry. & Light Corporation v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed in State v. Central States Electric Co., 231 N.W. 467.

5. Actions.

Corporation operating electric plant in town entitled to maintain suit to enjoin allegedly illegal contract for constructing of municipal plant. Iowa Southern Utilities Co. v. Cassill, C. C. A. 69 F.2d 703 (1934).

Owner of electric system in electing to stand on ruling sustaining demurer, admitted invalidity of franchise alleged in petition seeking ouster. State ex rel. Schlegel v. Munn, 216 Iowa 1232, 250 N.W. 471 (1933).

Court would not presume corportion erected line on highway without procuring franchise. Swartzwelter v. Iowa Southern Utilities Corporation, 216 Iowa 1060, 250 N.W. 121 (1933).

Suit to enjoin board of supervisors and others from interfering with or removing plaintiff's line properly dismissed. Incorporated Town of Fonda v. Bd of Sup'rs of Pocahontas County, 169 N.W. 648 (Iowa 1918).

478.2 Petition for Franchise - Informational Meetings Held

1. Validity.

Requirements that a public utility provide "a statement of legal rights of the landowner" and disclose "relationship of project to...future land use and zoning ordinances" imposed impossible burdens upon utility. O.A.G. April 14, 1970.

Code 1931, sections 6142, 8310 held not constitutional as depriving taxpayers of property without due process of law by permitting expenditure for supplying non excess electricity outside city limits for purely private purposes. Carroll v. City of Cedar Falls, 221 Iowa 277, 261 N.W. 652 (1935).

2. Construction and application.

"Public grounds" - defined. Taschner v. Iowa Elec. Light & Power Co., 249 Iowa 673, 86 N.W.2d 915 (1958).

County engineer's act of locating line on highway not illegal because written application not filed with auditor, such requirement being directory could be waived. Swartzwelter v. Iowa Southern Utilities Corporation, 216 Iowa 1060, 250 N.W. 121 (1933).

3. Location of poles and lines.

County engineer has control of location of line on highway except that poles cannot be located so as to overhang adjoining land. Iowa Ry. & Light Corporation v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930). State v. Central States Electric Co., 231 N.W. 467.

4. Necessity.

Petitioner seeking grant of electric transmission line franchise has burden of proving allegations as to necessity of line and of proposed use. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

Failure and refusal of State Commerce Commission to consider question whether it was necessary for utility to condemn strip across condemnees' land for electric transmission line right of way purposes. Vittetoe v. Iowa Southern Utilities Co., 255 Iowa 805, 123 N.W.2d 878 (1963).

5. Notice.

Substantial compliance with notice requirements of this section providing for notice of informational meetings prior to filing of power line franchise application to all affected parties is sufficient. Anstey v. Iowa State Commerce Commission, 292 N.W.2d 380 (Iowa 1980).

478.3 Petition - Requirements

For annotations, see I.C.A.

478.4 Franchise Hearing

For annotations, see I.C.A.

478.5 Notice - Objections Filed

1/2. Validity.

This chapter did not permit taking of private property for private purpose. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

1. Construction and application.

One purpose of providing for objections to applications for electric transmission line franchise was to allow those interested to attack both petition and petitioner's evidence in particulars required to alleged. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

Board of railroad commissioners had discretion to refuse or grant franchise for lines over highways already occupied by other lines serving same territory. O.A.G. 1930, p. 122.

2. Loction of poles or lines.

County engineer has control of location of line on highway except that poles cannot be located as to overhang adjoining land. Iowa Ry. & Light Corporation v. Lindsey, 211 Iowa 544, 231 N.W. 461 (1930), followed in State v. Central States Electric Co., 231 N.W. 467.

3. Amendment.

For annotations, see I.C.A.

4. Necessity of condemnation.

For annotations, see I.C.A.

5. Presumptions and burden of proof.

For annotations, see I.C.A.

6. Review.

Commerce Commission cannot make determination that it is proper to grant electric transmission line franchise without considering and passing on matters required by this section relating to findings of public use and public necessity. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

7. Findings.

Commerce Commission finding that it is proper to grant electric transmission line franchise over particular route includes finding of public use, public necessity for use, and that specified real estate is necessary for such purpose. Race v. Iowa Elec. Light & Power Co., 257 Iowa 701, 134 N.W.2d 335 (1965).

478.9 Exclusive Rights - Duration of Franchise (No Annotations)

478.16 Injury to Person or Property

For annotations, see I.C.A.

478.17 Access to Lines - Damages

1. Validity.

Code Supp. 1913, section 2120-t, not unconstitutional as permitting company to take less than full possession of right of way condemned and to pay for less than value of full possession. Draker v. Iowa Electric Co., 191 Iowa 1376, 182 N.W. 896 (1921).

1.5 In general.

Failure of condemnation notice to describe ingress and egress easement did not render condemnation proceedings void and condemnee was bound. SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635 (Iowa 1983).

Secondary easement right of ingress and egress may be obtained as incident to easement acquired by eminent domain as well as conveyance. Id.

Notice of condemnation which said "for condemnation of right of way for transmission line" was reasonably calculated to inform condemnee of interest in condemnation. Id.

2. Construction and application.

On condemnation company acquired only an easement which could be used, as necessary, to construct, maintain and operate its line as authorized by franchise. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

3. Waiver.

Power company could, on owner's appeal from assessment, surrender its right of access to strip over rest of owner's farm. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

4. Compensation.

Settlement of damages to be awarded not contract involving realty within statute of frauds. Cunningham v. Iowa-Illinois Gas & Elec. Co., 243 Iowa 1377, 55 N.W.2d 552 (1952).

Damages must be paid for rights appropriated though full use thereof may not be immediately contemplated. De Penning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948). Draker v. Iowa Electric Co., 191 Iowa 1376, 182 N.W. 896 (1921).

478.18 Supervision of Construction - Location

1. Construction and application.

State Commerce Commission's determination that franchise for new transmission lines complied with location design requirements were based on engineering consideration of practicality and reasonableness. Anstey v. Iowa State Commerce Commission, 292 N.W.2d 380, (Iowa 1980).

State Commerce Commission's finding that 345,000 volt transmission line through Dallas County did not injure Boone County objector's rights was supported by evidence and binding on Supreme Court. Clark v. Iowa State Commerce Commission, 286 N.W.2d 208 (Iowa 1979).

Placement of electric transmission lines shall be constructed near and parallel to railway right of way along section lines. Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157 (Iowa 1975).

Utility not liable for personal injury due to acts of its employees who were at the time under control of county engineer. Swartzwelter v. Iowa Southern Utilities Corporation, 216 Iowa 1060, 250 N.W. 121 (1933).

2. Necessity of Condemnation.

Refusal of State Commerce Commission to consider necessity to condemn strip across condemnee's land for electric transmission line right of way invalidated franchise and petition for condemnation. Vittoe v. Iowa Southern Utilities Company, 123 N.W.2d 878 (Iowa 1963).

478.19 Manner of Construction

1. Construction and application.

For annotations, see I.C.A.

478.20 Distance from Buildings

1. Construction and application.

For annotations, see I.C.A.

478.26 Wires Across Railroad Right of Way at Highways

For annotations, see I.C.A.

478.30 Crossing Highway

1. Construction and application.

For annotations, see I.C.A.

Chapter 479

Pipe Lines and Underground Gas Storage [New]

479.1 Purpose and Policy

1/2. Validity.

Permitting pipeline company engaged in interstate commerce to make underground crossing of public highways, grounds and streams would not result in taking of public property and statutes authorizing such permits are not unconstitutional. Mid-America Pipeline Co. v. Iowa State Commerce Co., 255 Iowa 1304, 125 N.W.2d 801 (1964).

1. Construction and application.

In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

2. Streams, lines crossing.

Only legislature may authorize permit to lay pipe line across bed of meandered or navigable stream. O.A.G. 1930, p. 364.

3. Issuance of permits.

State Commerce Commission has power to issue permits to interstate pipe line companies without regard to a convenience or a necessity and is required to do so subject only to safety regulations and proper permits to cross highways and railroad right of ways. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

4. Interstate commerce.

For annotations, see I.C.A.

479.3 Conditions Attending Operation

1/2. Validity generally.

Permitting pipe line company engaged in interstate commerce to make underground crossings of public highways, grounds and streams would not result in taking of public property. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

1. Validity, prior law.

Code 1931, section 8338-d2 when read with section 8338-d21 was unconstitutional as burdening interstate commerce. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

479.5 Application for Permit

1/2. Validity generally.

Permitting pipe line company engaged in interstate commerce to make underground crossings of public highways. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

Requirements that public utility provide "a statement of legal rights of the landowner" and disclose "relationship of project to...future land use and zoning ordinances" imposed impossible burdens upon utility. O.A.G. April 14, 1970.

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.
Federal eminent domain is available to natural gas companies seeking to acquire property rights for undergrounds storage facilities for natural gas. Natural Gas Pipeline Co. of America v. Iowa State Commerce Commission, 369 Supp. 156 (1974).
In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.6 Petition

1/2. Validity generally.
Permitting pipe line company engaged in interstate commerce to make underground crossings of public highways, grounds and streams would not result in taking of public property and statutes authorizing such permits are not unconstitutional. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.
In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.7 Hearing - Notice

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.
In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.8 Time and Place

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.

In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.9 Objections

1. Validity, prior law.

Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.

Right to object that an appropriation of private property is not for a public use is not confined to the owner of the property sought to be appropriated, but such an objection may be raised by any person interested. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 253 Iowa 1143, 114 N.W.2d 622 (1962).

In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.10 Filing

1. Validity, prior law.

Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.

In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.11 Examination - Testimony

1. Validity, prior law.

Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Construction and application.

In proceeding before commerce commission for permit to construct pipe line, substantial compliance with this chapter sufficient. Browneller v. Natural Gas Pipeline Co. of America, 233 Iowa 686, 8 N.W.2d 474 (1943).

479.12 Final Order - Condition

1/2. Validity generally.

Permitting pipe line company engaged in interstate commerce to make underground crossings of public highways, grounds and streams would not result in taking of public property and statutes authorizing such permits are not

unconstitutional. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

2. Issuance of permits.
State Commerce Commission has power to issue permits to interstate pipe line companies without regard to public convenience or necessity and is required to do so, subject only to safety regulations and proper permits to cross highways and railroad rights of way. Mid-America Pipeline Co. v. Iowa State Commerce Commission, 255 Iowa 1304, 125 N.W.2d 801 (1964).

3. Interstate commerce.
For annotations, see I.C.A.

479.13 Costs and Fees

1. Validity, prior law.
Code 1931, section 8338-d3 to 8338-d11 held invalid as violation of commerce clause of federal Constitution. State ex rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 216 Iowa 436, 249 N.W. 366 (1933), certiorari denied, 54 S. Ct. 120, 290 U.S. 684, 78 L. Ed. 589.

479.19 Limitation on Grant (No Annotations)

479.24 Eminent Domain

For annotations, see I.C.A.

479.25 Damages

1. Construction and application.
Contracts for right of way and simultaneously executed instruments acknowledging receipt of stated sums in settlement of all damages must be construed together in action for money due under aforementioned contract. Vorthmann v. Great Lakes Pipe Line Co., 228 Iowa 53, 289 N.W. 746 (1940).

Chapter 573

Labor and Material on Public Improvements

573.1 Terms Defined

1. Construction and application.

Notwithstanding equitable concerns, materialman allowed to recover amount of unpaid rentals since they did not constitute "unclean hands" nor excuse contractor's failure to protect itself by bond or assurance that subcontractor would meet obligation to materialman. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Section 573.23 construed in light of whole chapter. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

All sections of chapter considered in relation to entire chapter. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

"Materials" defined in subsection 4 strictly construed. Coon River Co-op Sand Ass'n v. McDougall Const. Co. of Sioux City, 215 Iowa 861, 244 N.W. 847 (1932). Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803.

"Materials" not groceries for help. Aetna Casualty & Surety Co. v. Kimball, 206 Iowa 1251, 222 N.W. 31. Monona County v. O'Connor, supra.

Petroleum products used in hauling materials constitute "materials." Rainbo Oil Co. v. McCarthy Improvement Co., 212 Iowa 1186, 236 N.W. 46.

Meaning of "materials" based on established judicial interpretation. Aetna Casualty & Surety Co. of Hartford, Conn. v. Kimball, 206 Iowa 1251, 222 N.W. 31 (1928).

2. Settlement.

Settlement with first subcontractor did not avoid liability to second subcontractor. Joseph T. Ryerson & Son v. Schraag, 211 Iowa 558, 229 N.W. 733 (1930).

3. Contract, necessity of.

Construction of storm sewer with day labor from tax money prohibited. O.A.G. 1928, p. 46.

4. Evidence.

Seller must prove use of petroleum products in hauling materials. Rainbo Oil Co. v. McCarthy Improvement Co., 212 Iowa 1186, 236 N.W. 46 (1931).

573.2 Public Improvements - Bonds and Conditions

1. Construction and application.

When a school district utilizes the services of a construction manager for the building of a high school, compliance with the statutory requirements of public hearing on the project and form of contract, approval of plans and bonding is also required. O.A.G. July 30, 1974.

Nonstatutory contractors performance bond void. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

Persons supplying fuel granted a lien. Standard Oil Co. v. Marvill, 201 Iowa 614, 206 N.W. 37 (1926).

2. Execution of bond.

Validity of bond to release claim for materials not affected by failure of "principal" to sign. Ft. Dodge Culvert & Steel Co. v. Miller, 200 Iowa 1169, 206 N.W. 141 (1925).

3. Cost of bond.

Cost of bond cannot be paid by public body. O.A.G. 1936, p. 527.

4. Construction of bond.

Bond given force and effect intended by contracting parties. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Public contractors bond not elastic. Queal Lumber Co. v. Anderson, 211 Iowa 210, 229 N.W. 707.

Obligation under bond measured by statute. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

Meaning of bond determined by entire contract and bond. Clinton Bridge Works v. Kingsley, 188 Iowa 218, 175 N.W. 976 (1920).

5. Scope of bond.

Bond limited to its specific provisions. Noyes v. Granger, 51 Iowa 227, 1 N.W. 519.

6. Liability on bond.

Surety liable for faulty construction though engineer makes no objection. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Surety not liable for incorrect payment to assignor where assignee failed to notify. Sibley Lumber Co. v. Madsen, 198 Iowa 880, 200 N.W. 425 (1924).

Liability of surety limited to statutory requirements. Nebraska Culvert & Mfg. Co. v. Freeman, 197 Iowa 720, 198 N.W. 7.

Performance bond liability does not extend to personal injury liability. Schisel v. Marvill, 198 Iowa 725, 197 N.W. 662 (1924).

Surety bond not liable for claims of materialmen who have no claim against county. Hunt v. King, 97 Iowa 88, 66 N.W. 71 (1896).

Subcontractor's performance bond not breached by excessive indebtedness of subcontractor. Hahn v. Wickham, 55 Iowa 545, 8 N.W. 358 (1881).

7. Priorities.

Surety has prior claim over assignee holding nonstatutory claims. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

8. Surety's rights.

Rights of laborers, materialmen and sureties fixed by this chapter. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Surety could not recover for "construction fraud" for payments over retained percentages. Federal Surety Co. v. Des Moines Morris Plan Co., 213 Iowa 464, 239 N.W. 99 (1941).

9. Indemnitors.

Indemnitors released by contractor's settlement with bond company after default. Iowa Bonding & Casualty Co. v. Wagner Co., 203 Iowa 179, 210 N.W. 775 (1926).

10. Appropriations.

Bond for expenditure of public funds authorized payment only after commended. Muscatine County v. Carpenter, 33 Iowa 41 (1871).

11. Actions.

Failure to file claim and sue within required time bars claim. Zeidler Concrete Pipe Co. v. Ryan & Fuller, 205 Iowa 37, 215 N.W. 801 (1927).

12. Evidence.

Whether dam a water tight structure for court under evidence. City of Osceola v. Gjellefald Const. Co., 225 Iowa 214, 279 N.W. 590 (1938).

Admission of liability by principal not prejudicial. Ft. Dodge Culvert & Steel Co. v. Miller, 200 Iowa 1169, 206 N.W. 141 (1925).

Bond to city immaterial where city had been recognized. Hooven, Owens, Rentschler Co. v. City of Atlantic, 163 Iowa 380, 144 N.W. 635 (1913).

Evidence of forfeit of contract not prejudicial. City of Ft. Madison v. Moore, 109 Iowa 476, 80 N.W. 527 (1899).

573.3 Bond Mandatory

1. Construction and application.

Settlement with first subcontractor does not defeat second subcontractor's rights. Joseph T. Ryerson & Son v. Schraag, 211 Iowa 558, 229 N.W. 733 (1930).

Assignee bank bound to know certain claim lienable. Ottumwa Boiler Works v. M. J. O'Meara & Son, 206 Iowa 577, 218 N.W. 920 (1928).

Contract construed in light of statute. Nebraska Culvert & Mfg. Co. v. Freeman, 197 Iowa 730, 198 N.W. 7 (1924).

573.4 Deposit in Lieu of Bond (No Annotations)

573.5 Amount of Bond

1. Construction and application.

Obligation under bond measured by statute. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

573.6 Subcontractors on Public Improvements

1. Construction and application.

Notwithstanding equitable considerations, materialman properly allowed to recover amount of unpaid rentals since it did not constitute "unclean hands" nor excuse contractor's failure to protect itself by requiring a bond or other assurance that subcontractor would meet obligation to materialman. Economy Forms Corporation v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Under subcontract for excavation on highway construction project, final payment was an absolute debt of general contractor. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Conflict between contract and statute resolved according to statute. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Bond provisions governed by statute. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Claimant's rights under contractor's bond governed by statute. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

2. Liability on bond.

County's action against contractor and contractor's surety for defects in performance. Board of Sup'rs of Winneshiek County v. Standard Appliance Co., 249 Iowa 438, 87 N.W.2d 459 (1958).

Acceptance of work no bar to recovery for hidden defects. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Surety's liability fixed by statute. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Settlement with first subcontractor did not defeat liability to second subcontractor. Joseph T. Ryerson & Son v. Schraag, 211 Iowa 558, 229 N.W. 733 (1930).

Bond liability broader than statute limited to statute. Ottumwa Boiler Works v. M. J. O'Meara & Son, 206 Iowa 577, 218 N.W. 920 (1928).

3. Discharge of surety.

Surety discharged for lack of notice of extension only where valid agreement to extend. O.A.G. 1919-20, p. 273.

4. Retained funds, right to.

Where subcontract for excavation on highway construction project provided that final payment to subcontractor should be made after payment of final estimate to general contractor by State Highway Commission, but general contractor delayed acceptance of this final estimate because of unrelated matters, subcontractor was entitled to compensation within a reasonable time. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Words "the amount then due the contractor" and "said amount" in section 573.23 refer to retained percentage. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Laborers and material men could resort only to retained ten percent and not to excess retained. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

5. Filing claims.

Filing claim within 30 days not condition precedent to claim against retained percentage and bond. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Failure to file claim in 30 days releases surety. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

573.7 Claims for Material or Labor

1. Construction and application.

Claimant must substantially comply with statute governing claim for material or labor under contract for construction of public improvement. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

This section construed with view to promoting its objectives and assisting parties to obtain justice. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Under the Miller act and statute governing claims for material and labor on public improvement, ordinarily contract with prime contractor is prerequisite for being subcontractor. Lennox Ind. Inc. v. City of Davenport, 320 N.W.2d 575 (Iowa 1982).

Plaintiff not prohibited from recovering from retainage, contractor, and insurer because it did not install units it manufactured. Other requirements being met, statute governing claims from material and labor on public improvement permit recovery by subcontractor furnishing labor or material to subcontractor. Id.

