

VI. ROAD LEGISLATION DURING THE TERRITORIAL PERIOD

Frontier road-making methods were crude and makeshift. Often they consisted merely of removing a few trees or boulders, or of filling the worst swamps with brush or logs and covering the rough causeways with a few spadefuls of dirt. The task of improving the roads so that they could bear the commerce of a rapidly developing frontier country was as difficult as that of making the first roads, for money and labor were still scarce. Frontier roads were laid out wherever a practicable route could be found, for most landowners were so greatly pleased to have access to roads that they freely granted a right of way for them. But to insure some uniformity in road construction and to provide some method by which the rough frontier trails could be kept in a passable condition, it was necessary to evolve a set of rules and regulations.

Under the terms of the organization act, passed on March 3, 1849, the laws of Wisconsin Territory were made effective in the territory of Minnesota, thereby continuing the tutelage of Wisconsin over the new territory. The inheritance from Wisconsin was more extensive even than that, for the Minnesota country also had the benefit of a decade's experience as a part of St. Croix

County, and the seat of the Wisconsin county was located in the Minnesota town of Stillwater. To the inheritance of a body of laws, therefore, was added that of a unit of local government. It fell upon the shoulders of Alexander Ramsey, who was appointed governor of Minnesota Territory, to put the laws into operation, and it was he who called for the election of representatives to the territorial legislature, which, meeting in St. Paul in September, 1849, built the legal structure of Minnesota Territory upon the foundation laid by the territory of Wisconsin. ¹

On September 27 Alexis Bailly introduced a bill in the House to provide for "laying out Territorial roads, in the Territory of Minnesota." It became a law on November 1, when Governor Ramsey affixed his signature to it. It was repealed in 1851 when the Revised Statutes were drawn up, but it provided a working basis for Minnesota road legislation until a satisfactory code was devised. It simplified the problem of road building for a territory hard pressed for money; and it obviated for the lawmakers a lengthy, detailed list of specifications for the laying out of roads. ²

1. Ante, p. 35-37; Folwell, Minnesota, 1: 246, 248, 252.

2. House Journal, 1849, p. 61; Laws, 1849, p. 83. This bill is House File number 18, and may be found in the Bailly Papers, which are in the possession of the Minnesota Historical Society.

The act provided:

The commissioners appointed to locate and establish any Territorial road, shall cause the same to be correctly surveyed and marked from beginning throughout the whole distance, by blazing trees in the timber, by setting stakes in the prairies, eighty rods apart, and properly marked. They shall establish mile posts, which shall be marked with a marking iron in regular progression of numbers of miles from the beginning to the termination of said roads, and shall also establish posts at every angle in said roads, marking as aforesaid upon the same and upon a tree in its vicinity, if any there be, the bearing from the true meridian of the course, beginning at said angle post, set as herein directed, and note the bearing and distance of two trees in opposite direction, if there be any in the vicinity, or any other landmark from each angle and mile post. 3

Certified plats and maps were to be made for each road laid out, on which should appear the width, depth, and course of all streams crossed, the position of all swamps and marshes, the character of the country over which the road passed, and the distance traversed in each county along its route. A master copy of these plats was to be filed in the office of the secretary of the territory, and copies of the portions lying within the different counties, in the office of the clerk of the commissioners of the respective counties through which the road passed. The act stated that territorial roads should be sixty-six feet wide, and that they should be

3. The original bill stipulated that the commissioners "may cause" a road to be correctly surveyed. The intention perhaps was compulsion, but the language implied discretionary power on the part of the commissioners. The original bill provided that markers be placed at "reasonable distances apart." This was changed in the final form to read "eighty rods apart."

permanent public highways, to be worked on by the counties through which they passed. Roads were to be laid out within one year of the passage of the act authorizing their construction, and the measure further specified that no part of the cost of laying out a road, nor of damages to property, was to be borne by the counties; such expenses were to be paid from the territorial treasury. Claims for damages which had been found just by a jury of three disinterested persons summoned to hear the case by any judge or justice of the peace in Minnesota were to be certified by the commissioners for payment by the territorial treasury. However, all such claims had to be made within six months of the laying out of the road.⁴ The compensation for road commissioners was set at two dollars per day, and for surveyors, the compensation allowed by law to the county surveyors -- all of which were to be paid from the territorial treasury. All laws, or parts of laws, already in force that contravened this new general law were repealed. This repealed the general Wisconsin law of 1838, which had been operative in accordance with the organization act.