Contract for mechanical and heating contract, an integral part of project, was a subcontract with meaning and intent of statute governing claims from material and labor on public improvements. Plaintiff had claim against retainage, contractor and insurer for payment of equipment and attorney's fees. Id.

Under this section requiring that claim filed with officer, board or commission authorized by law to let contracts for public improvement be for "labor" or "service," whether claim is for "labor" or "service" is determined not by nature of what claimant receives but, rather, by nature of what is done to be entitled to receive it. Dobbs v. Knudson, Inc., 292 N.W.2d 692 (Iowa 1980).

No lien attaches to public improvements. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

This section strictly construed. Melcher Lumber Co. v. Robertson Co., 217 Iowa 31, 250 N.W. 594 (1933).

Designation of officer where claims filed strictly construed. Missouri Gravel Co. v. Federal Surety Co., 212 Iowa 1322, 237 N.W. 635 (1931).

Failure of proof of use of petroleum products precludes relief. Rainbo Oil Co. v. McCarthy Improvement Co., 212 Iowa 1186, 236 N.W. 46 (1931).

Filing time mandatory. Francesconi v. Independent School Dist. of Wall Lake, 204 Iowa 307, 214 N.W. 882. Independent School Dist. of Perry v. Hall et al., 159 Iowa 607, 140 N.W. 855. McGillivray Bros. v. District Township of Barton, 96 Iowa 629, 65 N.W. 974. Manchester v. Popkin et al., 237 Mass. 434, 130 N.W. 62. Kendall et al. v. Fader, 199 Ill. 294, 65 N.E. 318. Joint Board of Sup'rs of Dickinson and Osceola Counties v. Title Guaranty & Surety Co., 198 Iowa 1382, 201 N.W. 88 (1924). Whitehouse v. Surety Co., 117 Iowa 328, 90 N.W. 727.

Filing of claims antedate effective date of act. O.A.G. 1932, p. 166.

2. Claims, nature of.

Payments to trust were for "labor" within meaning of this section permitting claim to be made with officer, board or commission authorized by law to let public contract where claim is for "labor" or "service." Dobbs v. Knudson, Inc., 292 N.W.2d 692 (Iowa 1980).

Claims for labor or material only protected by this section. Nolan v. Larimer & Shaffer, 218 Iowa 599, 254 N.W. 45 (1934).

Trucker for subcontractor could file claim against retained percentage. Forsberg v. Koss Const. Co., 218 Iowa 818, 252 N.W. 258 (1934).

Lumber for cement forms not lienable. Melcher Lumber Co. v. Robertson Co., 217 Iowa 31, 250 N.W. 594 (1933).

Gasoline and oils used in hauling other materials constitute "materials." Rainbo Oil Co. v. McCarthy Improvement Co., 212 Iowa 1186, 236 N.W. 46 (1931).

Highway subcontractor not employed by principal contractor could not recover against principal. Commercial State Bank of Independence v. Broadhead, 212 Iowa 688, 235 N.W. 299 (1931).

Claims for repairing machinery not lienable. Ottumwa Boiler Works v. M. J. O' Meara & Son, 206 Iowa 577, 218 N.W. 920 (1928).

Contract to furnish labor and material held as subcontractor. Teget v. Polk County Drainage Ditch No. 40, 202 Iowa 747, 210 N.W. 920 (1926).

Supply of gasoline and oil held supplying materials. Standard Oil Co. v. Marvill, 201 Iowa 614, 206 N.W. 37 (1925).

Contractor not liable for rental or depreciation of grading equipment used by subcontractor. Nebraska Culvert & Mfg. Co. v. Freeman, 197 Iowa 720, 198 N.W. 7 (1924).

Bond to pay claims for labor and material or bridge does not extend to material for contractor's equipment. Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 132 N.W. 837 (1911).

Bank loaning money for payroll not entitled to lien. O.A.G. 1928, p. 64.

3. County or city, liability of.

Material supplier has no claim against county which let contract for drainage district. Iowa Pipe & Tile Co. v. Parks & Gerber, 169 Iowa 438, 151 N.W. 438 (1915).

Claimants furnishing material payable out of tax certificate. Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 131 N.W. 870 (1911), rehearing denied, 152 Iowa 531, 132 N.W. 837.

Completion of defaulted contract by county relieves retained percentage from liability for subcontractor's claim. Epeneter v. Montgomery County, 98 Iowa 159, 67 N.W. 93 (1896).

City not released from liability for judgment for public improvements because not payable out of general revenue. Slusser, Taylor & Co. v. City of Burlington, 42 Iowa 378 (1876).

4. Bond, liability on.

Surety's liability fixed by statute. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500.

Settlement with first subcontractor does not defeat second subcontractor claim. Joseph T. Ryerson & Son v. Schraag, 211 Iowa 558, 229 N.W. 733 (1930).

Obligation under bond measured by statute. Monona Couty v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

5. Payments.

School district payment to subcontractor did not entitle contractor to deduct from money due subcontractor. Bain v. Bruce, 164 Iowa 327, 145 N.W. 865 (1914).

No defense to suit by materialman against city that certificates had been issued. Iowa Brick Co. v. City of Des Moines, 111 Iowa 272, 82 N.W. 922 (1900).

Subcontractor entitled to lien for net balance due him. Green Bay Lumber Co. v. Thomas, 106 Iowa 420, 76 N.W. 749 (1898).

6. Statement of claim.

Verified weekly time checks sufficient to recover on bond. Francesconi v. Independent School Dist. of Wall Lake, 204 Iowa 307, 214 N.W. 882 (1927).

Claim for lien on building and funds for its erection does not invalidate proper claim. Epeneter v. Montgomery County, 98 Iowa 159, 67 N.W. 93 (1896).

Statement without jurat though sworn to was insufficient. McGillivray v. District Township of Barton, 96 Iowa 629, 65 N.W. 974 (1896).

7. Filing claim.

Pursuant to this section governing claims for material or labor under construction contract, claim by materialman for rent due from leasing concrete forms to subcontractor under contract to install storm sewers for city was required to be filed with city council. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Filing of itemized claim essential to enforceable claim. William Penn & Co. v. Northern Bldg. Co., C. C., 140 F. 973 (1965).

Surety of primary road contractor not liable for claims not filed with auditor. Missouri Gravel Co. v. Federal Surety Co., 212 Iowa 1322, 237 N.W. 635 (1931).

Claims not filed within 30 days not entitled to 10 percent. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Subcontractor's claims should be filed with county auditor. Fuller & Hiller Hardware Co. v. Shannon & Willfong, 205 Iowa 104, 215 N.W. 611 (1927).

Claims on school contractor bond must be filed with secretary of school board. Francesconi v. Independent School District of Wall Lake, 204 Iowa 307, 214 N.W. 882 (1927).

Subcontractor's claim filed with treasurer of school with notice to secretary and president proper. Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 157 Iowa 614, 138 N.W. 470 (1912).

One not complying with section could not complain of premature payment. Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 131 N.W. 870 (1912), rehearing denied, 152 Iowa 531, 132 N.W. 837.

Payment of contractor proper where right to reserve payment not retained. Modern Steel Structural Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

Payment on certificates valid as against materialmen. Green Bay Lumber Co. v. Independent School District of Odebolt, 125 Iowa 227, 101 N.W. 84 (1904).

Answer of garnishee corporation valid defense against subcontractor's claim. Swearingen Lumber Co. v. Washington School Tp. of Greene County, 125 Iowa 283, 99 N.W. 730 (1904).

Surety not released where no obligation to pursue a lien. Whitehouse v. American Surety Co., 117 Iowa 328, 90 N.W. 727 (1902).

Failure to file claim did not release surety. Read v. American Surety Co., 117 Iowa 10, 90 N.W. 590 (1902).

Claims must be filed with county auditor though supervisor named superintendent. Green Bay Lumber Co. v. Thomas, 106 Iowa 420, 76 N.W. 749 (1898).

Claims must be filed with highway commission on highway work. O.A.G. 1932, p. 142.

Claims filed with state auditor should be forwarded to highway commission. O.A.G. 1930, p. 142.

Notice of existence of claim usually protects laborer on city work. O.A.G. 1916, p. 216.

8. Assignments.

Assignee bank has prior right over surety on defaulted contract. Coon River Co-op Sand Ass'n v. McDougall Const. Co. of Sioux City, 215 Iowa 861, 244 N.W. 847 (1932).

Assignee bank bound to know bond requirements and lienability of claims. Ottumwa Boiler Works v. M. J. O'Meara & Son, 206 Iowa 577, 218 N.W. 920 (1928).

Assignee bank not prior to claim where assignment for payment of lienable claims. Reynolds v. City of Onawa, 192 Iowa 398, 184 N.W 729 (1921).

Materialmen claims not defeated by assignment by contractor. City of Boone v. Gary, 162 Iowa 695, 144 N.W. 709 (1913).

Materialmen's rights following assignment for benefit of creditors purely equitable. Des Moines Bridge & Iron Works v. Plane, 163 Iowa 18, 143 N.W. 866 (1913).

Assignees for benefit of creditors took only rights of assignor and subject to equities. Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 157 Iowa 614, 138 N.W. 470 (1912).

9. Actions.

Question of right of intervenors to recover cannot be raised a month after judgment. Henderson v. Wilson, 196 Iowa 631, 195 N.W. 194 (1923).

Subcontractor not establishing lien may sue on bond. Streator Clay Mfg. Co. v. Henning-Vineyard Co., 176 Iowa 297, 155 N.W. 1001 (1916).

10. Garnishment.

Maturity of school district's debt on contract not postponed by claim for materials. Swearingen Lumber Co. v. Washington School Tp. of Greene County, 125 Iowa 283, 99 N.W. 730 (1904).

11. Evidence.

In proving his account against subcontractor as part of action against prime contractor, owner of machine rented by subcontractor was properly allowed to introduce subcontractor's itemized statement which subcontractor testified was verified and correct and which subcontractor had signed. Bingham v. Blunk, 253 Iowa 1391, 116 N.W.2d 447 (1962).

Showing of extent of use of machinery prerequisite to establishing claim. Byers Mach. Co. v. Iowa State Highway Commission, 214 Iowa 1347, 242 N.W. 22 (1932).

Hiring of laborer by subcontractor not contract of principal. Commercial State Bank of Independence v. Broadhead, 212 Iowa 688, 235 N.W. 299 (1931).

Contractor's bond immaterial where city not recouped for value of property. Hooven, Owens, Rentschler Co. v. City of Atlantic, 163 Iowa 380, 144 N.W. 635 (1913).

Burden of proof of legal filing of claims on city. Iowa Brick Co. v. City of Des Moines, 111 Iowa 272, 82 N.W. 922 (1900).

573.8 Highway Improvements

1. Construction and application.

Where a subcontract provides for payment to subcontractor upon general contractor's receipt of payment, and the contractor has by his own fault lost the right of payment, the subcontractor is entitled to compensation. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Claims for primary road construction not filed with county auditor. Missouri Gravel Co. v. Federal Surety Co., 212 Iowa 1322, 237 N.W. 635 (1931).

Claims filed with state auditor should be forwarded to highway commission. O.A.G. 1930, p. 142.

573.9 Officer to Indorse Time of Filing Claim (No Annotations)

573.10 Time of Filing Claims

1. Construction and application.

The doctrine of equitable estoppel is applicable to statutes of limitations. L. & W. Const. Co. v. Kinser, 251 Iowa 56, 99 N.W.2d 276 (1959).

Failure to file claim in 30 days does not prevent recovery on bond. Francesconi v. Independent School District of Wall Lake, 204 Iowa 307, 214 N.W. 882 (1927). Perkins B. S. & F. Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Filing claim in district court after 30 days does not establish claim against surety. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 1035, 1036, 237 N.W. 500, 504. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Claim not filed within 30 days could not recover from surety but only against balance of contract price. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Claim filed after 30 days could not recover in excess of amount withheld. Perkins Builders' Supply & Fuel Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Statute prescribing time of filing inapplicable where non-statutory bond. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

Action against surety barred for failure to file and bring timely suit. Zeidler Concrete Pipe Co. v. Ryan & Fuller, 205 Iowa 37, 215 N.W. 801 (1927).

Claim for materials on county road filed with county auditor. Fuller & Hiller Hardware Co. v. Shannon & Willfong, 205 Iowa 104, 215 N.W. 611 (1927).

Claims maturing under prior law not subject to revised law. Francesconi v. Independent School District of Wall Lake, 204 Iowa 307, 214 N.W. 882 (1927). Independent School District of Perry v. Hall et al., 159 Iowa 607, 140 N.W. 855. McGillivray Bros. v. District Township of Barton, 96 Iowa 629, 65 N.W. 974.

Failure to give notice waives claim against school district. Maryland Casualty Co. v. Des Moines City Evangelistical Union, 184 Iowa 246, 167 N.W. 695 (1918).

Failure to file claim defeats rights as against other claimants. Humboldt County v. Ward Bros., 163 Iowa 510, 145 N.W. 49 (1914).

Filing of claim after 30 day period waives lien on building and fund. Independent School District of Perry v. Hall, 159 Iowa 607, 140 N.W. 855 (1913).

Claim must be filed within 30 day period. Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 131 N.W. 870 (1911), reharing denied, 152 Iowa 532, 132 N.W. 837.

Subcontractor must file claim within 30 days after last labor by him. Breneman v. Harvey, 70 Iowa 479, 30 N.W. 846 (1886).

2. Computation of time.

Verified itemized statement must be filed within four months. Queal Lumber Co. v. Anderson, 211 Iowa 210, 229 N.W. 707 (1930).

3. Payments.

Where subcontract for excavation on highway construction project provided that final payment to subcontractor should be made after payment of final estimate to general contractor by state highway commission, but general contractor delayed acceptance of this final estimate because of unrelated matters, subcontractor was entitled to compensation within a reasonable time. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Failure to retain required percentage rendered school district liable. C. E. Stukas & Sons v. Miller & Ladehoff, 197 Iowa 824, 198 N.W. 65 (1924).

Payment to subcontractor not a preference. Bain v. Bruce, 164 Iowa 327, 145 N.W. 865 (1914).

Premature payment of contractor not subject to question by one not complying with section 3102, Code 1897. Empire State Surety Co. v. Des Moines, 152 Iowa 531, 131 N.W. 870 (1911), rehearing denied, 152 Iowa 531, 132 N.W. 837.

Excessive payments by county does not subject it to liability. Modern Steel Structural Co. v. Van Buren County, 126 Iowa 606, 102 N.W. 536 (1905).

4. Revival of claims.

Right to file claim not revived by furnishing material to trustee in bankruptcy. Empire State Surety Co. v. City of Des Moines, 152 Iowa 531, 131 N.W. 870 (1911), rehearing denied, 152 Iowa 531, 132 N.W. 837.

5. Contract, rights under.

Assignee not preferred over claimants preferred under contract. Reynolds v. City of Onawa, 192 Iowa 398, 184 N.W. 729 (1921).

Promise of contractor to pay subjected contractor and surety to liability beyond filing period. City National Bank of Mason City v. Independent School District of Mason City, 190 Iowa 25, 179 N.W. 947 (1920).

6. Bonds, liability on.

Subcontractor not filing lien could recover against surety. Streator Clay Mfg. Co. v. Henning-Vineyard Co., 176 Iowa 297, 155 N.W. 1001 (1916).

573.11 Claims Filed After Action Brought

1. Construction and application.

Filing of claim not prerequisite to recovery from surety. Cities service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Rights of claimants determined by statute. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Claims maturing under prior law not affected by revision. Francesconi v. Independent School District of Wall Lake, 204 Iowa 307, 214 N.W. 882 (1927).

2. Lien.

No lien attaches to public improvements. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

573.12 Retention from Payments on Contracts

1. Construction and application.

Surety on public construction contract for town, as subrogee of town, had right to retain all progress payments under the contract not earned by contractor at time of his default. First Federal State Bank v. Town of Malvern, 270 N.W.2d 818 (Iowa 1978).

Governmental unit may collect interest on funds retained pursuant to a contract or a public improvement. Such interest belongs to the governmental unit in most cases. O.A.G. July 17, 1980.

Legislature intended to protect claimants by this section. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Rights of laborers, materialmen and surety determined by this chapter. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Surety's liability on statutory bond fixed by this section. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Sections 573.12, 573.13 and 573.14 should be strictly followed. O.A.G. 1925-26, p. 86. O.A.G. 1925-26, p. 85. O.A.G. 1925-26, p. 73.

2. Filing claims.

Filing of claims within 30 days prerequisite to sharing retained percentage. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

3. Interest.

Where retained percentage insufficient interest properly denied. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

4. Assignment.

Assignment in surety bond covers only retained percentage. Federal Surety Co. v. Des Moines Morris Plan Co., 213 Iowa 464, 239 N.W. 99 (1931).

Where estimates assigned, voucher payable to contractor and assignee jointly. O.A.G. 1925-26, p. 338.

5. Contractual provisions.

Payments to contractor may be made under this section, though contract is silent as to terms of payment. O.A.G. October 7, 1969.

Payment of entire contract by city no defense where retained percentage contracted for. Iowa Brick Co. v. City of Des Moines, 111 Iowa 272, 82 N.W. 922 (1900).

Withholding retained percentage proper though mechanics liens not secured. Independent School District of Forest Home v. Mardis, 106 Iowa 295, 76 N.W. 794 (1898).

Contractor not entitled to any part of retained percentage where county took over work. King v. Mahaska County, 75 Iowa 329, 39 N.W. 636 (1888).

Special provision in contract must not violate statute. O.A.G. 1925-26, p. 73.

6. Release by filing bond.

Retained percentage not released by filing of indemnifying bond. O.A.G. 1928, p. 312.

7. Bond of supervisor.

Bond for proper expenditure of fund subject to recovery. Muscatine County v. Carpenter, 33 Iowa 41 (1871).

573.13 Inviolability and Disposition of Fund

1. Construction and application.

Contract not void for failure to require retained percentage. Weiss v. Incorporated Town of Woodbine, 228 Iowa 1, 289 N.W. 469 (1940).

Sections 573.12, 573.13 and 573.14 should be strictly followed. O.A.G. 1925-26, p. 86.

573.14 Retention of Unpaid Funds

1/2. Validity.

Chapter governing labor and material on public improvements did not deny due process to contractor by requiring city, without notice and opportunity for hearing, to retain a sum from final payment, of not less than double the total amount of materialman's claim against contractor for rent due for leasing of concrete forms to subcontractor. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

1. Construction and application.

Where subcontract for excavation on highway construction project provided that final payment to subcontractor should be made after payment of final estimate to general contractor by state highway commission, but general contractor delayed acceptance of this final estimate because of unrealted matters, subcontractor was entitled to compensation within a reasonable time. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Retained percentage for benefit of claimants and filing of bond releases excess. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Rights of laborers, materialmen, and surety determined by this chapter. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

Rights of claimant on bond fixed by this chapter. Southern Sur. Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500.

Retention of percentage did not relieve necessity of filing claim. Perkins Builders' Supply & Fuel Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Retained percentage must be held until action brought to adjudicate rights. O.A.G. 1925-26, p. 102. O.A.G. 1925-26, p. 86. O.A.G. 1925-26, p. 85.

2. Neglect to retain percentage.

School district liable for payments of retained funds and not absolved by bond. C. E. Stukas & Sons v. Miller & Ladehoff, 197 Iowa 824, 198 N.W. 65 (1924).

3. Assignments.

Assignee acquired only rights of contractor. Independent School District of Forest Home v. Mardis, 106 Iowa 295, 76 N.W. 794 (1898).

4. Interest.

Interest properly denied where insufficient funds retained. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

5. Bonds, liability on.

Failure to file claim in 30 days releases contractor's surety. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Subcontractor failing to perfect lien can sue on bond. Streator Clay Mfg. Co. v. Henning-Vineyard Co., 176 Iowa 297, 155 N.W. 1001 (1916).

6. Release by filing bond.

Retained percentage not released by filing of indemnifying bond. O.A.G. 1928, p. 312.

7. Waiver of rights.

Failure of legal action within six months of completion releases retained percentage. O.A.G. 1930, p. 148.

8. Notice of hearing.

Statutory provision requiring retention from payment to public improvement contractor of sum not less than double total amount of all claims on file is part of contractor's obligation. No additional notice or opportunity for hearing required for such retention, where materialman filed claim for rental for lease of concrete forms to subcontractor. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Retention from final payment to contractor of sum not less than double total amount of all claims does not constitute a seizure of contractor's property or require notice or hearing for retention. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

573.15 Exception

1. Construction and application.

Where materialman filed claim for rental of concrete forms to subcontractor on city storm sewer project, claim not barred, notwithstanding certification by affidavit furnished city was filed separately and did not aver the furnishing of invoice to contractor within thirty days of service covered by invoice. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Alleged deficiencies in materialman's claim for rental due for lease of concrete forms to subcontractor on city storms sewer project, including alleged misidentification of general contractor and project. False statement within claim and improper certification were not fatal to materialman's

claim. Economy Forms Corp. v. City of Cedar Rapids, 340 N.W.2d 259 (Iowa 1983).

Surety on public construction contract for town, as subrogee of town, was entitled to progress payments which were earned at time of default but unpaid, at least where excess cost of completion was greater than those earned payments; statute governing claims of materialmen did not apply. First Federal State Bank v. Town of Malvern, 270 N.W.2d 818 (Iowa 1978).

"Retained" refers to retained percentage. Sinclair Refining Co. v. Burch, 235 Iowa 549, 16 N.W.2d 359 (1944).

573.16 Optional and Mandatory Actions - Bond to Release

1. Construction and application.

Where subcontract for excavation on highway construction project provided that final payment to subcontractor should be made after payment of final estimate to general contractor by state highway commission, but general contractor delayed acceptance of this final estimate because of unrelated matters, subcontractor was entitled to compensation within a reasonable time. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Enforcement of claim not "mechanics lien." Eclipse Lumber Co. v. Iowa Loan & Trust Co., C. C. A., 38 F.2d 608 (1930).

Provisions of section refer to "retained percentage." Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Laborers, materialmen and surety could resort only to retained percentage. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944). City of Waukon v. Southern Surety Co. of New York, 214 Iowa 522, 242 N.W. 632 (1932).

Remedy of materialmen and surety's liability limited by statute. Queal Lumber Co. v. Anderson, 211 Iowa 210, 229 N.W. 707 (1930).

Kerosene supplier not entitled to participate in retained amount. Aetna Casualty & Surety Co. of Hartford, Conn. v. Kimball, 206 Iowa 1251, 22 N.W. 31 (1928).

Duty to retain percentage did not relieve claimant from pursuing remedy. Perkins Builders' Supply & Fuel Co. v. Independent School Dist. of Des Moines, 206 Iowa 1144, 221 N.W. 793 (1928).

Construction of bond or contract not affected by balance remaining due. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

Rights against bondsman fixed by statute of limitations. Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 204 Iowa 268, 214 N.W. 481 (1927).

Rights of subcontractor and assignee no different from original rights. Independent School Dist. of Perry v. Hall, 159 Iowa 607, 140 N.W. 855 (1913).

Provisions of section applicable to contracts prior to effective date. O.A.G. 1932, p. 166.

2. Computation of time.

Limitations commence when public improvement completed. Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 204 Iowa 268, 214 N.W. 481 (1927).

3. Bond to release claims.

Failure to sign bond by contractor did not affect validity. Fort Dodge Culvert & Steel Co. v. Miller, 200 Iowa 1169, 206 N.W. 141 (1925).

4. Waiver.

Failure to bring legal action within six months waives rights and releases funds retained. O.A.G. 1930, p. 148.

5. Election of remedies.

Judgment against principal contractor does not preclude equitable remedy against city and surety. Zeidler Concrete Pipe Co. v. Ryan & Fuller, 205 Iowa 37, 215 N.W. 801 (1927).

6. Defenses.

Acceptance bars recovery on bond absent fraud or mistake which must be proven. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Settlement with first subcontractor no bar to claim of second subcontractor. Joseph R. Ryerson 7 Son v. Schraag, 211 Iowa 558, 229 N.W. 733 (1930).

7. Accounting.

Materialmen entitled to know exact status of payments to contractor. Green Bay Lumber Co. v. Independent School Dist. of Odebolt, 90 N.W. 504 (Iowa 1902), affirmed, 121 Iowa 663, 213 N.W. 804.

8. Dismissal.

Claimant may dismiss action prior to trial. Eclipse Lumber Co. v. City of Waukon, 204 Iowa 278, 213 N.W. 804 (1927).

9. Issues.

In action on bond, issue of notice properly withdrawn from jury. City of Ottumwa v. McCarthy Improvement Co., 175 Iowa 233, 154 N.W. 306 (1915), Ann. Cas. 1917E, 1077.

Performance subject to attack by city though work accepted. City of Ottumwa v. McCarthy Improvement Co., 175 Iowa 233, 150 N.W. 586 (1915), Ann. Cas. 1917E, 1077, modified on other grounds and rehearing denied, 175 Iowa 233, 154 N.W. 306, Ann. Cas. 1917E, 1077.

10. Evidence.

In action by subcontractor against prime contractor on highway project to recover for cubic yards hauled, evidence established that, in one area, the subcontractor had hauled more yards than had been found by trial court, but that trial courts findings were correct as to other areas. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.E.2d 737 (1960).

Evidence showed completion more than six months prior to suit. Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 204 Iowa 268, 214 N.W. 481 (1927).

Resolution passed by council admissable. City of Ft. Madison v. Moore, 109 Iowa 476, 80 N.W. 527 (1899).

11. Instructions.

Further instructions on statement of issues properly refused. Zalesky v. Fidelity & Casualty Co. of New York, 176 Iowa 267, 157 N.W. 858 (1916).

12. Judgment.

Decretal portion should establish claim and direct disposition. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Recovery cannot be had on bond piecemeal. City of Osceola v. Gjellefald Const. Co., 225 Iowa 215, 279 N.W. 590 (1938).

Adjudication of claims not resjudicata of city's right to recover from surety. City of Waukon v. Southern Surety Co. of New York, 214 Iowa 522, 242 N.W. 632 (1932).

Where plaintiff dismissed action, decree not binding on plaintiff. Eclipse Lumber Co. v. City of Waukon, 204 Iowa 278, 213 N.W. 804 (1927).

13. Appeal.

Where principal admitted liability admission of other evidence not prejudicial. Ft. Dodge Culvert & Steel Co. v. Miller, 200 Iowa 1169, 206 N.W. 141 (1925).

Too late on appeal to raise question of sufficiency of allegations of petition. City of Ft. Madison v. Moore, 109 Iowa 476, 80 N.W. 527 (1899).

573.17 Parties

1. Construction and application.

Any party in interest may litigate claims for public improvement. Eclipse Lumber Co. v. City of Waukon, 204 Iowa 278, 213 N.W. 804 (1927).

2. Failure to make person party.

Sucontractor entitled to judgment in rem aginst fund. Commercial State Bank of Independence v. Boardhead, 212 Iowa 688, 235 N.W. 299 (1931).

3. Dismissal.

Dismissal of action by plaintiff renders decree ineffective against him. Eclipse Lumber Co. v. City of Waukon, 204 Iowa 278, 213 N.W. 804 (1927).

573.18 Adjudication - Payment of Claims

1. Construction and application.

Where heating and cooling subcontractor undertook to furnish specific materials required under original contractor, was subcontractor within meaning and intent of statute governing claims from material and labor on public improvements. Plaintiff had claim against retainage, contractor and insurer for payment of equipment and attorney fees. Lennox Ind. Inc. v. City of Davenport, 320 N.W.2d 575 (Iowa 1982).

Claims should be ordered paid from retained percentage in order of filing. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Laborers, materialmen and surety rights determined by this chapter. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350.

Filing claim in 30 days not condition precedent to claim against retained percentage on surety. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

Retained funds paid to court costs and attorney fees, labor claims in order filed and material claims in order filed. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

This chapter strictly construed. Aetna Casualty & Surety Co. of Hartford, Conn. v. Kimball, 206 Iowa 1251, 222 N.W. 31 (1928).

2. Priorities.

Surety has priority over non statutory claimants. Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803 (1927).

Surety may compel payment of materialmen prior to general creditors. Des Moines Bridge & Iron Works v. Plane, 163 Iowa 18, 143 N.W. 866 (1913).

Assignee out of profits subject to materialmen claims. Des Moines County v. Hinkley, 62 Iowa 637, 17 N.W. 915 (1883).

573.19 Insufficiency of Funds

1. Construction and application.

Retained funds paid to court costs, attorney fees, labor claims in order filed and material claims in order filed. Southern Surety Co. v. Jenner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

Where value of old buildings and insurance payments, district entitled to credit. Ludowici Caladon Co. v. Independent School Dist. of Independence, 169 Iowa 669, 149 N.W. 845 (1914).

Materialmen entitled to preference over general creditors. Des Moines Bridge & Iron Works v. Plane, 163 Iowa 18, 143 N.W. 866 (1913).

Preferred claim not ignored even though assignment for benefit of creditors. Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 157 Iowa 614, 138 N.W. 470 (1912).

Subcontractor acquires no lien though claim in nature of lien. Thompson & Peterson v. Stephens, 131 Iowa 51, 107 N.W. 1095 (1905).

573.20 Converting Property into Money

1. Construction and application.

"Said fund" referes to retained percentage. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

573.21 Attorney Fees

1. Construction and application.

Award of attorney's fees under this section is discretionary and reviewed only for abuse of discretion. Sheer Construction Inc. v. W. Hodgman and Sons Inc., 326 N.W.2d 328 (Iowa 1982).

Subcontractor who sued prime contractor on highway project entitled to attorney fees. Grady v. S. E. Gustafson Const. Co., 251 Iowa 1242, 103 N.W.2d 737 (1960).

Refusal to allow attorney fees in action against construction company and county based on services and use of equipment supplied to company which had contracted with county to improve highways. Petit v. Ervin Clark Const. Co., 243 Iowa 118, 49 N.W.2d 508 (1951).

Refusal of attorney fees not abuse of discretion. Petit v. Ervin Clark Const. Co., 243 Iowa 118, 49 N.W.2d 508 (1951).

Where attorneys did not represent district, not entitled to fees. Teget v. Polk County Drainage Ditch No. 40, 202 Iowa 747, 210 N.W. 954 (1926).

Where subcontractor settled, attorney fees not taxable against him. Fisher v. Independent School District of Keota, 154 Iowa 125, 134 N.W. 545 (1912).

2. Estoppel.

Settlement of account did not subject claimants to taxing of attorney fees. Fisher v. Independent School District of Keota, 154 Iowa 125, 134 N.W. 545 (1912).

573.22 Unpaid Claimants - Judgment on Bond

1. Construction and application.

"Said amount" refers to retained percentage. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Preferred claimants could not resort to more than retained 10 percent. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

2. Filing Claims.

Filing claim in 30 days not prerequisite to recover against fund or surety. Cities Service Oil Co. v. Longerbone, 232 Iowa 850, 6 N.W.2d 325 (1942).

3. Judgment.

Failure to file cross petition not res judicata of city's right to recover. City of Waukon v. Southern Surety Co. of New York, 214 Iowa 522, 242 N.W. 632 (1932).

573.23 Abandonment of Public Work - Effect

1. Construction and application.

Right of action on bond if retained percentage insufficient. Sinclair Refining Co. v. Burch, 235 Iowa 594, 16 N.W.2d 359 (1944).

Laborers, materialmen and surety have resort only to the 10 percent. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

573.24 Notice of Claims to Highway Commission (No Annotations)

573.25 Filing of Claims - Effect

1. Construction and application.

Laborer, materialmen and surety have resort only to the 10 percent. Hercules Mfg. Co. v. Burch, 235 Iowa 568, 16 N.W.2d 350 (1944).

No liens exist beyond retained percentage. Federal Surety Co. v. Des Moines Morris Plan Co., 213 Iowa 464, 239 N.W. 99 (1931).

2. Order of Payment.

Liens attach in order of filing claims. Federal Surety Co. v. Des Moines Morris Plan Co., 213 Iowa 464, 239 N.W. 99 (1931).

3. Deductions.

Propriety of deduction moot where deficiency of fund greater than deduction. Southern Surety Co. v. Janner Bros., 212 Iowa 1027, 237 N.W. 500 (1931).

573.26 Public Corporation - Action on Bond

1. Construction and application.

Failure to file cross petition not rerequisite to recovery against surety. City of Waukon v. Southern Surety Co. of New York, 214 Iowa 522, 242 N.W. 632 (1932).

573.27 Payment Before Work Completed (No Annotations)

Chapter 573A

Emergency Stoppage of Public Contracts

573A.1 National Emergency (No Annotations)

573A.2 Termination of Contracts (No Annotations)

573A.3 Determination of Dispute (No Annotations)

573A.4 Rules Applicable (No Annotations)

573A.5 Jurisdiction (No Annotations)

573A.6 Appeal (No Annotations)

573A.7 Order of Court (No Annotations)

573A.8 Limit of Payment (No Annotations)

573A.9 Application of Statute (No Annotations)

573A.10 Definitions (No Annotations)

589.27 Condemnation by State Department of Transportation (No Annotations)

Chapter 613

Parties to Actions

613.1 Joint and Several Obligations

6. Bonds.

Plaintiffs could not maintain dramshop action against surety on liquor suppliers bond on allegation that surety was on bond posted by and on behalf of suppliers pursuant to Dramshop Act with conditions of bond unknown. Cochran v. Lovelace, 207 N.W.2d 130 (Iowa 1973).

613.2 Adjudication (No Annotations)

613.3 to 613.6 Repealed. Acts 1965 (61 G.A.) ch. 413, § 10102.

613.8 Actions Against State

1. Construction and application.

Iowa state highway commission is arm of state, and action against commission is therefor action against sovereign. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

By express mention of forms of action in which State consents to be sued and waives it immunity from suit, Legislature has impliedly excluded others. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

State cannot make a law impairing the obligation of its contract. O.A.G. April 8, 1970.

613.9 Service on State

1. Construction and application.

By express mention of forms of action in which State consents to be sued and waives its immunity from suit, Legislature has impliedly excluded others. Megee v. Barnes, 160 N.W.2d 815 (Iowa 1968).

613.10 Status of State as Defendant (No Annotations)

613.11 Actions Against Department of Transportation

1. Construction and application.

Iowa state highway commission is arm of state, and action against commission is therefor against sovereign. Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W.2d 639 (Iowa 1974).

Statutes in derogation of sovereignty should be strictly construed in favor of the state so that its sovereignty may be upheld and not narrowed or destroyed. Montandon v. Hargrave Const. Co., 256 Iowa 1297, 130 N.W.2d 659 (1965).

613.12 Venue (No Annotations)

613.13 Service of Notice (No Annotations)

613.14 Limitation (No Annotations)

613.15 through 613.17 Omitted

Chapter 614

Limitations of Actions

614.1 Period

I. INJURIES FROM DEFECTIVE ROADS OR STREETS

252. Construction and application, defects in roads or streets.

Subdivision of 1 of this section requiring notice on municipal corporation is mandatory and must be substantially complied with. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

Pedestrian's cause of action against city for injuries resulting from fall on public sidewalk. Hack v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Purpose of statutory notice to city of injury from defects in street is to convey to city prompt information of time, place, and circumstances of injury so that necessary investigation may be had. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W.37 (1933).

Subdivision 1 of this section applied to city operating under commission form of government. Wilson v. City of Cedar Rapids, 210 Iowa 790, 231 N.W. 495 (1930).

This section should be liberally construed. Blackmore v. City of Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

The provision of subd. 1 of this section is mandatory, and cannot be waived by the municipality. Starling v. Incorporated Town of Bedford, 94 Iowa 194, 62 N.W. 674 (1895).

253. Purpose and necessity of notice, road defects.

Individual officers or agents of city, other than its governing body, have no power to waive provision of this section for notice of claim against municipal corporation. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

The notice required under subd. 1 of this section, requiring written notice to city of claim for injuries from defects in street, is not jurisdictional, but is for the purpose of preventing cause of action from becoming barred in three months after happening of injury and to provide a method by which prompt information of time, place and circumstances thereof may be conveyed to city so that investigation may be had while facts are fresh. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Notice of claim of injury against municipality necessary only if suit is not commenced within three month period of limitation. Gates v. City of Des Moines, 38 N.W.2d 96 (Iowa 1949).

Pedestrian was not estopped from claiming any cause of action against city because notice served on city by pedestrian was defective, since city was timely advised as to exact facts of accident within statutory period. Id.

Subdivision 1 of this section is mandatory and must be complied with. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W. 37 (1933).

Statutory notice of injuries on defective sidewalks is condition precedent to suit. Luke v. City of Keokuk, 202 Iowa 1123, 211 N.W. 583 (1926).

254. Nature of defects in roads, bridges or streets.

"Defective condition" defined. Pasold v. Town of De Witt, 198 Iowa 966, 200 N.W. 595 (1924).

This section applies to fatal injuries received through the negligence of a municipality in failing to protect travelers from dangerous embankments by lights or otherwise. Bixby v. Sioux City, 184 Iowa 89, 164 N.W. 641 (1917).

Notice is required for injuries occurring in a ditch in a street. Giles v. City of Shenandoah, 111 Iowa 83, 82 N.W. 466 (1900).

Falling of a bridge within subdivision 1 of this section. Sachs v. Sioux City, 109 Iowa 224, 80 N.W. 336 (1899).

255. Failure to give notice, excuse, road defects.

Giving notice of defect in street, is not excused by fact that city owned abutting property. Pasold v. Town of De Witt, 198 Iowa 966, 200 N.W. 595 (1924).

256. Sufficiency of notice, road defects.

Notice to municipal corporation is sufficient if it conforms to statute as to time, place and circumstances, is in writing and is served. Halvorson v. City of Decorah, 138 N.W.2d 856 (Iowa 1965).

Statute requiring written notice to city of claim for injuries from defects in street is mandatory and must be substantially complied with, and burden rests upon injured party to plead and prove such compliance. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Written statement made by injured person in response to questions asked him by the city solicitor was a sufficient notice to the city. Ray v. City of Council Bluffs, 193 Iowa 620, 187 N.W. 447 (1922).

Two notices taken together constituted sufficient compliance with this section. Blackmore v. City of Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

Notice of claim against county for personal injuries which fails to state time of injury was insufficient to stop running of statute of limitations. Howe v. Sioux County, 180 Iowa 580, 163 N.W. 411 (1917).

Subdivision 1 of this section does not require specification of the manner in which the defendant has been negligent. Magee v. Jones County, 161 Iowa 296, 142 N.W. 957 (1913).

Approximate location of accident on defective sidewalk was efficient. Harrison v. City of Albia, 144 Iowa 132, 122 N.W. 816 (1909).

Notice dismissed as containing none of the "circumstances" of the injury. Giles v. City of Shenandoah, 111 Iowa 83, 82 N.W. 466 (1900).

257. Description of place in notice, road defects.

Party injured from defect in street must designate place of injuries with reasonable certainity. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W. 37 (1933).

Notice defective for failure to specifiy place where accident took place. Ray v. City of Council Bluffs, 193 Iowa 620, 187 N.W. 447 (1922).

Notice of injury required to be served upon city is sufficient if sufficiently specific to enable officers of the city to know the time and to locate the place where the injury occurred and to investigate and determine for itself whether or not the claim is well founded. Blackmore v. City of Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

Whether notice of claim for injuries from defective walk sufficiently describes the place is ordinarily for the court; but sometimes, when proof of the physical conditions and surroundings, considered in connection with the description, raises an issue as to whether the place is stated with reasonable certainty, it becomes a jury question. Sollenbarger v. Incorporated Town of Lineville, 141 Iowa 203, 119 N.W. 618 (1909).