The legislature in 1849 passed one other measure

4. The original bill provided the same method of hearing claims for damages, but the commissioners were to submit claims to the treasurer for payment if they considered them "just and equitable." In effect, this would have given the commissioners a veto power over the board of appeals, and would have constituted them a superior court for determining damages.

affecting the construction of roads. The law that provided for the organization of a board of county commissioners for each county stated that one of the duties of such commissioners was to lay out, discontinue, or alter county roads within their respective counties, and to license ferries and fix toll rates.⁵ Authority for actual construction work and for levying taxes to pay for it, could be found in the law of the territory of Wisconsin enacted in 1839. The law provided for the division of the county into road districts and the selection of road supervisors by the county commissioners, who were required to oversee the repair and upkeep of roads and to see that each male citizen between the ages of 21 and 50 worked for two days each year on the roads in his vicinity. They collected the road tax, assessed by the county commissioners, which, according to the Wisconsin law, was not to exceed one-half of one per cent of the value of the real estate. This tax might also be paid in labor on the roads at the rate of two dollars per day. The road supervisors were to build bridges wherever the county commissioners determined that they were necessary, and the cost was to be paid out of the general road fund of the county. Thus, by using the portions of the Wisconsin laws which were applicable to Minnesota, and by devising new laws where they were needed, the fron-

5. Laws, 1849, p. 53.

tler statesmen made provision for the road-building campaign upon which they were about to embark. ⁶

Much of the law to regulate the opening of roads -- their width and the general procedure to be followed by those laying them out -- was borrowed from the Wisconsin law, passed in January, 1838, which was repealed by the act. It departed from the Wisconsin precedent in one very important particular, however. The Wisconsin law stipulated that no portion of the cost of laying out roads was to be borne by the territorial treasury, but that the entire cost was to be assumed by the counties. The Minnesota law made mandatory the assumption by the territory of the expense of laying out roads. The adoption of the county form of government followed the Wisconsin plan. The conditions of settlement were very similar, and the county commissioner form of government was an efficient and economical plan for sparsely settled regions. ⁷

Regular sessions of the legislature were scheduled to begin on the first Wednesday in January of each year, but, since the session of 1849 came at the end of that year, there was no reason for convening another session

6. Ante, p. 35.

7. In Iowa, although conditions were very similar, the township plan of government was adopted in 1840 -- two years after it was organized as a territory. John E. Brindley, History of Road Legislation in Iowa, 32 (Iowa City, 1912). A good, short account of road legislation in Michigan and Wisconsin territories to 1838 may be found in chapter 1 of Brindley's work.

in 1850. The legislature which assembled in January, 1851, therefore, took up the work begun in 1849, and one of its accomplishments was that of codifying the body of laws that governed the territory. On September 1, 1851, the Revised Statutes, with the exception of certain laws for which other dates were given, became effective, and automatically all laws, whether enacted by the legislature of the territory of Wisconsin or by that of Minnesota, were repealed unless they were specifically mentioned in the text of the revised laws. Thus, the first road law, outlining the procedure by which roads might be laid out, was annulled, not by a specific act, but by its omission from the list of laws exempted from repeal. ⁸

The Revised Statutes did not define the term "territorial road," but its legality was implied in the definition of a highway, which, according to the statutes, was "any road laid out by the authority of the United States, or of this territory, or of any town or county, and all bridges upon the same." It is apparent that the lawmakers of 1851 believed that the legislature