For additional annotations, see I.C.A.

258. Service of notice, road defects.

Notice required by this section in order to suspend limitations on the bringing of suits founded on injuries to person on account of defective sidewalks must be wholly in writing. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

An injured pedestrian's giving of statement to adjuster of city's liability insurance carrier, did not constitute substantial compliance with requirement of notice under subdivision 1 of this section. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Admitting testimony of claim agent as to date of filing of notice of accident was not reversible error. Smith v. Sioux City, 200 Iowa 1100, 205 N.W. 956 (1925).

Form of notice or service thereof is immaterial. Ray v. City of Council Bluffs, 193 Iowa 620, 187 N.W. 447 (1922).

Service of written notice of injury is sufficient if it is served on any officer of the city whose relation to the city is such that notice to him of matters affecting the interest of the city is notice to the city. Blackmore v. City of Council Bluffs, 189 Iowa 157, 176 N.W. 369 (1920).

Service of notice is not a fact essential to recovery, the question of limitations not being raised. Belken v. City of Iowa Falls, 122 Iowa 430, 98 N.W. 296 (1904).

259. Service of notice as affecting limitations, road defects.

Subdivision 1 of this section is strictly a statute of limitations, and in the absence of notice, bar is complete in three months. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W. 37 (1933).

Notice to city of injury caused by defective streets, etc., is not jurisdictional, but is required merely to prevent the cause of action for such injuries from being barred. Ray v. City of Council Bluffs, 193 Iowa 620, 187 N.W. 447 (1922).

An action for the death from injuries received from defects in highway must be brought within three months unless notice is duly given. Bixby v. Sioux City, 184 Iowa 89, 164 N.W. 641 (1917).

For additional annotations, see I.C.A.

260. Computation of limitation, road defects.

In action by pedestrian falling on icy sidewalk, amendment to petition filed after action was barred did not state independent cause of action. Casper v. Sioux City, 213 Iowa 69, 238 N.W. 591 (1931).

An amended petition for injuries from a defective sidewalk does not state a new cause of action by charging the city with actual and constructive notice, where the original petition only charged actual notice. Blake v. City of Bedford, 170 Iowa 128, 151 N.W. 74 (1915).

261. Estoppel or waiver, defects in roads or streets.

City solicitor's waiver of statute of limitations, being unauthorized, did not estop city from relying on limitation, where notice of injury was not served. Welu v. City of Dubuque, 202 Iowa 201, 209 N.W. 439 (1926).

That officers of county, upon receipt of plaintiff's claim for personal injuries due to effective approach to bridge, made full investigation and offered inducement to settle, did not estop county from pleading statute of limitations. Howe v. Sioux County, 180 Iowa 580, 163 N.W. 411 (1917).

Individual officers or agents of city, other than its governing body, have no power to waive a notice to city of claim for injuries from defects in street or sidewalk. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

262. Actions, defects in roads or streets.

Immaterial whether the defect was a defect in the sidewalk or in the street. Daniels v. Iowa City, 188 Iowa 1012, 177 N.W. 42 (1920).

A person injured by a defective sidewalk, having given required notice could sue for injuries without presenting her claim to the council, though an ordinance of the city, under a special charter, required claims to be so presented. McFarland v. City of Muscatine, 98 Iowa 199, 67 N.W. 233 (1896).

In absence of an express statutory requirement, it is not a condition precedent to a right of action against a city that the claim should be presented to the city council. Green v. Town of Spencer, 67 Iowa 410, 25 N.W. 681 (1885).

263. Pleadings, defects in roads or streets.

Statute requiring written notice to city of claim for injuries from defects in street is mandatory and must be substantially complied with, and burden rests upon injured plaintiff to plead and prove such compliance. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

City waived plaintiff's failure to allege that claim for damages was served or filed with the council by failure to attack petition by demurrer or motion and by filing an answer, which was in effect a general denial. Heller v Smith, 188 N.W. 878 (Iowa 1922).

Failure of complaint, in action against municipality, to allege that notice was given simply affected plaintiff's right to recover, and did not go to the court's jurisdiction, and hence it could not be raised for the first time on appeal. Reed v. City of Muscatine, 104 Iowa 183, 73 N.W. 579 (1897).

The fact of the service of the notice is a material allegation. Pardey v. Incorporated Town of Mechanicsville, 101 Iowa 266, 70 N.W. 189 (1897).

264. Issues, proof, and variance, defects in roads or streets.

Evidence did not establish such variance in location of injury as to require holding that city had not been sufficiently notified. Ahern v. City of Des Moines, 234 Iowa 113, 12 N.W.2d 296 (1944).

Variance in time of injury of one hour was not fatal. Brose v. City of Dubuque, 193 Iowa 763, 187 N.W. 857 (1922).

265. Evidence, defects in roads and streets.

Statute requiring written notice to city of claim for injuries from defects in street is mandatory and must be substantially complied with, and burden rests upon injured plaintiff to plead and prove such compliance. Heck v. City of Knoxville, 249 Iowa 602, 88 N.W.2d 58 (1958).

Error in admitting notice in evidence was not prejudicial to defendant. Taylor v. City of Sibley, 238 Iowa 1010, 29 N.W.2d 251 (1947).

Plaintiff had burden of proving written notice had been served designating place in street where injuries were received. Tredwell v. City of Waterloo, 218 Iowa 243, 251 N.W. 37 (1933).

Notice of injuries from defective sidewalk, having thereon an acknowledgment of service which plaintiff's attorney testified was signed by the mayor, was admissable. Daniels v. Iowa City, 188 Iowa 1012, 177 N.W. 42 (1920).

In action against city for personal injuries, defendant, who set up the statute of limitation as a defense, had the burden of proving that the action was not commenced within three months. Hearn v. City of Waterloo, 185 Iowa 995, 169 N.W. 392 (1918).

Where plaintiff in a suit for injuries on a city sidewalk had introduce proof that the original preliminary notice of injuries given by plaintiff to

the city was lost or destroyed, secondary evidence thereof was admissable. Considine v. City of Dubuque, 126 Iowa 283, 102 N.W. 102 (1905).

Evidence that the mayor's attention was called to the exact place of the accident three days after it happened. Owen v. City of Ft. Dodge, 98 Iowa 281, 67 N.W. 281 (1896).

Evidence that a member of county board had notice of defects in bridge. Morgan v. Fremont County, 92 Iowa 644, 61 N.W. 231 (1894).

266. Instructions, defects in roads or streets.

For annotations, see I.C.A.

267. Jury questions, defects in roads or streets.

For annotations, see I.C.A.

268. Review, defects in roads or streets.

For annotations, see I.C.A.

269. Waiver of notice.

City has no power to waive substantial compliance with requirement of this section that it be given notice of claim. Halvorson v. City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

270. Presumptions and burden of proof.

Women injured in fall on sidewalk had burden of pleading and proving ultimate facts showing compliance with this section requiring notice to a municipal corporation. Halvorson v City of Decorah, 258 Iowa 314, 138 N.W.2d 856 (1965).

Chapter 657

Nuisances

657.1 Nuisance - What Constitutes - Action to Abate

1/2. Validity.

Undefined term "indecent" used in this section prohibiting public nuisance is vague in violation of due process clause of Fourteenth Amendment. State ex rel. Clemens v. ToNeCa, Inc., 256 N.W.2d 909 (Iowa 1978).

1. Construction and application.

For purposes of determining whether nuisance exists, major factor in determining reasonableness of condition in place and under circumstances is character and gravity of resulting injuries rather than injury threatened. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

Although in most situations a penal provision is a sufficient remedy for violation of an ordinance, where the ordinance is regulatory and its principal purpose is to promote the public interest and welfare, the penal provision is merely incidental. Incorporated Town of Carter Lake v. Anderson Excavation & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

Statutes defining nuisance do not abrogate the common law of nuisance. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

A "private nuisance" is an actionable interference with a person's interest in the private use and enjoyment of his land. Larsen v. McDonald, 212 N.W.2d 505 (Iowa 1973).

Statutory enumerations do not modify common-law application to nuisances. Wymer v. Dagnillo, 162 N.W.2d 514 (Iowa 1968).

Action for nuisance is not predicated on negligence since nuisance is a condition, and not an act or failure to act, and if wrongful condition exists, person responsible for its existence is liable for resulting damages to others. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Dense smoke may be declared to be a nuisance. Northwestern Laundry v. City of Des Moines, 36 S.Ct. 206, 239 U.S. 486, 60 L. Ed. 396 (1916).

Court properly refused bond where not properly completed. Harding v. McCullough, 236 Iowa 556, 19 N.W.2d 613 (1945).

"Nuisance" has special meaning when applied to public streets or highways. Stokes v. Sac City, 151 Iowa 10, 130 N.W. 786 (1911).

Within province of legislature to determine what constitutes a nuisance. State v. Beardsley, 108 Iowa 396, 79 N.W. 138 (1899).

2. Nature and element of nuisance.

Under Iowa law, a "nuisance per se, or in law," is an act which is a nuisance at all times and under all circumstances. Stockdale v. Agrico Chemical Co., Division of Continental Oil Co., 340 F. Supp. 244 (1972).

Under Iowa law, a "nuisance per accidents, or in fact" arises where a lawful activity is conducted in such a manner as to be a nuisance. Id.

Under Iowa law, the invasion must be intentional, unreasonable, and substantial in order to support a recovery of damages for nuisance. Id.

Conduct alleged to be nuisance under statute prohibiting public nuisance must cause tangible injury; mere annoyance, aesthetic objections, offense to community tastes or community disapproval are not sufficient. State ex rel. Clemens v. ToNeCa, Inc., 265 N.W.2d 909 (Iowa 1978).

Although purpose of municipal sanitary landfill ordinance was to prevent a nuisance, defendant's violations of the ordinance did not automatically

constitute a nuisance in fact. Incorporated Town of Carter Lake v. Anderson Excavating & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

Action by owner of servient estate against owners of dominant estate seeking relief from alleged drainage nuisance was premised upon and alleged private nuisance. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

The existence of a nuisance is not affected by the intention of its creator not to injure anyone. Larsen v. McDonald, 212 N.W.2d 505 (Iowa 1973).

One must use his property so that his neighbor's comfortable and reasonable use and enjoyment of his estate will not be unreasonably interfered with or disturbed. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (1972).

The standard used in determining whether an invasion involving personal discomfort or annoyance is substantial, is the standard of normal persons in a particular locality. Id.

Gravity of harm to plaintiff will be weighed against utility of defendant's conduct. Pitsenbarger v. Northern Natural Gas Co., 198 F. Supp. 658 (1962).

To constitute a nuisance there must be a degree of danger, likely to result in damage, inherent in the thing itself, beyond that arising from mere failure to exercise ordinary care. Sparks v. City of Pella, 258 Iowa 187, 137 N.W.2d 909 (1965).

Unsightliness does not constitute nuisance. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d (1952).

Negligence not essential to recover for nuisance and damages therefrom. Blackman v. Iowa Union Electric Co., 234 Iowa 859, 14 N.W.2d 721 (1944).

Nuisance is interference with use and equipment of land. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1942).

Solicitation of orders for goods is property right and not a nuisance. City of Osceola v. Blair, 231 Iowa 770, 2 N.W.2d 83 (1942).

Courts should consider sensibilities of reasonable ordinary persons in considering nuisance. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109, 81 A.L.R. 1199 (1932).

Conduct of legitimate business may be nuisance. Pauly v. Montgomery, 209 Iowa 699, 228 N.W. 648 (1930).

Element of nuisance is invasion of rights of persons or threatened danger to public. State v. Jacob Decker & Sons, 197 Iowa 41, 196 N.W. 600 (1924).

"Public nuisance" effects rights enjoyed by every citizen. State v. Chicago Great Western Ry. Co., 166 Iowa 494, 147 N.W. 874 (1914).

"Nuisance" has special meaning applied to public highways or streets. Stokes v. Sac City, 151 Iowa 10, 130 N.W. 786 (1911).

Every person entitled to redress where exclusive uninterrupted enjoyment of premises is disturbed. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786, 20 L.R.A., N.S. 466 (1908).

Intent not an element in question of presence of nuisance. Bonnell v. Smith & Bro., 53 Iowa 281, 5 N.W. 128 (1880).

2.5. Burden of proof.

In light of dispute as to sufficiency of showing of reasonableness and necessity of costs of abatement which county board of health sought to assess against property owners, mere payment of bill by county board to another branch of county government, standing alone, was not sufficient to warrant assessment of amount claimed. Local Bd. of Health, Boone County v. Wood, 243 N.W.2d 862 (Iowa 1976).

An ordinance is presumed reasonable and valid and the burden is on the one who attacks it to show it is not; evidence of invalidity must be clear. Incorporated Town of Carter Lake v. Anderson Excavating & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

3. Enjoyment of life or property.

Vehicular use of private road to take children to private school not nuisance. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592, 27 A.L.R.2d 1237 (1952).

Use of property should not unreasonably interfere with neighbors use of land. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Substantial interference with enjoyment of property subject to abatement. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W.2d 109 (1932), 20 L. R. A., N. W. 466.

Where use of dwelling or health of occupants affected, damages recoverable. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

Stench and effect on health enough to support nuisance. Percival v. Yousling, 120 Iowa 451, 94 N.W. 913 (1903).

Unsightly building not nuisance per se. Trulock v. Merte, 72 Iowa 510, 34 N.W. 307 (1887).

4. Dangerous devices.

Failure of municipality to keep metal traffic sign post, which fell killing child, in proper repair was not nuisance. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 748 (Iowa 1957).

Trap door not nuisance per se. Sulhoff v. Everett, 235 Iowa 396, 16 N.W.2d 737 (1945).

Unlocked and unguarded well drilling equipment not nuisance per se. Wood v. Independent School District of Mitchell, 44 Iowa 27 (1876).

5. Pollution of atmosphere.

Injunction restraining emission of noxious odors into air from feed grinding and fertilizer sales business should restrain only normal and not accidental emissions. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

The statutory enumeration of noxious exhalations, offensive smells, or other annoyances as being nuisances does not modify the common-law rule. Riter v. Keokuk Electric-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Pollution of waters by city a nuisance. Newton v. City of Grundy Center, 70 N.W.2d 162 (Iowa 1955).

Stockyards not nuisance per se but method of conduct may create it. Funnell v. City of Clear Lake, 239 Iowa 135, 30 N.W.2d 722 (1948).

Noxious gases and odors not a "trespass" but a "nuisance". Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1942).

Honest attempts to overcome dust in school yard prevent injunction as "nuisance". Ness v. Independent School District of Sioux City, 230 Iowa 771, 298 N.W. 855 (1941).

Rendering plant within city limits a nuisance. Harris v. Drayer, 218 Iowa 446, 255 N.W. 532 (1934).

Excessive smoke, cinders, fumes and dust from asphalt plant a nuisance. Andrews v. Western Asphalt Paving Corporation, 193 Iowa 1047, 188 N.W. 900 (1922).

Showing of actual physical discomfort to ordinary persons required. Soderburg v. Chicago, St. P., M. & O. Ry. Co., 167 Iowa 123, 149 N.W. 82 (1914).

Unreasonable emission of smoke and cinders resulting in tangible injury a nuisance. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

6. Necessities for business and enjoyment of property.

City seeking to require railroad to abandon right of way along certain street within city because of traffic problem had right to apply to interstate commerce commission ICC for abandonment for such portion of line. City of Des Moines, Iowa v. Chicago & M. W. Ry. Co., 159 F. Supp. 223 (1958).

Under modified civil law rule which recognizes a servitude of natural drainage as between adjoining lands, a servient estate must accept surface waters which drain thereon from a dominant estate. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

The operation of lawful industry which would be considered a nuisance in a residential section may not be considered such when conducted in an industrial locality. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Owner may put property to reasonable use depending on locality. Casteel v. Town of Afton, 227 Iowa 61, 287 N.W. 245 (1939).

Stretching wires over street a "nuisance". Incorporated Town of Ackley v. Central States Electric Co., 204 Iowa 1246, 214 N.W. 879 (1927), 54 A. L. R. 474.

7. Cemeteries.

Cemetery not nuisance per se. Payne v. Town of Wayland, 131 Iowa 659, 109 N.W. 203 (1906).

8. Fences and hedges.

Fence of the kind commonly used and standard in the industry was not a nuisance. Wymer v. Dagnillo, 162 N.W.2d 514 (Iowa 1968).

Fence erected on own property not a nuisance. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592 (1952), 27 A. L. R.2d 1237.

Adjoining owners may be enjoined from cutting down trees. Musch v. Burkhart, 83 Iowa 301, 48 N.W. 1025 (1891), 12 L. R. A. 484, 32 Am. St. Rep. 305.

9. Funeral homes.

Undertaking not nuisance per se but may constitute nuisance through method of operation. Dawson v. Laufersweiler, 241 Iowa 850, 43 N.W.2d 726 (1950).

Evidence justified injunction of funeral home as nuisance. Bevington v. Otte, 223 Iowa 509, 273 N.W. 98 (1937).

Funeral home reasonably operated in business district not a nuisance. Kirk v. Mabis, 215 Iowa 769, 246 N.W. 759 (1933), 87 A. L. R. 1055.

10. Games and entertainment.

Baseball park not nuisance per se but operation may make it so. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Public playgrounds not nuisance per se but may be so. Casteel v. Town of Afton, 227 Iowa 61, 287 N.W. 245 (1939).

Playground equipment not nuisance per se. Smith v. Iowa City, 213 Iowa 391, 239 N.W. 29 (1931).

11. Garages and filling stations.

Service station not nuisance per se. Yeanos v. Skelly Oil Co., 220 Iowa 1317, 263 N.W. 834 (1936).

Whether garage a nuisance depends on circumstances. Pauly v. Montgomery, 209 Iowa 699, 228 N.W. 648 (1930).

12. Junk dealers.

Town may by statute declare junk dealer a nuisance. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

13. Keeping and slaughter of animals.

County board of supervisors, by rezoning neighbors' farm as industrial so as to allow formerly agricultural land to be used for hog-slaughtering plant, did not, as a matter of law, authorize creation of nuisance. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

Defendants' keeping at least forty dogs, not including puppies, on their premises in R-2 zone, resulting in noise and odor, constituted nuisance. Larsen v. McDonald, 212 N.W.2d 505 (Iowa 1973).

Stockyards in heavy industrial district are not nuisances per se, although they may be so conducted as to become nuisances. Chicago, R. I. & P. R. Co. v. Liddle, 253 Iowa 402, 112 N.W.2d 852 (1962).

Poultry and produce plants not nuisance per se. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109 (1932), 81 A. L. R. 1199.

Animal breeding may be nuisance if particularly annoying to others. Williams v. Wolfgang, 151 Iowa 548, 132 N.W. 30 (1911).

Slaughtering and rendering may be nuisance. Rhoades v. Cook, 122 Iowa 336, 98 N.W. 122 (1904).

Slaughter house in city is nuisance per se. Bushnell v. Robeson, 62 Iowa 540, 17 N.W. 888 (1883).

Livery stable may be nuisance. Shiras v. Olinger, 50 Iowa 571, 32 Am. Rep. 138 (1879).

13.5 Manufacturing plants.

Operation of cement plant constituted a nuisance. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Nuisance caused by method of operation of a manufacturing plant is a temporary nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

14. Noises.

Test of whether the operation of a lawful trade or industry constitutes a "nuisance" is the reasonableness of conducting it in the manner, at the place and under the circumstances in question. Bates v. Quality-Ready Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Noise may be a nuisance. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Playing of baseball not nuisance per se. Ness v. Independent School District of Sioux City, 230 Iowa 771, 298 N.W. 855 (1941).

Noises which unreasonably interfere with enjoyment of property are "nuisance" and showing of injury to health unnecessary. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109 (1932).