8. Chapter 137 of the Revised Statutes specifically exempted from repeal the laws enacted by the first session for laying out roads from St. Paul to Point Douglas, from St. Paul to Little Canada, from Stillwater to the mouth of the Rum River, and from the Rum River to Crow Wing. The laws providing for specific roads were not repealed, but the general law was, apparently under the assumption that its principles were embodied in other laws. Revised Statutes, 1851, p. 578.

had the power to order roads laid out at its own expense or at the expense of smaller units of government. Under this assumption all regulations for making and maintaining territorial roads were covered by the rules governing roads constructed in the smaller units, and a territorial road was a series of contiguous county roads. Since the legal basis for county roads was worked out in the Revised Statutes, it was unnecessary to include a general road law. ⁹

In a general way the county commissioners were given authority to "lay out, discontinue, or alter county roads and highways within their respective counties, and to do all other necessary acts relating thereto." ¹⁰ Chapter 13 of the Revised Statutes, entitled "Of County Roads," laid down rules governing the application of these powers. The law specified that all county roads should be under the supervision of the commissioners of the county, and that no such road or cartway should there-

9. Revised Statutes, 1851, p. 33. A number of state supreme court decisions have amply proved the inherent right of the legislature to control roads. Among them may be cited the decision in the case of Swan E. Sanborn vs. the city of Minneapolis and others in June, 1886, in which the following statement is made: "At common-law the title to all public highways was in the king, for the benefit of all his subjects. In this country such title is in the state, either directly or through municipalities, or such agencies as it may create for that purpose, for the use and benefit of all its citizens." 35 Minnesota Reports, 318. See also W.H. Williams, comp. and ed., The Minnesota Township Code, 139 (Minneapolis, 1925).

10. Revised Statutes, 1851, p. 59.

after be established, altered, or vacated except by their authority. Roads could be established, altered, or vacated by the commissioners when at least twelve householders residing in the vicinity of the road applied for such action by petition. Notice of the application for a road had to be posted in three public places or published in three successive issues of a county newspaper at least thirty days before the petition was presented. Upon receipt of the petition, the commissioners were required to appoint two disinterested householders to act with the county surveyor as a board of examiners to inspect and mark the proposed road as nearly as possible along the lines suggested in the petition, following township, section, or quarter section lines wherever practicable. If the report submitted by the examiners recommended that the road be not opened, or if a remonstrance signed by twelve householders in the vicinity of the road had been presented to the commissioners prior to the date of the report, the road would not be constructed unless a majority of the householders along its route petitioned for it.

When the county commissioners authorized the construction of a road, the register of deeds was required to issue an order to the county surveyor to hire two chainmen and one marker to survey and mark the route indicated. The surveyor was to deliver a certified return of the survey, together with a plat of the road, to the register

of deeds before the next regular meeting of the commissioners. He was allowed two dollars and fifty cents a day for making the survey, and two dollars for the return and plat; the chainmen and the marker each received a dollar and fifty cents per day. When the plat was properly registered, the register of deeds was to notify the supervisors of the districts through which the road passed that it had been legally established as a public highway, and they then were required to open it for public use.

The county commissioners were given complete authority to vacate any road within the county, and the title to the land in the abandoned road was to revert to the owners of the land from which the road originally was taken. A road along a county line could be opened by either of the adjacent counties, but no territorial road running on a county line could be altered or vacated without the consent of both counties. The width of county roads was fixed by this law at sixty-six feet, and the legislature was forbidden to authorize the construction of any territorial road unless it passed the line of a county and was petitioned for by at least twelve householders in each county residing in the vicinity of the road. A householder who had no access to public roads could have a cartway, thirty-three feet wide, opened through intervening lands to a road by presenting a written request for such an outlet to the county com-

missioners. If any landowner along the line of the proposed cartway objected to its passage through his land, the surveyor was required to lay out an alternate cartway. If that route also was objected to, the county commissioners were to decide which of the two routes would be most suitable. After the cartway had been surveyed, the procedure followed was the same as that prescribed for county roads. ¹¹

This was one step toward providing a workable system for laying out roads. County control was the predominating theme in it. The beginning of the principles of local control, however, appeared in the chapter that provided for the construction and maintenance of roads. Article 10 of chapter 3 of the Revised Statutes prescribed for Minnesota the labor tax as the method of financing construction and upkeep, and provided that a resident of each road district should be chosen supervisor at the annual general election. To insure the faithful performance of his duties, he was required to post a five hundred dollar bond on or before the first Monday in January following the election. If he failed to qualify, it became the duty of the county commissioners to appoint someone else, who was required to qualify

11. Revised Statutes, 1851, p. 112-114. The bill for this law, which was introduced in the Council by William H. Forbes as Council File number 2, originally provided that county roads should be fifty feet wide, and cartways, twenty-five feet. The compensation of the surveyor and his assistants was increased by fifty cents per day in the final form.

for the office in the same manner.

The road supervisor had to see that all the men in his district between the ages of twenty-one and fifty worked, or furnished someone to work, on the roads near their places of residence for three days every year. All work was to be performed between the first of April and the first of October of each year, and any person able to work who failed to appear after being notified was liable to a fine of two dollars per day. Delinquency was excusable on the grounds of illness, absence from home, or for "any other good cause," provided that the person was willing to serve at some other time or employ someone else in his stead. Workers were notified to appear with certain implements, and, if the supervisor required it, with a team of horses or oxen. For every day that a man furnished a team he was to receive credit for an extra day's work, and, if he furnished a cart, scraper, or wagon, such additional compensation as the supervisor deemed fit was allowed him. If he worked more than the three days required by law, he was to receive a certificate which would permit him to deduct the extra time from a future year's requirement or to sell it to some other resident of the district. No person, however, could be required to perform more than two days of extra labor in any one year, and not more than fifteen men were to be at work at the same time.

The road supervisor was required to open all public roads and highways which had been laid out as the law prescribed, but on no account was he to work on roads not legally laid out. Roads that were most traveled were to be worked first. He was authorized to contract for the building of bridges not built by poll tax labor, and to employ persons to work on roads, paying them not more than a dollar a day out of funds accumulated from a road tax assessed in his district. He was enjoined to inflict as little damage as possible on property adjacent to the road, and owners of property were allowed a reasonable compensation for damages. He was also required to erect at all crossroads legible signs indicating the distance to the next town or towns, and to keep roads free from obstructions. Anyone who defaced signs or wilfully damaged roads was liable to a fine of not less than ten, nor more than fifty, dollars.

On or before the first Monday in July of each year, the supervisor of roads was required to submit to the commissioners a statement of the length and number of public roads in his district, the repairs necessary for their maintenance, the number of persons subject to work on the roads, and an estimate of the sum required to put the roads in thorough repair. The commissioners were required to levy a road tax not exceeding one-third of one per cent of the value of real estate in the district, which was to be collected by the supervisor.

The persons against whom the tax was levied, however, could pay it in labor at the rate of a dollar per day. If the tax was not paid, ten per cent would be added to the amount, and it would be collected by the sheriff in the same way that he collected taxes for the general county revenue. In return for his labor the road supervisor was to receive two dollars per day. If he failed to perform his full duty, however, he was liable to a fine of not less than five, nor more than fifty, dollars for every offense. 12

The article which prescribed the duties of road supervisors was very vague in its definition of the road districts. It provided that "there shall be elected at the general election in each and every year, one supervisor of roads in each road district in this territory, who shall be a resident of the road district for which he is elected, and who shall hold office for one year, and until his successor is elected and qualified." 13 Nowhere in the entire section was there any statement indicating the size of the road districts. The original bill --- Council File number 3 of the legislature of 1851 --

12. Revised Statutes, 1851, p. 78-82. The legislature of 1854 amended the labor tax clause by restricting the amount of work required in payment of the tax to a single day's labor. In the matter of crediting workers for additional time, the law remained the same, but no person could be required to work more than one day extra in any one year. Laws, 1854, p. 57.