Unloading dairy cans at night a nuisance. Mitchell v. Flynn Dairy Co., 172 Iowa 582, 151 N.W. 434 (1915), modified on other grounds, 172 Iowa 582, 154 N.W. 878.

Manufacturing noises must be unreasonable and of physical discomforts to constitute nuisance. McGill v. Pintsch Compression Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

15. Exercise of legal right.

Legitimate character of dam does not defeat showing of nuisance. Mills County v. Hammack, 200 Iowa 251, 202 N.W. 521 (1925).

Proper discharge of water from building lawfully erected not nuisance. Reynolds v. Union Savings Bank, 155 Iowa 519, 136 N.W. 529 (1912), 49 L. R. A., N. S. 194.

All property subject to use for common good and welfare. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

No action for nuisance where use is lawful. Quinn v. Chicago, B. & Q. R. Co., 63 Iowa 510, 19 N.W. 336 (1884).

Additional track in city by R. R. not a nuisance. Davis v. Chicago & N. W. R. Co., 46 Iowa 389 (1877).

16. Municipal regulations.

City could not, by zoning as an industrial district, or issuing permits for construction, authorize creation or maintenance of nuisance. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

City ordinance establishing bus zone for loading and unloading interurban buses in the street fronting business property adjoining bus station was illegal and created a public nuisance. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Damages recoverable from city for creation of public nuisance. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Ordinance regulating solicitors invalid. City of Osceola v. Blair, 231 Iowa 770, 2 N.W.2d 83 (1942).

City may adopt reasonable regulations governing use of property. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

Unreasonableness of ordinance immaterial. Miller v. Webster City, 94 Iowa 162, 62 N.W. 648 (1895).

Railroads authorized by municipalities not nuisances. Milburn v. City of Cedar Rapids, 12 Iowa 246 (1861).

Ordinance prohibiting hogs from running at large not invalid. Gosselink v. Campbell, 4 Iowa 296, 4 Clarke 296 (1856).

17. Care, precautions against annoyance or injury.

Negligence not essential to nuisance action. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1942).

School's conduct of playground must not create private nuisance. Ness v. Independent School District of Sioux City, 230 Iowa 771, 298 N.W. 855 (1941).

Use of property should not be injurious to others. Casteel v. Town of Afton, 227 Iowa 61, 287 N.W. 245 (1939).

Others may not ignore improper use of property. State v. Jones, 202 Iowa 640, 210 N.W. 784 (1926).

Freedom from negligence no defense to nuisance. Andrews v. Western Asphalt Paving Corporation, 193 Iowa 1047, 188 N. W. 900 (1922).

Negligence and nuisance may combine in same act. Erickson v. Town of Manson, 180 Iowa 378, 160 N.W. 276 (1917).

Damages recoverable regardless of negligence. Soderburg v. Chicago, St. P., M. & O. Ry. Co., 167 Iowa 123, 149 N.W. 82 (1914).

Contributory negligence not applicable. Risher v. Acken Coal Co., 147 Iowa 459, 124 N.W. 764 (1910).

Contributory negligence not complete defense. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

18. Similar annoyances or injuries from other causes.

Contribution of garbage no bar to contributor suit against city. Correll v. City of Cedar Rapids, 110 Iowa 333, 81 N.W. 724 (1900).

All contributors to smoke nuisance need not be joined in nuisance action. Harley v. Merill Brick Co., 83 Iowa 73, 48 N.W. 1000 (1891).

Evidence as to another sewer properly excluded unless alike in construction and use. Randolph v. Town of Bloomfield, 77 Iowa 50, 41 N.W. 562 (1899), 14 Am. St. Rep. 268.

Similar use by plaintiff of his own property not admissable. Baker v. Bohannan, 69 Iowa 60, 28 N.W. 435 (1886).

Maintaining structure on complainant's property bars objection to like structure on neighboring land. Cassady v. Cavenor, 37 Iowa 300 (1873).

19. Defenses.

Use of the most modern machinery was no defense to creation of nuisance by operation of asphalt plant in close proximity to populated area. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Intent to injure not required in dumping molasses in ditch. Iverson v. Vint, 243 Iowa 949, 54 N.W.2d 494 (1952).

Construction permit no defense for construction of nuisance. Dawson v. Laufersweiler, 241 Iowa 850, 43 N.W.2d 726 (1950).

An agreement for discharge of sewer no defense to nuisance. Ruthven v. Farmers' Co-op Creamery Co., 140 Iowa 570, 118 N.W. 915 (1908).

Legislative authorization of city operation of public work no defense to nuisance. Churchill v. Burlington Water Co., 94 Iowa 89, 62 N.W. 646 (1895).

Separate nuisance operated by plaintiff considered in fixing liability. Randolf v. Town of Bloomfield, 77 Iowa 50, 41 N.W. 562 (1889), 14 Am. St. Rep. 268.

20. Estoppel or laches.

Failure of owners of realty to object sooner to alleged nuisance caused by corporation in method of operating manufacturing plant was not such laches or acquiescence as to constitute an estoppel. Riter v. Keokuk Elector-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Knowledge of erection of baseball park did not estop complaint as nuisance. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Failure to protest erection of asphalt plant did not bar complaint as nuisance. Andrews v. Western Asphalt Paving Corporation, 193 Iowa 1047, 188 N.W. 900 (1922).

Mere delay does not constitute estoppel to complain of nuisance. Smith v. City of Jefferson, 161 Iowa 245, 142 N.W. 220 (1913), 45 L. R. A., N. W. 792, Ann. Cas. 1916A, 97.

Purchaser near cemetery not bound to submit to enlargement. Payne v. Town of Wayland, 131 Iowa 659, 109 N.W. 203 (1906).

Plaintiff setting out hedge may not require defendant to remove it as nuisance. Hardon v. Stultz, 124 Iowa 440, 100 N.W. 329 (1904).

Purchaser not estopped to complain of nuisance. Van Fossen v. Clark, 113 Iowa 86, 84 N.W. 989 (1901), 52 L. R. A. 279.

Evidence of cost of factory admissible where plaintiff knowingly permitted it to be built. Harley v. Merill Brick Co., 83 Iowa 73, 48 N.W. 1000 (1891).

Control of use of adjoining property cannot be gained by erection of nuisance. Bushnell v. Robeson, 60 Iowa 540, 17 N.W. 888 (1883).

21. Damages in general.

Remedy of town against encroachment of landowners' garage into public street and alley was not restricted to an action at law for damages. Town of Marne v. Gocken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Jury has great deal of discretion in awarding damages in nuisance case, where damages may not be precisely measured. Miller v. Town of Ankeny, 253 Iowa 1055, 114 N.W.2d 910 (1962).

Damages may be recovered though injunction denied. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Damages recovered in equity suit may thereafter be recovered at law. Stover v. Town of Calmar, 207 Iowa 1123, 224 N.W. 24 (1929).

Joint perpetrator of nuisance may compel contribution for damages paid. Horrabin v. City of Des Moines, 198 Iowa 549, 199 N.W. 988 (1924), 38 A. L. R. 554.

Plaintiff may elect whether to seek permanent damages or recover in successive actions. Risher v. Acken Coal Co., 147 Iowa 459, 124 N.W. 764 (1910).

Finding by board of health not prerequisite to recovery. Baker v. Bohannan, 69 Iowa 60, 28 N.W. 435 (1886).

One who suffers nuisance to arise again liable without notice. Drake v. Chicago, R. I. & P. R. Co., 63 Iowa 302, 19 N.W. 215 (1884), 50 Am. Rep. 746.

Complainant entitled to jury assessment of damages though injunction requested. Miller, Trustee v. Keokuk & Des Moines Ry. Co., 63 Iowa 680, 16 N.W. 567 (1884).

Recovery limited to special damages shown. Prosser v. City of Ottumwa, 42 Iowa 509 (1876).

22. Elements and measure of damages.

When a nuisance is abatable and thus temporary, measure of damages under Iowa law, in absence of injury to the property itself, is the loss in value of the use of the land plus special damages. Stockdale v. Agrico Chemical Co., Division of Continental Oil Co., 340 F. Supp. 244 (1972).

Plaintiff owner of servient estate, who brought action seeking relief from alleged drainage nuisance, was not entitled to exemplary damages. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Measure of damages in case involving temporary nuisance which is subject to abatement is the diminution in rental value of involved land proximately caused by the nuisance, plus any resultant special damages. Earl v. Clark, 219 N.W.2d 487 (Iowa 1974).

Mere commission of nuisance justifying award of actual damages would be insufficient to justify assessment of punitive damages as a penalty. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Measure of damages for nuisance, where nuisance is not permanent but is subject to abatement, and there is no injury to property itself, is diminution in rental value caused by nuisance together with other special damages. Miller v. Town of Ankeny, 253 Iowa 1055, 114 N.W.2d 910 (1962).

Action for special damages for private nuisance limited to invasion of use and enjoyment of land. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1942).

Discomfort of owners proper element of damage. Stover v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Wife entitled to damages for extra cleaning and washing. Andrews v. Western Asphalt Paving Corporation, 193 Iowa 1047, 188 N.W. 900 (1922).

Inconvenience and discomfort sufficient basis for substantial damages. Boyd v. City of Oskaloosa, 179 Iowa 387, 161 N.W. 491 (1917).

Recovery had for diminished enjoyment of premises. Soderburg v. Chicago, St. P., M. & O. Ry. Co., 167 Iowa 123, 149 N.W. 82 (1914).

Damages not limited to injury to land but may include special damages to private person. Van Fossen v. Clark, 113 Iowa 86, 84 N.W. 989 (1901), 52 L. R. A. 279.

Where smoke nuisance, damages not confined to loss in rental value but include special damages. Churchill v. Burlington Water Co., 94 Iowa 89, 62 N.W. 646 (1895).

Impairment of enjoyment of premises, loss in rental value, sickness are proper elements. Ferguson v. Firmenich Mfg. Co., 77 Iowa 576, 42 N.W. 448 (1889), 14 Am. St. Rep. 319.

Where premises are homestead, damages not limited to rental value. Randolf v. Town of Bloomfield, 77 Iowa 50, 41 N.W. 562 (1889), 14 Am. St. Rep. 268.

Loss of time for sickness recoverable. Loughran v. City of Des Moines, 72 Iowa 382, 34 N.W. 172 (1887).

Damages confined to time nuisance exists. Quinn v. Chicago, B. & Q. R. Co., 63 Iowa 510, 19 N.W. 336 (1884).

23. Damages accruing after commencement of action.

Proof of damages to date of trial not error. Bowman v. Humphrey, 124 Iowa 744, 100 N.W. 854 (1904).

Supplemental petition may set up damages since petition filed. Foote v. Burlington Gaslight Co., 103 Iowa 576, 72 N.W. 755 (1897).

24. Continuing nuisances, damages.

A "permanent nuisance" is one of such character and existing under such circumstances that it will be reasonably certain to continue indefinitely in the future, and this contemplates that it is at once necessarily productive of all damage that can ever result from it. Patz v. Farmegg Product, Inc., 196 N.W.2d 577 (Iowa 1972).

In case of continuing nuisance, subject to abatement, the measure of damages is diminution in rental value of property caused by nuisance, plus any special damages. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Damages in case of continuing nuisance is loss in value of use of land. Duncanson v. City of Fort Dodge, 233 Iowa 1325, 11 N.W.2d 583 (1943).

Every day's continuance of nuisance is new cause of action. Thompson v. Illinois Cent. R. Co., 191 Iowa 35, 179 N.W. 191 (1920).

Removal of obstruction in drainage built by nature may not be nuisance. Taylor v. Frevert, 183 Iowa 799, 166 N.W. 474 (1918).

Owner may elect to sue for damages as a whole or continuing damages. Irvine v. City of Oelwein, 170 Iowa 653, 150 N.W. 674 (1915), L. R. A. 1916E 990.

Recovery for permanent damages bars later suit for continuing nuisance. Risher v. Acken Coal Co., 147 Iowa 459, 124 N.W. 764 (1910).

Indefinite continuance of nuisance entitles recovery but once, but temporary may entitle to successive damages. Harvey v. Mason City & Ft. D. R. Co., 129 Iowa 465, 105 N.W. 958 (1906), 3 L. R. A., N. S. 973,, 113 Am. St. Rep. 483.

Measure for continuing nuisance is loss of its use. Vogt v. City of Grinnell, 123 Iowa 332, 98 N.W. 782 (1904).

Recovery of continuing damage no bar to later actions. Bennett v. City of Marion, 119 Iowa 473, 93 N.W. 558 (1903).

Wrongful operation of railroad is continuing nuisance. Cain v. Chicag, R. I. & P. R. Co., 54 Iowa 255, 3 N.W. 736 (1879), rehearing denied, 54 Iowa 255, 6 N.W. 268.

Where nuisance continues without change it may be fully compensated in one action. Powers v. City of Council Bluffs, 45 Iowa 652(1877), 24 Am. Rep. 792.

25. Permanent nuisance, damages.

A nuisance which is subject to abatement is not permanent. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Common law "nuisance" was created by dust raised by trucks. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

Permanent nuisance damage is value before and after. Conklin v. City of Des Moines, 184 Iowa 384, 168 N.W. 874 (1943). Wesley v. City of Waterloo, 232 Iowa 1299, 8 N.W.2d 430 (1943).

Where progressive and increasing discomfort, permanent damages recoverable. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Only one action maintainable for permanent injury. Wesley v. City of Waterloo, 232 Iowa 1299, 8 N.W.2d 430 (1943).

"Permanent nuisance" is one which is reasonably certain to continue indefinitely. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435 (1942).

Recovery for permanent and original damage bars later suit for unforseen injury. Thompson v. Illinois Cent. R. Co., 191 Iowa 35, 179 N.W. 191 (1920).

Permanent construction of sewer does not preclude later recovery. City of Ottumwa v. Nicholson, 161 Iowa 473, 143 N.W. 439 (1913), L. R. A. 1916E 983.

Recovery is limited to difference in value of home where injury permanent. Risher v. Acken Coal Co., 147 Iowa 459, 124 N.W. 764 (1910).

Where smoke abated prior to trial no permanent injury. Foote v. Burlington Water Co., 94 Iowa 200, 62 N.W. 648 (1895).

26. Temporary nuisance, damages.

Fact that nuisance is intermittent due to changing seasons or wind direction variations will not prevent the granting of injunctive relief or an award of damages. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Depreciation in rental value measure of damages for temporary nuisance. Shively v. Cedar Rapids, I. F. & N. R. Co., 74 Iowa 169, 37 N.W. 133 (1888), 7 Am. St. Rep. 471.

27. Diminution in value, damages.

To recover damages for diminution of land value under Iowa law, plaintiff farmer would have to prove that defendant's plant constituted a nuisance and that the nuisance was permanent. Stockdale v. Agrico Chemical Co., Division of Continental Oil Co., 340 F. Supp. 244 (1972).

Evidence supported award of money damages for diminution in rental value of plaintiff's residential property. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Where a nuisance is not permanent but subject to abatement, in the absence of injury to the property itself, the measure of damages is the diminution in rental value caused by the nuisance, together with such special damages as may result therefrom, and such rule applies even though plaintiff is both owner and occupant of premises. Kellerhals v. Kallenberger, 251 Iowa 974, 103 N.W.2d 691 (1960).

No recovery by owner for decreased value for nuisance after lease. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Measure of damages is diminution of value. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

Instructions limiting recovery to difference in value before and after proper. Holbrook v. Griffis, 127 Iowa 505, 103 N.W. 479 (1905).

Test of damages is value of use of property for purposes for which suitable. Pettit v. Incorporated Town of Grand Junction, Greene County, 119 Iowa 352, 93 N.W. 381 (1903).

Special damages and abatement proper where refuse discharged onto dairy land. Van Fossen v. Clark, 113 Iowa 86, 84 N.W. 989 (1901), 52 L. R. A. 279.

Instruction that damages are difference in rental value before and after nuisance proper. Podhaisky v. City of Cedar Rapids, 106 Iowa 543, 76 N.W. 847 (1898).

"Value of use" before and "value of said premises" with nuisance improper. Ferguson v. Firmenich Mfg. Co., 77 Iowa 576, 42 N.W. 448 (1889), 14 Am. St. Rep. 319.

Damages are difference in rental value before and after plus loss of time for sickness. Loughran v. City of Des Moines, 72 Iowa 382, 34 N.W. 172 (1887).

28. Public nuisance, damages.

Term "private nuisance" refers to an actionable interference with a person's interest in private use and enjoyment of his land. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Individual may recover special damages for public and private nuisance. Park v. Chicago & S. W. R. Co., 43 Iowa 636 (1876). Platt v. Chicago, B. & Q. R. Co., 74 Iowa 127 (1888).

Suit by citizen for public nuisance may show special damage. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

Showing of special damages sufficient to recover for public nuisance. Pettit v. Incorporated Town of Grand Junction, Greene County, 119 Iowa 352, 93 N.W. 381 (1903).

Franchise from city no defense to action for special injury. Cain v. Chicago, R. I. & P. R. Co., 54 Iowa 255, 3 N.W. 736 (1879), rehearing denied, 54 Iowa 255, 7 N.W. 268.

29. Amount of damages.

$30.00 ordinary damages plus $9600 special damages with interest. Earl v. Clark, 219 N.W.2d 487 (Iowa 1974).

Reasonable and proper compensatory award of $500. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

In order to be liable for actual damages, one need not create or commit a nuisance, but to be punished for it by exaction of exemplary damages, he must create and persistently maintain it with a reckless disregard for rights of others. Id.

Damages and special damages award in nuisance action excessive. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Excessive award. Miller v. Town of Ankeny, 253 Iowa 1055, 114 N.W.2d 910 (1962).

$259.91 adequate for creek through farm. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Nominal damages proper where special injury not shown. Perry v. Howe Co-op Creamery Co., 125 Iowa 415, 101 N.W. 150 (1904).

30. Persons entitled, damages.

In action by owner of servient estate against owners of dominant estate seeking relief from alleged drainage nuisance, trial court balanced the equities and properly held that retaining wall construction costs should be shared. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Owners of farm who endured obnoxious odors for years. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Damages recoverable by one who is specially injured by public nuisance. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

No defense that present owner was not owner when nuisance commenced. Miller v. Keokuk & D. M. R. Co., 63 Iowa 680, 16 N.W. 567 (1883).

Widow of owner may recover for R. R. track placed during life of husband. Cain v. Chicago, R. I. & P. R. Co., 54 Iowa 255, 3 N.W. 736 (1879), rehearing denied, 54 Iowa 255, 6 N.W. 268.

Any person injured may obtain injunction and damages. Ewell v. Greenwood, 26 Iowa 377 (1868).

31. Persons liable for damages.

Where creation of nuisance was apparent mutual effort, owners' liability for abatement thereof would likewise be mutual. Local Bd.. of Health, Boone County v. Wood, 243 N.W.2d 862 (Iowa 1976).

Counties are financially responsible for any violation of dust regulations committed by county officers, agents or employees without exercise of due care. O.A.G. September 11, 1973.

Repair of hangar by city not "nuisance". Abbott v. City of Des Moines, 230 Iowa 494, 298 N.W. 649 (1941), 139 A. L. R. 120.

Collapse of speakers' stand not "nuisance" for which school district liable. Larsen v. Independent School Dist. of Kane Tp., Council Bluffs, 223 Iowa 691, 272 N.W. 632 (1837).

Dairy owner not liable for nuisance of patrons feeding horses on street. Mitchell v. Flynn Dairy Co., 172 Iowa 582, 151 N.W. 434 (1915), modified on other grounds, 172 Iowa 582, 154 N.W. 878.