13. Revised Statutes, 1851, p. 78.

provided for the election of a road supervisor for each election precinct in the territory. The words "election precinct" were scratched out, however, and the words "road district" were substituted in the final form. Chapter 32 of the laws of 1855 clarified the definition by requiring the county commissioners to establish as many road districts as their respective counties needed, but in all cases a road district had to lie entirely in one election precinct. The election of the supervisors remained on the same basis as that provided by the original act, but the task of certifying their election was rendered simpler by delegating to the judges of election of the precincts, instead of to the clerk of the county commissioners, the power to issue the certificate of election.

The pioneer lawmakers were progressing cautiously in the direction of local control of roads. In some respects the law of 1855 placed the territory in a position resembling the township system. The restriction of the size of the road district to a single election precinct created a local unit, smaller than the township, which was practically independent in the matter of maintaining roads within its limits. The delegation of the power to certify the election of road supervisors to the judges of election was a step toward removing from the county commissioners their control of the enforcement of the poll tax law and the maintenance of the road

system. At the same time, the restraining hand of the county commissioners remained in control of the location of new roads and the alteration or vacating of old routes. The local unit had complete control of the maintenance and construction function, but the county still retained the power to state what roads should be built and when they should be built. ¹⁴

This step toward local control of the road-building and road-maintaining function was partially offset two years later when the special session of the legislature in 1857 created two new officers in the hierarchy of county government. These officers, serving two-year terms, one of whom was to be elected annually, were called road commissioners, and, acting with the county surveyor, constituted a board of road commissioners, with the power, upon actual survey, to lay out, alter, or discontinue roads in their respective counties. Roads might be laid out, altered, or discontinued upon petition of "twelve or more freeholders" residing in the county, if the public good would "thereby be promoted." Public hearings were prescribed for property holders along the road affected by the proposed change upon twenty days' notice, at the end of which time they could adjust their damages with the commissioners, or, if they were willing to post a bond to pay all costs in the event

14. Laws, 1855, p. 97.

their cases were adjudged against them or for an amount no larger than the commissioners' offer, they might have a trial by a jury of twelve. Jurors were to be allowed six cents per mile traveled to and from the place of meeting and fifty cents for their services, while the presiding justice was entitled to a one-dollar fee. For their work, the commissioners were to receive three dollars per day. If the road was laid out, this was to be paid by the county; if not, the petitioners were required to pay the cost. The commissioners were allowed to alter any United States or territorial road within the county, provided that doing so did not increase its length -- except to pass around unsurmountable obstructions -- or break its continuity at the county lines. They had the power to order owners of property which was to be taken for road purposes to remove fences within a specified time, not less than thirty days, at any time of the year except between April 1 and November 1. The law further provided that territorial roads that were not surveyed within a year of their authorization no longer were to be considered public roads. The right of landowners to plant trees along the right of way was recognized, provided that they were placed not closer than ten feet from the edge. This was the last general road law passed by the territory, and with its passage, the frontier lawmakers were, perforce, content. 15

15. Laws, 1857, extra session, 244-249. At the regular session the legislators voted to increase the pay

It is difficult to understand why these two offices of government were created. The act was a step away from the development of a local system of road maintenance and construction, and the adoption of a township plan of government the following year seems to indicate that such a system was desirable. Indeed, it concentrated in the hands of three individuals the function which formerly had been performed by the county commissioners as a whole, or by persons delegated to perform it by the commissioners. In a way, this act created a system similar to that which prevailed in Iowa during the brief period from 1851 to 1853. In that state, the powers of determining the location of new roads, of altering or vacating old ones, and the assessment of the road tax had been taken completely away from the county commissioners and vested in the hands of the county judge. In Minnesota the function of establishing, altering, and vacating roads was performed by the two especially elected road commissioners and the county surveyor, but the county commissioners retained the power to assess taxes for road and bridge purposes. Under the Iowa law a county road supervisor saw to it that the locally elected district supervisors performed the work assigned to them. In Minnesota this general power of supervision of county surveyors, "while engaged in the surveying, laying out, altering or examining County or Territorial Roads," from two and a half to three dollars per day. Laws, 1857, regular session, 30.