32. Abatement and injunction - nature of remedy.

Although violation of municipal sanitary landfill ordinance was a misdemeanor, such fact did not preclude issuance of injunction restraining continued violation of the ordinance. Incorporated Town of Carter Lake v. Anderson Excavating & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

Grant or denial of injunctive relief of any nature unquestionably rests in the sound judicial discretion of the court. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Permanent injunctive relief and damages may be had for a temporary nuisance which is subject to abatement. Earl v. Clark, 219 N.W.2d 487 (Iowa 1974).

When the tort of nuisance is proved and the plaintiff seeks an injunction, the court can hold that damages are appropriate and turn plaintiff out of court, hold that injunction is appropriate and prohibit operation of the nuisance, grant an injunction relating to manner of operation of the nuisance, or remand with permission for plaintiff to amend to ask damages. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Injunction against operation of ready-mix cement plant. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Granting of injunction rests largely in sound judicial discretion of trial court under facts of particular case. Gilbrech v. Kloberdanz, 252 Iowa 509, 107 N.W.2d 574 (1961).

An action to enjoin a nuisance and recover damages may be brought either in equity or at law, and plaintiff may choose either forum and secure the same relief. Kellerhalls v. Kallenberger, 251 Iowa 974, 103 N.W.2d 691 (1960).

Injunction to be granted sparingly and with caution. Dawson v. Laufersweiler, 241 Iowa 850, 43 N.W.2d 726 (1950).

In injunction proceedings character and sufficiency of nuisance is for court. Mississippi & M. R. Co. v. Ward, 67 U.S. 485, 2 Black 485, 17 L. Ed. 311 (1862).

Injunction of nuisance may be brought either in law or equity. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Action for permanent injunction may be brought but once. Cary-Platt v. Iowa Electric Co., 207 Iowa 1052, 224 N.W. 89 (1929).

No proof of special damages in action to enjoin public nuisance. Lytle Inv. Co. v. Gilman, 201 Iowa 603, 206 N.W. 108 (1925).

Where public benefits outweigh private no injunction. Molden v. Town of Batavia, 200 N.W. 183 (Iowa 1924).

Judgment for injunction and damages not inconsistent. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

No injunction after abatement by owner. Perry v. Howe Co-op Creamery Co., 125 Iowa 415, 101 N.W. 150 (1904).

Action for injunction and damages may be tried in equity. Gribbin v. Hanson, 69 Iowa 255, 28 N.W. 584 (1886).

Injunction will lie to abate nuisance. Bushnell v. Robeson, 62 Iowa 540, 17 N.W. 888 (1883).

33. Jurisdiction and venue.

Jurisdiction in equity may be invoked to enjoin maintenance of nuisance even though compensatory relief is also sought. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Action to enjoin must be brought in district where nuisance is. Mississippi & M. R. Co. v. Ward, 67 U.S. 485, 2 Black 485, 17 L. Ed. 311 (1862).

Proper relief is abatement and not criminal prosecution. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

Prevention of nuisance proper is exercise of police power. City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096, 184 N.W. 823, 23 A. L. R. 1322 (1921),

Title held subject to authority of state to abate nuisance. City of Waterloo v. Waterloo, C. F. & N. Ry. Co., 149 Iowa 129, 125 N.W. 819 (1910).

34. Abatement.

To justify abatement, the annoyance must be such as would cause physical discomfort or injury to person of ordinary sensibilities. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Adjoining property owner entitled to have nuisance abated. Kellerhals v. Kallenberger, 103 N.W.2d 691 (Iowa 1960).

Equity has the power in a proper case to prevent a nuisance. Harvey v. Prall, 250 Iowa 1111, 97 N.W.2d 306 (1959).

Action to abate is preventive justice. State ex rel. Swanson v. Heaton, 237 Iowa 564, 22 N.W.2d 815 (1946).

Tubercular animal is a nuisance and may be slaughtered. Loftus v. Department of Agriculture of Iowa, 211 Iowa 566, 232 N.W. 412 (1930), appeal dismissed, 51 S. Ct. 647, 283 U.S. 809, 75 L. Ed. 1427.

Proper exercise of police power not limited to suppression of common law nuisance. Fevold v. Bd. of Sup'rs of Webster County, 202 Iowa 1019, 210 N.W. 139 (1926).

Where dam endangered R. R. bridge and rendered highway bridge useless it is a nuisance. Mills Couty v. Hammack, 200 Iowa 251, 202 N.W. 521 (1925).

Recovery of damages for permanent nuisance bars injunction. Downing v. City of Oskaloosa, 86 Iowa 352, 53 N.W. 256 (1892).

Recovery of damages does not bar abatement and removal. Platt v. Chicago, B. & Q. R. Co., 74 Iowa 127, 37 N.W. 107 (1888).

No negligence for failing to abate nuisance. Cooper v. Dolvin, 68 Iowa 757, 28 N.W. 59, 56 Am Rep. 872 (1886).

Abatement of water pollution does not include filling pond. Finley v. Hershey, 41 Iowa 389 (1875).

Abatement by individual proper to extent of destruction. Morrison v. Marquardt, 24 Iowa 35, 92 A. Dec. 444 (1868).

Abatement authorized by individual only in case of particular emergency. Moffett v. Brewer, 1 G. Greene 348 (1848).

Common law right to abate nuisance not abrogated by penal offense for injury to milldam. State v. Moffett, 1 G. Greene 348 (1848).

35. Wrongful abatement.

Restoration proper for wrongful abatement of nuisance. Morrison v. Marquardt, 24 Iowa 35, 92 Am. Dec. 444 (1868).

Appropriation of gas without payment improper where nuisance not established. Davenport Gas Light & Coke Co. v. City of Davenport, 13 Iowa 229 (1862).

36. Grounds for abatement or injunction.

Landowners entitled to injunction prohibiting operation of cement plant even though the plant was located on unzoned land outside city limits. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Appropriateness of an injunction to abate a nuisance depends on a comparative appraisal of all the factors in the case. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Anticipated nuisance enjoined only where it is certain to follow. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237 (1952).

Depreciation in value of home from mortuary construction not enjoinable. Dawson v. Laufersweiler, 241 Iowa 850, 43 N.W.2d 726 (1950).

Abatement granted only where annoyance such as to cause actual physical discomfort. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Injunction asked on grounds of anticipated nuisance is subject to use of surrounding premises. Funnell v. City of Clear Lake, 239 Iowa 135, 30 N.W.2d 722 (1948).

Prohibition of junk yards not "penal ordinance" but was regulatory. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

Annoyance and discomfort must be actual discomfort. Casteel v. Town of Afton, 227 Iowa 61, 287 N.W. 245 (1939).

Equity will enjoin cemetery constituting a nuisance. Payne v. Town of Wayland, 131 Iowa 659, 109 N.W. 203 (1906).

No injunction where proper basis not shown. Harndon v. Stultz, 124 Iowa 734, 100 N.W. 851 (1904).

Deposit of excrement of horses on city street no basis for injunction. Miller v. Webster City, 94 Iowa 162, 62 N.W. 648 (1895).

Ordinary operation of feed lots a nuisance and enjoinable. Baker v. Bohannan, 69 Iowa 60, 28 N.W. 435 (1886).

Where injury will result irrespective of existence of nuisance it will not be abated. Langdon v. Chicago, B. & Q. R. Co., 48 Iowa 437 (1878).

Obstruction in highway is subject to abatement and individual may also have relief. Ewell v. Greenwood, 26 Iowa 377 (1868).

37. Persons entitled, abatement and injunction.

Injunction against maintenance of nuisance is not mandated where adequate redress can be afforded by a monetary award even though the nuisance be clearly shown to exist. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Action by six owners of realty against corporation to abate an alleged nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Private suit against public nuisance must show special damage. Mississippi & M. R. Co. v. Ward, 67 U.S. 485, 2 Black 485, 17 L. Ed. 311 (1862).

Private individual not entitled to injunction if he is only one of a class. Farmers Co-op Assn. v. Ouaker Oats Co., 233 Iowa 701, 7 N.W.2d 906 (1943).

Town entitled to injunction for junk yard in violation of ordinance. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

"Incumbering streets" a nuisance and subject to injunction. Incorporated Town of Lamoni v. Smith, 217 Iowa 264, 251 N.W. 706 (1934).

Owner not estopped to enjoin enlargement of poultry business. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199 (1932).

Private injury special to plaintiff sufficient to abate public nuisance. Livingston v. Cunningham, 188 Iowa 254, 175 N.W. 980 (1920).

One who assisted city to construct dam cannot thereafter claim a nuisance. Irvine v. City of Oelwein, 170 Iowa 653, 150 N.W. 674, L. R. A. 1916E, 990 (1915).

Presence of hitching posts subject to abatement if special injury shown. Smith v. City of Jefferson, 161 Iowa 245, 142 N.W. 220 (1913), 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

Affect on others of nuisance does not preclude plaintiff's right to bring suit. Percival v. Yousling, 120 Iowa 451, 94 N.W. 913 (1903).

Action against public nuisance must show peculiar injury. Innis v. Cedar Rapids, I. F. & N. W. R. Co., 76 Iowa 165, 40 N.W. 701, 2 L. R. A. 282 (1888).

No authority for city to enjoin on ground of general harm to public. City of Ottumwa v. Chinn, 75 Iowa 405, 39 N.W. 670 (1888).

Circuitous route required by construction of turntable is sufficient special damage. Platt v. Chicago B. & Q. R. Co., 74 Iowa 127, 37 N.W. 107 (1888).

Individuals may sue to restrain slaughter house though public too affected. Bushnell v. Robeson, 62 Iowa 540, 17 N.W. 888 (1883).

Maintenance of nuisance on own premises precludes suit for similar nuisance on adjoining premises. Cassady v. Cavenor, 37 Iowa 300 (1873).

Obstruction in highway subject to abatement. Houghman v. Harvey, 33 Iowa 203 (1871).

Public and individual may enjoin obstruction in highway. Ewell v. Greenwood, 26 Iowa 377 (1868).

38. Persons who may be enjoined.

Injunction will not issue against defendant unless he is in control of action restrained. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Injunction against municipal light plant proper only in extreme circumstances. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Injunction not proper against owner permitting playing ball on his premises. Spiker v. Eikenberry, 135 Iowa 79, 110 N.W. 457 (1907), 11 L. R. A., N. S. 463, 124 Am. St. Rep. 259, 14 Ann. Cas. 175.

39. Defenses, abatement and injunction.

Building permit no defense to wrongful erection of building. McCartney v. Schuette, 243 Iowa 1358, 54 N.W.2d 462 (1952).

No defense that residential area is small. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199 (1932).

Minor contribution in nuisance by plaintiff will not bar injunction against city. Rand Lumber Co. v. City of Burlington, 122 Iowa 203, 97 N.W. 1096 (1904).

40. Relief awarded, abatement and injunction.

Plaintiffs were entitled to a decree permanently enjoining defendants from permitting grinding operations within certain distance. Kellerhals v. Kallenberger, 251 Iowa 974, 103 N.W.2d 691 (1960).

Delay of owners of realty in bringing action to abate alleged nuisance was one factor to be considered in determining what kind of relief should be allowed. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Condemnation not such adequate remedy as to preclude abatement of nuisance. Newton v. City of Grundy Center, 70 N.W.2d 162 (Iowa 1955).

Where no complaint in petition as to fence, injunction of fence improper. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237 (1952).

Injunction decree should not go beyond particular case. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Injunction improper which enjoined use already abated. Trulock v. Merte, 72 Iowa 510, 34 N.W. 307 (1887).

Where premises cannot be used except to create nuisance injunction restraining absolutely their use is proper. Baker v. Bohannan, 69 Iowa 60, 28 N.W. 435 (1886).

Injunction proper, forcing removal of hog house to different part of lot. Cook v. Benson, 62 Iowa 170, 17 N.W. 470 (1883).

Court can only enjoin such use of hog lot as amounts to nuisance. Richards v. Holt, 61 Iowa 529, 16 N.W. 595 (1883).

Defective water ways not sufficient to establish nuisance. Fuller v. Chicago, R. I. & P. R. Co., 61 Iowa 125, 15 N.W. 861 (1883).

Blacksmith shop not nuisance per se and injunction should only restrain use for that purpose. Faucher v. Grass, 60 Iowa 505, 15 N.W. 302 (1883).

Rebuilding of stable not enjoined if use modified so as to not constitute a nuisance. Shiras v. Olinger, 50 Iowa 571, 32 Am. Rep. 138 (1879).

41. Violation of injunction.

Violation of injunction. Ford v. Oliver, 124 N.W. 1067 (Iowa 1910).

42. Prescription and limitation of actions.

Statute of limitations is an affirmative defense and the burden of proof is upon the pleader. Earl v. Clark, 219 N.W.2d 487 (Iowa 1974).

No vested right to continue nuisance against public. Mills County v. Hammack, 200 Iowa 251, 202 N.W. 521 (1925).

Damages do not accrue until nuisance causes damage. Churchill v. Burlington Water Co., 94 Iowa 89, 62 N.W. 646 (1895).

A slaughter house a nuisance and priority of erection no defense. Bushnell v. Robeson, 62 Iowa 540, 17 N.W. 888 (1883).

Right to continue a nuisance cannot be gained by prescription. Cain v. Chicago, R. I. & P. R. Co., 54 Iowa 255, 3 N.W. 736 (1879), rehearing denied, 54 Iowa 255, 6 N.W. 268.

42.5 Temporary nuisances.

Under Iowa law, a nuisance which is subject to abatement is not permanent. Stockdale v. Agrico Chemical Co., Division of Continental Oil Co., 340 F. Supp. 244 (1972).

Nuisance caused by method of operation of a manufacturing plant is a temporary nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

42.6 Continuing nuisances.

Award of money damages is authorized in continuing as well as in permanent nuisances. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Evidence sustained trial court's finding that operation of corporation's plant constituted a continuing nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

43. Actions.

It was proper for trial court to retain jurisdiction of drainage nuisance action to the end that the litigation be equitably terminated by means of the building of a retaining wall. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Failure of defendant to pursue remedy afforded by statute. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Abatement action joined with damages not subject to dismissal. Newton v. City of Grundy Center, 70 N.W.2d 162 (1955).

Action to enjoin raising dam and for past damages could not be joined. Watt v. Robbins, 160 Iowa 587, 142 N.W. 387 (1913).

43.5 Presumptions.

There is no presumption of reasonableness of expenditures by governmental body in abating a nuisance. Local Bd.. of Health, Boone County v. Wood, 243 N.W.2d 862 (Iowa 1976).

44. Parties.

Where nuisance erected by several parties those within jurisdiction are the only necessary parties. Mississippi & M. R. Co. v. Ward, 67 U.S. 485, 2 Black 485, 17 L. Ed. 311 (1862).

Tenant of filling station "indispensable party" to injunction suit against filling station. Wright v. Standard Oil Co. (Indiana) 234 Iowa 1241, 15 N.W.2d 275 (1944).

Individuals specially injured may join in injunction proceedings against public nuisance. Bushnell v. Robeson, 60 Iowa 540, 17 N.W. 888 (1883).

45. Pleadings.

Prayers for injunctive relief liberally construed. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Nuisance action by six owners of realty brought as a class action was merely an invitation to others in the class to intervene and was proper. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

No reply necessary where answer sets out building permit as defense. Dawson v. Laufersweiler, 241 Iowa 850, 43 N.W.2d 726 (1950).

Division asking past and present damages not repugnant to division asking past, present and future damages. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752.

Striking from answer allegations as to proper construction not error. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435. Ryan v. City of Emmetsburg, 228 Iowa 678, 293 N.W. 29 (1940).

Negligence may exist where no nuisance and vice versa and both may be present. Erickson v. Town of Manson, 180 Iowa 378, 160 N.W. 276 (1917).

Motion in arrest of judgment proper where location of obstruction not pleaded or found by jury. Sloan v. Rebman, 66 Iowa 81, 23 N.W. 274 (1885).

Defendants cannot object on trial to evidence of multiple plaintiff's interest in property. Bushnell v. Robeson, 60 Iowa 540, 17 N.W. 888 (1883).

46. Evidence.

Objections in nuisance action were sufficient to preserve error for appelate review. Local Bd.. of Health, Boone County v. Wood, 243 N.W.2d 862 (Iowa 1976).

Evidence did not show, in action by owner of servient estate against owners of dominant estate seeking to recover for drainage nuisance, that installation by owners of dominant estate of drainage pipe in embankment on dominant estate so altered the natural system of drainage as to substantially increase the burden on servient estate. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Evidence was insufficient to establish that sewage treatment lagoon emitted such odors as to be a nuisance which could be enjoined. Bader v. Iowa Metropolitan Sewer Co., 178 N.W.2d 305 (Iowa 1970).

Evidence sustained finding that, although during heavy rain sanitary sewer water backed up and did considerable damage to owners' property, city had not created nuisance. Sparks v. City of Pella, 258 Iowa 187, 137 N.W.2d 909 (1965).

Testimony that grinding did not make more noise than ordinary operations of a grinding business did not render defendants immune from liability. Kellerhals v. Kallenberger, 251 Iowa 974, 103 N.W.2d 691 (1960).

Evidence sustained trial court's finding that operation of corporation's plant constituted a continuing nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Burden on plaintiff to plead and prove nuisance. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237 (1952).

Presumption that plaintiff has ordinary sensibilities. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Testimony of what visitors in home said properly excluded. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Testimony of health hazard permitted where noxious odors from sewage. Hill v. City of Winterset, 203 Iowa 1392, 214 N.W. 592 (1927, followed in Brooker v. City of Winterset, 215 N.W. 668).

Evidence of other residents as to smoke soot and gas admissible. Soderburg v. Chicago, St. P. M. & O. Ry. Co., 167 Iowa 123, 149 N.W. 82 (1914).

Clerk's testimony as to collection of fines admissible without reference to police record. Ford v. Oliver, 124 N.W. 1067 (1910).

Instruction as to decrease in value cured admission of decrease in rental value. Risher v. Acken Coal Co., 147 Iowa 459, 124 N.W. 764 (1910).

Difference in value before and after nuisance as distinguished from difference in value from date of decree to time of trial inadmissible. Holbrook v. Griffis, 127 Iowa 505, 103 N.W. 479 (1905).

Premises of nuisance may be identified by evidence aliunde. Jasper County v. Sparham, 125 Iowa 464, 101 N.W. 134 (1904).

Construction of sewer proper evidence. Suddith v. Incorporated City of Boone, 121 Iowa 258, 96 N.W. 853 (1903).

Objection to admission of similar petition should be sustained. Bennett v. City of Marion, 119 Iowa 473, 93 N.W. 558 (1903).

Matters subsequent to verification of petition admissible. State v. Williams, 90 Iowa 513, 58 N.W. 904 (1894).

Manner in which nuisance affected other persons not parties to suit inadmissible. Harley v. Merrill Brick Co., 83 Iowa 73, 48 N.W. 1000 (1891).

Competent for defendant to show other causes contributed to damages. Loughran v. City of Des Moines, 72 Iowa 382, 34 N.W. 172 (1887).

47. Weight and sufficiency of evidence.

Special damages in action for abatement were barred by five-year limitations period. Earl v. Clark, 219 N.W.2d 487 (Iowa 1974).

Evidence as to odors emanating from sewage lagoon sufficient to establish that maintenance of lagoon constituted a private continuing nuisance. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Unanimity of neighbors not required to prove a substantial invasion of rights of those neighbors whose sensibilities were unreasonably offended. Larsen v. McDonald, 212 N.W.2d 505 (Iowa 1973).

Finding that concrete plant constituted a nuisance was supported by evidence. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Evidence established that baseball games caused actual discomfort. Amdor v. Cooney, 241 Iowa 777, 43 N.W.2d 136 (1950).

Evidence sustained $300 verdict. Ness v. Independent School Dist. of Sioux City, 230 Iowa 771, 298 N.W. 855 (1941).

Evidence showed offensive odors may be reduced by sanitary measures. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199 (1932).