remained in the hands of the county commissioners, and the performance of the work, in the hands of locally elected district supervisors. The system remained in operation for only a short time, and there is so little contemporary comment about it that it is difficult to determine what ultimate object the sponsors of the bill sought to attain. Presumably it was designed to relieve the commissioners of the often tedious task of laying out roads. 16

Prior to 1856, no attempt was made to provide for the maintenance by the territory of the roads which the federal government was building. The legislature that year, however, passed a law which classified as territorial roads all the military roads which had been built, and also all roads for which the federal government might appropriate funds in the future. In addition to making provision for the maintenance of these roads after they were completed, this law made it possible to acquire a right of way through privately owned lands, for under existing federal laws a right of way could not be forcibly seized if the owner objected to having the road pass through his property. The law was modelled after a similar law passed by the territory of Michigan in 1830 to insure the maintenance of government constructed roads. 17

16. Brindley, Road Legislation in Iowa, 95.

17. Ante, p. 71n; Laws, 1856, p. 152; Brindley, Road Legislation in Iowa, 5.

All these measures stabilized the procedure for laying out roads and provided for their construction. There was one more requirement in the legal structure providing good transportation facilities in the frontier territory. That was the machinery for regulating the granting of ferry licenses. It was feasible, both from the physical and the financial point of view, to construct bridges over small streams. When larger rivers were encountered, however, the counties of Minnesota had at their command neither the technical skill nor the financial backing requisite for the construction of substantial bridges. It was far easier and much less expensive to ferry goods, stock, and persons across such streams. The equipment needed for a ferry was not elaborate. Sometimes it consisted of a raftlike structure which was propelled across the stream by poles or ropes. More often, it was a slightly more complicated mechanism, consisting of a bargelike boat hitched by a pulley at each end to a heavy cable spanning the river. The motive power was furnished by the current hitting against a keelboard. The boat was slanted upstream by lengthening or shortening the lines of the pulleys, so that the current, hitting it at an angle, drove it across the stream. Where much wider rivers were encountered -- such as the Mississippi at Winona -- cable ferries could not be operated, because a cable would have constituted a barrier to steamboat navigation. It therefore became necessary to devise some

other form of ferry, and so horse ferries -- propelled by one or more horses walking in a treadmill -- or steam ferries were used.

In a country which was so dependent upon ferry transportation for crossing the numerous streams, it became imperative that some legal provisions be made for their regulation. The first legislature received several applications for ferry licenses but granted only one -- a five-year charter to Franklin Steele, who "at a great expense in the construction of roads and other improvements established a temporary ferry at the Falls of St. Anthony." No attempt was made to pass a general law to regulate ferries, as had been done in the case of roads, although the right of the legislature to regulate them was equally clear. The general law defining the duties of county commissioners passed at the first session relegated to those officials the duty of controlling ferries within the counties, in the same manner as it placed on them the duty of regulating roads. ¹⁸

18. Laws, 1849, p. 53, 98. Steele's petition was presented to the Council on September 11, 1849. Council Journal, 1849, p. 30. The petition is in the archives of the secretary of state. The minutes of the meeting of the commissioners of Ramsey County, published in the Minnesota Chronicle and Register for January 26, 1850, stated that licenses for two ferries had been granted. James M. and Isaac N. Goodhue were licensed to operate a ferry at the Lower Landing in St. Paul, and at the Upper Landing a license was granted to John R. Irvine, D. F. Brawley, and Justus C. Ramsey. How many other counties followed a similar course is not known, but at least the opportunity to do so was open to all organized counties.