Temporary injunction proper when defendants agreed to comply though evidence failed to establish a nuisance. Walter v. Howe, 184 Iowa 563, 168 N.W. 867 (1918).

Evidence sufficient to enjoin sand pit within town. City of Hawarden v. Betz, 182 Iowa 808, 164 N.W. 775 (1917).

Evidence showed nuisance complained of did not frighten horse. Stokes v. Sac City, 155 Iowa 334, 136 N.W. 207 (1912).

Evidence insufficient to sustain damages for more than nominal amount. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786 (1908), 20 L. R. A., N. S. 466.

If injury is doubtful or contingent equity will not interfere. Payne v. Town of Wayland, 131 Iowa 659, 109 N.W. 203 (1906).

Evidence that garbage dump was nuisance sufficient. Percival v. Yousling, 120 Iowa 451, 94 N.W. 913 (1903).

48. Trial.

Denial of relief not necessarily a dismissal. Friedman v. Forest City, 239 Iowa 112, 30 N.W.2d 752 (1948).

Trial may be either at law or in equity. Gribbin v. Hanson, 69 Iowa 255, 28 N.W. 584 (1886).

Plaintiff entitled to have damages assessed by jury. Miller v. Keokuk & D. M. R. Co., 63 Iowa 680, 16 N.W. 567 (1883).

Finding that gas works are permanent is equivalent to finding that injury is permanent. Baldwin v. Oskaloosa Gaslight Co., 57 Iowa 51, 10 N.W. 317 (1881).

49. Jury questions.

Generally, probable cause of damages to person or property by maintenance of a nuisance is determinable by the trier of facts. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Jury question as to whether construction company acted with malice or in reckless disregard of the rights of others. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Question of whether nuisance has been created and maintained is ordinarily one of fact and not of law. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 582 (1967).

Evidence not sufficient to submit to jury depreciation of rental value. Soderburg v. Chicago, St. P., M. & O. Ry. Co., 167 Iowa 123, 149 N.W. 82 (1914).

50. Instructions.

Instruction not erroneous on ground that it permitted jury to speculate as to what nuisance is. Miller v. Town of Ankeny, 253 Iowa 1055, 114 N.W.2d 910 (1962).

Use of nuisance statutes not objectionable where limited. Wesley v. City of Waterloo, 232 Iowa 1299, 8 N.W.2d 430 (1943).

Instructions to damages for each year alike improper where damages different each year. Friend v. City of Grinnell, 200 N.W. 592 (1924).

Evidence must be sufficient to submit question of injury. Nuessle v. Western Asphalt Paving Corporation, 194 Iowa 626, 190 N.W. 5 (1922).

Doctrine of contributory negligence may apply. Holbrook v. Griffis, 127 Iowa 505, 103 N.W. 479 (1905).

Plaintiff need not prove every allegation of her petition. Harley v. Merrill Brick Co., 83 Iowa 73, 48 N.W. 1000 (1891).

Instruction that stockyards necessary properly refused. Shively v. Cedar Rapids I. F. & N. W. R. Co., 74 Iowa 169, 37 N.W. 133, 7 Am. St. Rep. 471 (1888).

51. Judgment or decree.

Mere fact that plaintiff owner of servient estate, in action against owners of dominant estate seeking relief from alleged drainage nuisance sought compensatory redress in addition to equitable relief did not, per se, mean that the case stood in law. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Where judgment was not challenged on appeal, existence of nuisance as alleged was thereby established. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Where no issues or evidence, necessity of proof by defendant improper. Livingston v. Davis, 243 Iowa 21, 50 N.W.2d 592 (1952), 27 A. L. R.2d 1237.

Decree should be interlocutory rather than final. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Denial of order enjoining construction not conclusive that nuisance will not result. Thomas v. City of Grinnell, 171 Iowa 571, 153 N.W. 91 (1915).

No prejudice to defendant where prior judgments pleaded. Bennett v. City of Marion, 119 Iowa 473, 93 N.W. 558 (1903).

Injunction abatement must include all parties interested. Danner v. Hotz, 74 Iowa 389, 37 N.W. 969 (1888).

Judgment to abate nuisance res judicata to another action between same parties. Brant v. Plumer, 64 Iowa 33, 19 N.W. 842 (1884).

52. Appeal.

Review in Supreme Court was de novo. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

On appeal of action seeking injunction against a nuisance, the Supreme Court hears the appeal de novo, and while it gives great weight to the trial court's fact findings, it is not bound by them. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Where issue of liability for exemplary damages in creating a nuisance was neither urged nor discussed by defendant on appeal, such issue was not open to Supreme Court's determination. Claude v. Weaver Const. Co., 261 Iowa 1225 (Iowa 1968).

Where motion to dismiss or direct a verdict was taken with submission of the case, determination that no nuisance had been created was a finding of

fact, and not a ruling as a matter of law. Sparks v. City of Pella, 258 Iowa 187, 137 N.W.2d 909 (1965).

Where record did not establish a clear and strong case supporting right to abate nuisance, and District Court erroneously concluded that where a nuisance was shown, the injured person is entitled, as a matter of right, to its abatement by injunction, without reference to comparative benefits or injuries, and various factors, which should have been appraised in determining appropriateness of injunctive relief where not considered, judgment granting injunctive relief was required to be modified by Supreme Court. Rider v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Where claim of misjoinder withdrawn by stipulation, no basis for appeal. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

Plaintiff entitled to modification of decree. Harndon v. Stultz, 124 Iowa 440, 100 N.W. 329 (1904).

Appellate court may consider survey though no plea of res judicata. Brutsche v. Bowers, 122 Iowa 226, 97 N.W. 1076 (1904).

An order conditioned on voluntary abatement by defendant not appealable. Suddith v. Incorporated City of Boone, 121 Iowa 258, 96 N.W. 853 (1903).

Objection of no avail on appeal where not made below. Bennett v. City of Marion, 119 Iowa 473, 93 N.W. 558 (1903).

53. Criminal liability.

A person may be indicted for maintaining nuisance. State v. Chicago Great Western Ry. Co., 166 Iowa 494, 147 N.W. 874 (1914).

Indictment need not specify premises for purposes of lien. Jasper County v. Sparham, 125 Iowa 464, 101 N.W. 134 (1904).

Indictment sufficiently described public nuisance. State v. Close, 35 Iowa 570 (1873).

Defendant may not show public benefit equals public inconvenience. State v. Kaster, 35 Iowa 221 (1872).

Description in indictment sufficient. State v. Schilling, 14 Iowa 455 (1862).

54. Negligence.

One must use his own property so that his neighbor's comfortable and reasonable use and enjoyment of his estate will not be unreasonably interfered with or disturbed. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

55. Obstruction of roads, ways and streets.

Even if dust on road caused by truck traffic constituted an obstruction within statutes pertaining to duty of a county board of supervisors to cause all obstructions in highways to be removed, residents of homes along such roadway would at most be entitled to an order requiring the board to perform its duty and remove the obstruction. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

A businessman's customers cannot create nuisance in alley and cannot block alley with standing vehicles. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Only in extreme situations would it be necessary for the county to use night patrol crews to avoid the accumulation of accident producing deposits of earth or other materials on road surfaces. O.A.G. Sept. 11, 1973.

56. Businesses.

In determining whether a nuisance has been created by a business operation, considerations are priority of location, nature of neighborhood and wrong complained of. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

A lawful business is not nuisance merely because it attracts many customers. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

57. Aiding nuisances.

Customer of a limestone quarry could not be held responsible for creation of nuisance caused by hauling of limestone from the quarry. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

58. Sewers.

Common-law definition of a nuisance must be applied where action was against city to recover damages for the construction and maintenance of a sewer as nuisance. Sparks v. City of Pella, 258 Iowa 187, 137 N.W.2d 909 (1965).

58.5 Sanitary landfills.

Although a refuse disposal operation including a sanitary landfill is not a nuisance per se, it may become a nuisance in fact as a result of the manner in which it is operated. Incorporated Town of Carter Lake v. Anderson Excavating & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

59. Encroachments.

Encroachment of landowner's garage upon a street and alley in the town. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

60. Priority of occupation.

Priority of occupation is a circumstance of considerable weight in nuisance actions. Bates v. Quality Read-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

61. Massage parlors.

For annotations, see I.C.A.

62. Zoning.

Governmental body cannot, by zoning an industrial district, authorize creation or maintenance of nuisance. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

657.2 What Deemed Nuisances

1. Construction and application.

Under Iowa law, the invasion must intentional, unreasonable, and substantial, in order to support a recovery of damages for nuisance. Stockdale v. Agrico Chemical Co., Division of Continental Oil Co., 340 F. Supp. 244 (1972).

For purposes of determining whether nuisance exists, major factor in determining reasonableness of condition in place and under circumstances is character and gravity of resulting injuries rather than injury threatened. Montgomery v. Bremer County Bd. of Sup'rs, 299 N.W.2d 687 (Iowa 1980).

Statutes defining nuisance do not abrogate the common law of nuisance. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Existence of nuisance is not affected by lawfulness of an offending establishment or absence of intention to injure. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Where a statute is openly, publicly, repeatedly, continuously, persistently and intentionally violated, a public nuisance is created. State ex rel. Turner v. Younker Bros., Inc., 210 N.W.2d 550 (Iowa 1973).

Existence of a nuisance is not affected by the intention of its creator not to injure anyone. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

A "nuisance per se" is a structure or activity which is a nuisance at all times and under any circumstances, regardless of location or surroundings. Bader v. Iowa Metropolitan Sewer Co., 178 N.W.2d 305 (Iowa 1970).

Action for nuisance is not predicated on negligence since nuisance is a condition. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Mere commission of nuisance justifying award of actual damages would be insufficient to justify assessment of punitive damages. Id.

Term "private nuisance" refers to an actionable interference with person's interest in private use and enjoyment of his land. Bates v. Qualtiy Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Statutory enumerations of nuisances does not modify the common-law rule applicable to nuisances. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

"Private nuisance" has reference to an actionable interference with a person's interest in the private use and enjoyment of his land. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

To constitute a nuisance there must be a degree of danger, likely to result in damage, inherent in the thing itself, beyond that arising from mere failure to exercise ordinary care in its use. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 748 (1957).

That thing is unsightly or offends aesthetic sense not sufficient for nuisance. Livingston v. Davis, 243 Iowa 21, 50 N.W.d 592, 27 A. L. R.2d 1237 (1952).

Only one action for permanent nuisance and all damages assessed but once. Wesley v. City of Waterloo, 232 Iowa 1299, 8 N.W.2d 430 (1943).

"Nuisance in fact" is legitimate business conducted as nuisance. Pauly v. Montgomery, 209 Iowa 699, 228 N.W. 648 (1930).

Decrease in rental value on leased farm is damage to owner. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Criminal nuisance statute did not abrogate common-law nuisance. State v. Chicago Great Western R. Co., 166 Iowa 494, 147 N.W. 874 (1914).

2. Noxious exhalations or offensive smells.

Chick-raising facility constituted a nuisance. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Sewage disposal facility is not a "nuisance per se." Bader v. Iowa Metropolitan Sewer Co., 178 N.W.2d 305 (Iowa 1970).

Jury question as to whether construction company acted with malice or in reckless disregard of rights of others. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Defendant required to operate machinery so as not to cause undue noises and vibrations annoying to persons of ordinary sensibilities. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Right of a person to pure air may be surrendered in part by his election to live in a city where the atmosphere is impregnated with impurities. Riter v. Keokuk Electo-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Allegation of emission of odors, pollution and corruption made a case of nuisance. Newton v. Grundy Center, 70 N.W.2d 162 (Iowa 1955).

Not error for court to cite nuisance statutes though not pleaded. Wesley v. Waterloo, 232 Iowa 1299, 8 N.W.2d 430.

"Private nuisance" is actionable invasion of interests in use and enjoyment of land. Ryan v. City of Emmetsburg, 232 Iowa 600, 4 N.W.2d 435.

All property owners have right to have air diffused without undue soot, smoke or fumes. Higgins v. Decorah Produce Co., 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199 (1932).

Discomfort from odors from pollution of creek proper element of damages. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Allegation of offensive odors permit testimony as to health hazard. Hill v. City of Winterset, 203 Iowa 1392, 214 N.W. 592 (1927), followed in Brooker v. City of Winterset, 215 N.W. 668.

Admission of evidence of offensive odors not prejudicial where instruction limited damages. Chase v. Winterset, 203 Iowa 1361, 214 N.W. 591 (1927), followed in Brooker v. City of Winterset, 215 N.W. 668.

Where no evidence of injury from discharge of waste no nuisance. Ruthven v. Farmers Co-op Creamery Co., 140 Iowa 570, 118 N.W. 915 (1908).

An offensive trade though lawful should be exercised in remote place. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466 (1908).

Though "creamery odor" could be noticed, its discharge not a nuisance. Perry v. Howe Co-op Creamery Co., 125 Iowa 415, 101 N.W. 150 (1904).

Knowledge of construction does not estop complaint as nuisance. Harley v. Merrill Brick Co., 83 Iowa 73, 48 N.W. 1000.

Annoyance from coal chute not enough to constitute nuisance. Dunsmore v. Central Iowa R. Co., 72 Iowa 182, 33 N.W. 456 (1887).

Annoyance without injury or destruction insufficient for nuisance. Daniels v. Keokuk Waterworks, 61 Iowa 549, 16 N.W. 705 (1883).

Corruption and infesting of air constitutes public indictable nuisance. State v. Kaster, 35 Iowa 221 (Iowa 1872).

3. Filth or noisome substances.

Considerable dust and noise which would cause physical discomfort to a person of ordinary sensibilities. Helmkamp v. Clark Ready Mix Co., 214 N.W.2d 126 (Iowa 1974).

Unregulated accumulation of garbage is, or may become a public nuisance. Harvey v. Prall, 250 Iowa 1111, 97 N.W.2d 306 (1959).

Common-law rule not modified by statutory enumeration. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

Verbatim use of statutes in instructions not objectionable where limited. Wesley v. City of Waterloo, 232 Iowa 1299, 8 N.W.2d 430.

Unusually large manure pile a nuisance. Smith v. City of Jefferson, 161 Iowa 245, 142 N.W. 220, 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97 (1913).

Plaintiff's dumping of garbage on own property no defense to action against city. Correll v. City of Cedar Rapids, 110 Iowa 333, 81 N.W. 724 (1900).

Due care to prevent nuisance and evidence sufficient to show no nuisance. Bennett v. National Starch Mfg. Co., 103 Iowa 207, 72 N.W. 507 (1897).

4. Conditions endangering public welfare.

"Junk dealer" may be declared nuisance by ordinance. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

Repair of hangar tower not nuisance. Abbott v. Des Moines, 230 Iowa 494, 298 N.W. 649, 139 A. L. R. 120 (1941).

Playground equipment in park not nuisance. Smith v. Iowa City, 213 Iowa 391, 239 N.W. 29 (1931).

5. Noises.

Noises may be of such a character and intensity as to so unreasonably interfere with comfort and enjoyment of private property as to constitute a "nuisance" and, in such cases, injury to health need not be shown. Bates v. Quality Ready Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

Noise may be a nuisance. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Breeding of horses in residential district a nuisance. Williams v. Wolfgang, 151 Iowa 548, 132 N.W. 30 (1911).

Whether smoke or noise constitutes nuisance depends on evidence. McGill v. Pintsch Compressing Co., 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466 (1908).

Conditions under which shop could be operated so as not to constitute nuisance should be shown. Hughes v. Scheurman Bros., 134 Iowa 742, 112 N.W. 198 (1907).

6. Obstructing streams.

Pier erected in navigable water without authority is a nuisance. Atlee v. Union Packet Co., 88 U.S. 389, 21 Wall 389, 22 L. Ed. 619 (1874).

Erection of bridge in reasonable place and in reasonable manner no nuisance. Mississippi & M. R. Co. v. Ward, 67 U.S. 485, 2 Black 485, 17 L. Ed. 311 (1862).

Where discharge of sewer into stream caused injury to property and streets, obstruction of it is a nuisance. Sioux City v. Simmons Warehouse Co., 151 Iowa 334, 129 N.W. 978 (1911), rehearing denied, modified on other grounds, 151 Iowa 334, 131 N.W. 17.

No defense that obstruction caused flood only in very high water. Hastings v. Chicago, R. I. & P. Ry. Co., 148 Iowa 390, 126 N.W. 786 (1910).

Right of unobstructed flow of water may be lost by prescription. Marshall Ice Co. v. La Plant, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S., 1073 (1907).

Riparian owner may construct pier on navigable lake if navigation not obstructed. Mills & Allen v. Evans, 100 Iowa 712, 69 N.W. 1043 (1897).

Ferry franchise cannot be exercised to inconvenience, annoy or damage boat passage. The Globe, 4 G. Greene 433 (Iowa 1854).

Mississippi River cannot be obstructed or monopolized. Jones v. Fanning, 1844, Morris, 348.

7. Pollution of water.

Allegation of emission of offensive materials into pasture creek makes a case of nuisance. Newton v. Grundy Center, 70 N.W.2d 162 (Iowa 1955).

Decree should be interlocutory to give city change to abate pollution. Stovern v. Town of Calmar, Winneshiek County, 204 Iowa 983, 216 N.W. 112 (1927).

Failure to be specific in petition rendered it fatally defective. State v. Jacob Decker & Sons, 197 Iowa 41, 190 N.W. 600 (1924).

Jury may consider decrease in rental value and inconvenience and discomfort. Boyd v. Oskaloosa, 179 Iowa 387, 161 N.W. 491 (1917).

Plaintiff may recover for damages sustained for five years preceding action. Vogt v. Grinnell, 133 Iowa 363, 110 N.W. 603 (1907).

Contributory negligence not applicable to nuisance. Bowman v. Humphrey, 132 Iowa 234, 109 N.W. 714 (1906), 6 L. R. A., N. S., 1111, 11 Ann. Cas. 131.

Deposit of refuse which affected use and enjoyment of property a nuisance. Perry v. Howe Co-op Creamery Co., 125 Iowa 415, 101 N.W. 150 (1904).

Where health or comfort destroyed or visible injury to property rights there is a nuisance. Bowman v. Humphrey, 124 Iowa 744, 100 N.W. 854 (1904).

Defendant cannot complain in action for permanent nuisance where only temporary damages are asked. Hollenbeck v. City of Marion, 116 Iowa 69, 89 N.W. 210 (1902).

Where causes of offense are removed prior to trial it will not be enjoined. Bennett v. National Starch Mfg. Co., 103 Iowa 207, 72 N.W. 507 (1897).

One who merely contributes to pollution of stream is guilty of nuisance. State v. Smith, 82 Iowa 423, 48 N.W. 727 (1891).

Recovery proper of depreciation in rental value and for sickness. Ferguson v. Firmenich Mfg. Co., 77 Iowa 576, 42 N.W. 448 (1889), 14 Am. St. Rep. 319.

8. Obstruction of roads, ways and streets.

City's assessment against owner of property adjacent to city parking of cost of removal of trees from city parking was void. Shriver v. City of Jefferson, 190 N.W.2d 838 (Iowa 1971).

Extent of obstruction of public street or alley was not important in determining whether defendants had violated ordinance making obstruction of streets and alleys by buildings a nuisance. Town of Marne v. Goeken, 259 Iowa 1375, 147 N.W.2d 218 (1966).

Dust on road caused by traffic constituted an obstruction within statutes pertaining to duty of county board of supervisors to cause removal of obstructions in highways. Shannon v. Missouri Val. Limestone Co., 255 Iowa 528, 122 N.W.2d 278 (1963).

A businessman's customers cannot create nuisance in alley and cannot block alley with standing vehicles. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

City requirement that private water hydrant, installed by corporation in sidewalk abutting its property, be removed as nuisance violating this section and city ordinance. Midwest Inv. Co. v. City of Chariton, 248 Iowa 407, 80 N.W.2d 906 (1957).