The legislature in 1851 considered the problem in earnest, and as a result a bill specifying the method by which commissioners of the various counties should regulate ferries was adopted. It provided that the commissioners of any county could grant a license to establish a ferry wherever it was necessary, and could levy an annual tax for the privilege of not less than five, nor more than fifty, dollars. Licenses, properly signed and attested, might be granted for terms of not more than two years, provided that the applicant for the license had satisfied the requirement of posting a notice of his intention, twenty days before a regular meeting of the commissioners, in three public places in the vicinity of the spot where he intended to establish the ferry. Ferry operators were required to keep on hand a sufficient supply of good boats and enough employees to satisfy the needs of the public "from daylight in the morning until dark in the evening," and, at any time of the day or night, to transport mail or other public express across the ferry. They were protected by the law from suits for damages resulting from the elements -- ice or floods. The rate of ferriage was to be regulated by the county commissioners, and a copy of the rates allowed had to be posted at the door of a ferry house or at some conspicuous place near the landing. For charging more than the scheduled prices, an operator was liable to a fine of not more than twenty dollars. If anyone estab-

lished a ferry without authority to do so, he was subject to a fine of not less than one, nor more than twenty-five, dollars. 19

The bill to regulate ferries was introduced as Council File number 4 under the title, "A Bill to authorize the establishment and regulation of Ferries and Bridges in this Territory." Section 1 of the bill provided that a ferry could not be established within one mile of an already existent ferry except by "act of the Legislative Assembly." When the measure became law, this qualification was removed, and the restriction which was allowed was innocuous, for it provided that "no ferry shall be established within one-half mile of any ferry already established, unless when the county commissioners think it necessary." There was another weakness in the law, for, when the license was granted for a ferry across a stream which formed the line of a county, there was nothing to prevent the commissioners of the county on the other side of the river from licensing a competitor. The only alternative that the operator of such a ferry had was to secure licenses from both counties, and that meant a double tax. 20

19. Laws, 1851, p. 25; Revised Statutes, 1851, p. 606.

20. Revised Statutes, 1851, p. 606. Section 7 of the original bill provided that, if a man owned land on both sides of a stream, he did not need to obtain a license for operating a ferry, provided that he did not place it within one-third of a mile of an established, licensed ferry. It also provided that no ferry could be established except where a road was laid out to the banks of a stream, and all landings were required to be on public roads.

A most interesting feature of Council File number 4 were the provisions for the construction of bridges by private corporations. County commissioners, according to the bill, might grant permission to build toll bridges under the same rules that governed the granting of ferry licenses. Such licenses could be granted for periods of not more than nine years, and at the expiration of that time the bridges were to become public property. They were to be built in such a way that they did not impede navigation, and the builders were to be required to keep them in good repair. For any damages arising from their neglect to do this, the bridge owners were to be liable to a penalty equal to twice the amount of actual damages, which might be collected by the injured person in any court having jurisdiction. Council File number 4 ran into opposition in the House, and, as a result, on February 5, 1851, House File number 9 was introduced as a substitute measure. It omitted all that portion relating to toll bridge corporations, and in this form the bill became a law.

The law regulating the granting of ferry licenses was, in general, workable. The clause allowing county commissioners to license a ferry near one already licensed by another county was partially adjusted by a law passed in 1852, which provided that all ferries would be deemed "to be situated in the county in which the keeper thereof resides, on that side of a river on which the ferry

house is situated; and no ferry shall be liable to pay tax to but one county." In addition to this change, the act provided that ferry licenses might be granted for a period of six years, instead of two years, as defined in the original law.²¹ In 1854 the ferry law was further amended by a provision that a license for a ferry across a stream which was in two counties had to be obtained in the county in which the applicant resided. Within ten days of the granting of the license by this county, a certified copy of it was required to be filed in the office of the clerk of the commissioners in the adjoining county, and, in addition to the tax provided for in the laws of 1851 and 1852, the licensee was required to pay a fee of five dollars annually to the treasurer of that county. If these conditions were lived up to, the commissioners of the adjoining county were forbidden to license a ferry within a half mile of the point designated in the license; if not, they could, after thirty days, license another ferry in its place. This removed the evil resulting from the existence of two ferries, licensed by neighboring counties, at the same landing or road ending.²²