Obstruction of access need not be continuous to allow recovery. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Gasoline pumps in street are "incumbering" street. Incorporated Town of Lamoni v. Smith, 217 Iowa 264, 251 N.W. 706 (1934).

Cities may enjoin stretching of wires across street without showing damages. Incorporated Town of Ackley v. Central States Electric Co., 204 Iowa 1246, 214 N.W. 879 (1927), 54 A. L. R. 474.

Obstruction of alley is nuisance. Dugan v. Zurmuehlen, 203 Iowa 1114, 211 N.W. 986 (1927).

No private person has right to obstruct streets. Mettler v. Ottumwa, 197 Iowa 187, 196 N.W. 1000 (1924).

Unloading circus on street not prohibited by this section. Carlisle v. Sells-Floto Show Co., 180 Iowa 549, 163 N.W. 380 (1917).

Obstruction of streets by parking of autos is nuisance. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916), L. R. A. 1917F, 345.

Finding of nuisance in hitching posts will not be disturbed. Kent v. City of Harlan, 170 Iowa 90, 152 N.W. 6 (1915).

Hitching posts constructed by city council no nuisance. Smith v. City of Jefferson, 161 Iowa 245, 142 N.W. 220 (1913), 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

No defense to city council action to remove hitching posts that they are not a nuisance. Lacey v. Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909), 31 L. R. A., N. S., 853.

A fence extending into public highway is a nuisance. Quinn v. Baage, 138 iowa 426, 114 N.W. 205 (1907).

Advice of judge no defense for violation of injunction. Young v. Rothrock, 121 Iowa 588, 96 N.W. 1105 (1903).

Trees in street not a nuisance where they do not obstruct travel and public policy to preserve. Burget v. Incorporated Town of Greenfield, 120 Iowa 432, 94 N.W. 933 (1903).

Lessee may proceed against obstruction though it existed prior to tenancy. Morrison v. Chicago & N. W. R. Co., 117 Iowa 587, 91 N.W. 793 (1902).

Cities and towns may fine one for obstructing streets. Incorporated Town of Nevada v. Hutchins, 59 Iowa 506, 13 N.W. 634 (1882).

No defense that grievance committed under authority of law. Scheckner v. Milwaukee & P. Du C. R. Co., 21 Iowa 515 (1866).

Injunction will not lie against city where no showing stream will obstruct street. McMahon v. Council Bluffs, 12 Iowa 268 (1861).

Equity has no power to restrain removal by city of obstruction in street. Sayers v. City of Lyons, 10 Iowa 249 (1859).

9. Sidewalks, obstructing.

Private water hydrant installed by corporation in sidewalk abutting its property was unlawful obstruction. Midwest Inv. Co. v. City of Chariton, 248 Iowa 407, 80 N.W.2d 906 (1957).

Newstand operation in public street not authorized by prescriptive right or license. Cowin v. Waterloo, 237 Iowa 202, 21 N.W.2d 705 (1946), 163 A. L. R. 1327.

Permission by city to build housing in street does not render city liable for death of child. Jones v. City of Ft. Dodge, 185 Iowa 600, 171 N.W. 16 (1919).

10. Obstructions authorized by public authority.

Business owner could sue city for nuisance though permit granted by city. Gates v. City of Bloomfield, 243 Iowa 671, 53 N.W.2d 279 (1952).

Obstructions to travel are "nuisance" absent valid ordinance authorizing same. Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

City may authorize use of streets for areaways if no injury to others. Wendt v. Incorporated Town of Akron, 161 Iowa 338, 142 N.W. 1024 (1913).

Public market not nuisance per se where only temporary or partial obstruction. State v. Smith, 123 Iowa 654, 96 N.W. 899 (1903).

Traffic post of pipe filled with concrete attached to pavement is an obstruction. O.A.G. 1916, p. 235.

11. Abatement, obstructions of way.

Suit to restrain city from removing, as a nuisance, a private water hydrant installed by plaintiff corporation in sidewalk abutting its property. Midwest Inv. Co. v. City of Chariton, 248 Iowa 407, 80 N.W.2d 906 (1957).

Ditch which changes natural course of drainage is nuisance and may be abated. Droegmiller v. Olson, 241 Iowa 456, 40 N.W.2d 292 (1950).

City may bring action to abate nuisance though summary remedy provided. Polk City, Polk County v. Gemricher, 185 Iowa 278, 170 N.W. 378 (1919).

City may prohibit parking or limit time of parking. Pugh v. Des Moines, 176 Iowa 593, 156 N.W. 892 (1916), L. R. A. 1917F, 345.

City may order removal of one entering on or excavating on street without permission. Callahan v. City of Nevada, 170 Iowa 719, 153 N.W. 188 (1915).

Action by individual against city must show special injury. Collins v. Keokuk, 147 Iowa 605, 125 N.W. 231 (1910).

City may not arbitrarily destroy trees. Waterbury v. Morphew, 146 Iowa 313, 125 N.W. 205 (1910).

Limited extent of street obstruction is immaterial to right to remove. Lace v. Oskaloosa, 143 Iowa 704, 121 N.W. 542 (1909), 31 L. R. A., N. S. 853.

City charged with duty of keeping full width of street in repair. Kemper v. City of Burlington, 81 Iowa 354, 47 N.W. 72 (1890).

Right to continue obstruction not gained by perscription or estoppel. City of Waterloo v. Union Mill Co., 72 Iowa 437, 34 N.W. 197 (1887).

Shade trees cannot be removed unless actual obstruction to travel. Everett v. City of Council Bluffs, 46 Iowa 66 (1877).

If enclosure of street affects value of property, owner entitled to restrain enclosure. Prince v. McCoy, 40 Iowa 533 (1875).

12. Damages, obstructions of ways.

Private citizen complaining of nuisance in street must show special damages. Lytle Inv. Co. v. Gilman, 201 Iowa 603, 206 N.W. 108 (1925).

Instruction as to wind condition improper where burden on plaintiff. Kiple v. Town of Clermont, 193 Iowa 243, 186 N.W. 889 (1922).

Proof that obstruction is a nuisance not prerequisite to recovery of damages. Raine v. City of Dubuque, 169 Iowa 388, 151 N.W. 518 (1915).

Special interrogatories assuming knowledge by plaintiff properly refused. Hall v. City of Shenandoah, 167 Iowa 735, 149 N.W. 831 (1914).

Ultimate effect on instructions was proper as to proximate case. Stokes v. Sac City, 162 Iowa 514, 144 N.W. 639 (1913).

Violation of duty of city to maintain streets may subject them to liability. Wheeler v. Fort Dodge, 131 Iowa 566, 108 N.W. 1057 (1906), 9 L. R. A., N. S. 146.

Abutting owner may recover from city for injury from erection of buildings in street by city. Pettit v. Incorporated Town of Grand Junction, Greene County, 119 Iowa 352, 93 N.W. 381 (1903).

Cause of action for R. R. nuisance arose at first occupancy. Fowler v. Des Moines & K. C. R. Co., 91 Iowa 533, 60 N.W. 116 (1894).

Town had right to remove hedges if in public street. Philbrick v. Town of University Place, 88 Iowa 354, 55 N.W. 345 (1893).

R. R. laying track beyond limits authorized subject to damages for special injury. Cain v. Chicago, R. R. & P. R. Co., 54 Iowa 255, 3 N.W. 736 (1879), rehearing denied, 54 Iowa 255, 6 N.W. 268.

Lamp post at center of intersection a nuisance but whether city subjected to liability quaere. O.A.G. 1916, p. 235.

13. Diversion of water.

Diversion of surface water inconsequential and no nuisance. Grimes v. Polk County, 34 N.W.2d 767 (Iowa 1949).

Defendant could not complain of admission of evidence of permanent damage. Valentine v. Widman, 156 Iowa 172, 135 N.W. 599 (1912).

That dike diverted less water than before did not excuse maintenance of dike as nuisance. Meyers v. Priest, 145 Iowa 81, 123 N.W. 943 (1909).

Action for damages and for abatement not inconsistent. Steber v. Chicago & G. W. Ry. Co., 139 Iowa 153, 117 N.W. 304 (1908).

One who without objection watches construction of diversion bank may not later enjoin. Slocumb v. Chicago, B. & Q. R. Co., 57 Iowa 675, 11 N.W. 641 (1882).

14. Billboards and signs.

Failure of municipality to keep metal traffic sign post, which fell killing child, in proper repair, was not nuisance. Hall v. Town of Keota, 248 Iowa 131, 79 N.W.2d 784 (1957).

The only expressed power given the city to abate billboards is found in § 657.2 subd. 7, and when construed with § 319.10, relates only to the abatement of nuisances. Stoner McCray System v. City of Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956).

15. Dams.

For annotations, see I.C.A.

16. Garages and filling stations.

For annotations, see I.C.A.

17. Houses of ill fame, etc.

For annotations, see I.C.A.

18. Municipal regulations.

City could not, by zoning as an industrial district, or issuing permits for construction, authorize creation or maintenance of nuisance. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

Ordinance prohibiting junk yard not unconstitutional. Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942).

Vacation of street no defense to suit to enjoin nuisance for obstructing street. Pederson v. Town of Radcliffe, 226 Iowa 166, 284 N.W. 145 (1939).

Cities have no authority to punish by fine the obstruction of street with buildings. Incorporated Town of Nevada v. Hutchins, 59 Iowa 506, 13 N.W. 634 (1882).

19. Weeds.

Primary duty on city to destroy weeds in streets and alleys. O.A.G. 1938, p. 802.

20. Remedies.

Action by owner of servient estate against owners of dominant estate seeking relief from alleged drainage nuisance was premised upon an alleged private nuisance. Braverman v. Eicher, 238 N.W.2d 331 (Iowa 1976).

Compensatory award not challenged on appeal was accepted as reasonable and proper. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

Injunction warranted in view of record showing that no other appropriate order could be entered which would abate as to adjoining landowners the nuisance created by noise of operation of a plant. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

21. Criminal liability.

For annotations, see I.C.A.

21.5 Evidence.

Expert testimony on standard of normal persons in a particular locality with respect to whether invasion involving personal discomfort or annoyance is substantial. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Evidence sustained finding that operation of plant constituted a continuing nuisance. Riter v. Keokuk Electro-Metals Co., 248 Iowa 710, 82 N.W.2d 151 (1957).

22. Repeals.

For annotations, see I.C.A.

23. Schools.

For annotations, see I.C.A.

24. Particular nuisances.

Evidence insufficient to establish that operation of underground natural gas storage area constituted nuisance. Pitsenbarger v. Northern Natural Gas Co., 198 F. Supp. 665 (1962).

Question of whether a nuisance has been created and maintained is ordinarily one of fact, and not of law. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

25. Businesses.

License to carry on particular trade or business does not given licensee permission to carry it on in such manner as to constitute nuisance. Pitsenbarger v. Northern Natural Gas Co., 198 F. Supp. 665 (1962).

Fair test of whether operation of lawful trade or industry constitutes a "nuisance" is the reasonableness of conducting it in the manner, at the place and under the circumstances in question. Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972).

Concrete plant constituted a nuisance. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 154 N.W.2d 852 (1967).

A lawful business is not nuisance merely because it attracts many customers. Schlotfelt v. Vinton Farmers' Supply Co., 252 Iowa 1102, 109 N.W.2d 695 (1961).

26. Sewers.

Sewage disposal facility is not a nuisance per se. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Common-law definition of nuisance must be applied where action was against city to recover damages for the construction and maintenance of a sewer as nuisance. Sparks v. City of Pella, 258 Iowa 187, 137 N.W.2d 909 (1965).

26.5 Sanitary landfills.

Although a refuse disposal operation including a sanitary landfill, is not a nuisance per se, it may become a nuisance in fact as a result of the manner in which it is operated. Incorporated Town of Carter Lake v. Anderson Excavating & Wrecking Co., 241 N.W.2d 896 (Iowa 1976).

Purpose of municipal regulation of landfills is to prevent them from becoming public nuisances. Id.

27. Defenses.

Existence of nuisance is not affected by lawfulness of an offending establishment or absence of intention to injure. Kriener v. Turkey Val. Community School Dist., 212 N.W.2d 526 (Iowa 1973).

Use of most modern machinery to alleviate offensive situation was no defense to creation of nuisance. Claude v. Weaver Const. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968).

28. Common law.

Basic elements of common-law public nuisances are (1) unlawful or antisocial conduct that (2) in some way injures (3) a substantial number of people; a public nuisance is thus unlike a private nuisance of tort law where specific injury to an individual must be shown. State ex rel. Turner v. Younker Bros., Inc., 210 N.W.2d 550 (Iowa 1973).

29.5. Slaughter of animals.

For annotations, see I.C.A.

657.3 Penalty - Abatement (No Annotations)

657.4 Process (No Annotations)

657.5 Repealed by Acts 1972 (64 G.A.) ch. 1124, § 282, eff. July 1, 1973.

657.6 Stay of Execution

1. Construction and application.

an order continuing decision on abatement is not final order and not appealable. Suddith v. City of Boone, 121 Iowa 258, 96 N.W. 853 (1903).

657.7 Expenses - How Collected

1. Construction and application.

Expense of removal of obstruction in highway borne by owner who created obstruction. O.A.G. 1938, p. 318

657.8 Feed Lots (No Annotations)

Chapter 721

Official Misconduct

721.1 Felonious Misconduct in Office (No Annotations)

721.2 Non-felonious Misconduct in Office

1. Validity.

For annotations, see I.C.A.

2. In general.

Absent a vote of two-thirds of the members of each branch of the General assembly, a city may not, consistent with the Iowa constitution, authorize the use of city property by city employees for their private use. O.A.G. June 18, 1980.

Subsection 1 of this section imposes non-felonious criminal liability on any public officer or employee who knowlingly makes a contract that contemplates an expenditure known to be in excess of that authorized by law. O.A.G. September 25, 1979.

Public officers not liable for acts of commission or omission by predecessors. Dewell v. Suddick, 211 Iowa 1352, 232 N.W. 118 (1930).

For the misfeasance or non-feasance of a ministerial officer, the party injured may have redress by civil action. Wasson v. Mitchell, 18 Iowa 153 (1864).

Board of supervisors could not authorize grading of private lanes leading from secondary roads to farms despite offer of payment for such service by farmers. O.A.G. 1938, p. 837.

3. Misfeasance.

"Act of misfeasance" is positive wrong, and every employee whether employed by a private person or municipal corporation owes duty not to injure another by a negligent act of commission. Shirkey v. Keokuk County, 225 Iowa 1159, 281 N.W. 837 (1938).

Misfeasance of a county officer or employee is the improper doing of an act which a person might lawfully do. Moore v. Murphy, 254 Iowa 969, 119 N.W.2d 759 (1963).

A municipal employee is liable for an act of misfeasance on his part even though he is engaged in the performance of a governmental function. Shirkey v. Keokuk County, 225 Iowa 1159, 281 N.W. 837 (1938).

A city, county, or state employee, committing wrongful or tortious act, violates duty owed to one injured thereby and is personally liable for damages. Montanick v. McMillin, 225 Iowa 1159, 280 N.W. 608 (1938).

4. Nonfeasance.

Nonfeasance of a county officer or employee is the omission of an act which a person ought to do. Moore v. Murphy, 254 Iowa 969, 119 N.W.2d 759 (1963).

Officer or employee of county not personally liable for acts of nonfeasance in connection with duties as an employee. Id.

5. Judicial acts.

Officer not liable for judicial acts where no malice. Green v. Talbot, 36 Iowa 499 (1873).

6. Ministerial acts.
A ministerial officer is liable for damages caused by his misfeasance and nonfeasance in office. Howe v. Mason, 14 Iowa 510 (1863).

7. Lobbyists.
For annotations, see I.C.A.

8. Subdivisions or agencies of state.
A governmental subdivision of the state is a part of the state or a subdivision thereof, exercising powers of government such as a county or a city. O.A.G. 1934, p. 96.

9. Conflict of interest.
For annotations, see I.C.A.

10. Public monies - in general.
For annotations, see I.C.A.

11. Intent, public monies.
For annotations, see I.C.A.

12. Burden of proof, public monies.
For annotations, see I.C.A.

13. Fact questions, public monies.
For annotations, see I.C.A.

14. Instructions, public monies.
For annotations, see I.C.A.

15. Compensation - in general.
For annotations, see I.C.A.

16. Gifts in general, compensation.
For annotations, see I.C.A.

17. Rewards, compensation.
For annotations, see I.C.A.

18. Bribery, compensation.
Person offering or promising to give anything of value or benefit to a legislator or other public official, with intent to influence the act, vote, opinion, decision, or exercise of discretion of the legislator or official with respect to his service as such would be guilty of bribery, a class D felony. O.A.G. December 27, 1977.

19. Expense reimbursements, compensation.
For annotations, see I.C.A.

20. Indictment and information, compensation.
For annotations, see I.C.A.

21. Burden of proof, compensation.
For annotations, see I.C.A.

22. Review, compensation.
For annotations, see I.C.A.

23. Acting in excess of authority.
For annotations, see I.C.A.

24. Oppression - in general.
For annotations, see I.C.A.

25. Intent, oppression.
For annotations, see I.C.A.

26. Indictment and information, oppression.
For annotations, see I.C.A.

27. Private use of public property.
Use of state motor vehicles. O.A.G. December 2, 1975.
No authority for the use of state vehicles by any one other than a state officer or employee. O.A.G. February 8, 1972.
Superintendent of state institutions may not use state cars for private use. O.A.G. 1940, p. 116.

28. Performance of duty - in general.
Refusal of public officer to perform mandatory act subjects him to personal liability. Amy v. Des Moines County Sup'rs, 78 U.S. 136 (1870).

29. Intent, performance of duty.
Honest intentions of officer in official act does not affect his personal liability. Amy v. Des Moines County Sup'rs, 78 U.S. 136 (1870).
Officer's actions within statutory limitations unaffected by malice. Anderson v. Park, 57 Iowa 69, 10 N.W. 310 (1881).
Officer's actions invalidating private rights incurs personal liability without proof of malice and intent. McCord v. High, 24 Iowa 336 (1868).

30. Special injuries, performance of duty.
Proof of special injury required to recover for failure to perform mandatory official act. Smith v. Iowa City, 213 Iowa 391, 239 N.W. 29 (1931).
Public officer liable for special injury sustained by failure of ministerial duty. Gutschenritter v. Whitmore, 158 Iowa 252, 139 N.W. 567 (1913).

31. Torts, performance of duty.
Employee of governmental body does not share immunity of principle. Lenth v. Schug, 226 Iowa 1, 281 N.W. 510 (1939).
Knowing deception by public officer imposes liability. Perkins v. Evans, 61 Iowa 35, 15 N.W. 584 (1883).

32. Malicious prosecution.
For annotations, see I.C.A.

33. Res Judicata.
For annotations, see I.C.A.

34. Burden of proof, in general.
Officer has burden of proving existence of order and compliance with prerequisites. Andrew v. Winnebago County Bank, Forest City, 208 Iowa 392, 226 N.W. 73 (1929).

721.3 Solicitation for Political Purposes

For annotations, see I.C.A.

721.4 Using Public Motor Vehicles for Political Purposes

For annotations, see I.C.A.

721.5 State Employees not to Participate

For annotations, see I.C.A.

721.6 Exception to Sections 721.3 to 721.5

For annotations, see I.C.A.

721.7 Penalty for Violating Sections 721.3 to 721.6

For annotations, see I.C.A.

721.8 Labeling Publicly Owned Motor Vehicles

For annotations, see I.C.A.

721.9 Punishment for Violation of Section 721.8

For annotations, see I.C.A.

721.10 Misuse of Public Records and Files

For annotations, see I.C.A.

721.11 Interest in Public Contracts

For annotations, see I.C.A.