Minnesota passed through the territorial period during the closing years of a great era in transportation history. It was at the dawning of the modern rail-

21. Laws, 1852, p. 36.

22. Laws, 1854; p. 11.

road age, but to frontier settlers of that day, the railroad was a distant possibility. The stagecoach and covered wagon, however, were commonplace realities to them. Therefore, while they dreamed of railroads to come in the future, they also planned improvements for the time in which they lived, and they thought in terms of stagecoaches and covered wagons, and of familiar, homely wagon roads. In the background of their experience lay the turnpike and plank-paved roads of their own age -- roads made and maintained usually by private capital, for traveling over which a charge was made. The plank road was a remnant of the toll road epoch in the history of transportation. Its popularity was based on the supposition that it could be built more cheaply than a turnpike road, and would give a maximum of efficiency. Experts believed that three-inch hardwood planks would stand up for a period of from seven to ten years before extensive replacements would be necessary, and such replacements would be cheaper than the repairs required on a turnpike. In the eastern states the plank roads came into existence as supplements to the canals and railroads, and as little feeder lines to the turnpikes. They were rarely of great length, and little effort was made to make a connected system of them. Their popularity in the East lasted for only slightly more than a decade -- 1845 to 1857 -- and they waned in popular favor as rapidly as they developed. Their western development is less well

known, but they were in favor in Minnesota from the dawning of the territorial era. ²³

Soon after James M. Goodhue came to Minnesota to establish the first newspaper printed in the territory, he began to discuss the possibilities for improving the means for land travel between St. Paul and its sister village, St. Anthony. He ardently wished for a railroad, but, recognizing the difficulty of raising sufficient capital for such an enterprise in the new country, he pleaded for a plank road to connect the two places. About the same time, Henry M. Rice, soon to become territorial delegate to Congress, wrote to a friend asking for his help in obtaining a legislative charter for a plank road company which he hoped would be organized during the coming session of the legislature. ²⁴

As a consequence of this planning, the legislature which met that fall chartered the St. Paul and St. An-

23. Joseph A. Durrenberger, Turnpikes; A Study of the Toll Road Movement in the Middle Atlantic States and Maryland, 144-152 (Valdosta, Georgia, 1931). Brindley, in his Road Legislation in Iowa, failed to trace the activity of plank road companies. He found evidence which led him to believe that at least two plank roads were built in Iowa, and that several graded toll roads were built. The law passed by the Minnesota legislature in 1851 for the regulation of plank road companies did not vary greatly from the Iowa law either in its legal requirements or the procedure required to be followed. See Brindley, p. 57-76; post, p. 246-248.

24. Goodhue's attitude toward the transportation problem is summed up in an editorial in the Minnesota Pioneer for December 12, 1849. See also Minnesota Pioneer, March 27, December 26, 1850. Rice to J. H. McKenny, July 13, 1849, in Sibley Papers. Rice wrote: "We want a charter for a plank road from the falls to this point [St. Paul], and must have the votes."

thony Plank Road Company. The bill is interesting not only because it was the first fruit of this desire for improved transportation facilities in the Minnesota country, but also because it embodied many of the principles which appeared in a general act, passed in 1851, to regulate the incorporation of such companies. The law gave the incorporators permission to receive subscriptions to the capital stock of twenty-five thousand dollars -- which was divided into one thousand negotiable shares of twenty-five dollars each -- thirty days after publishing notice of their intention to do so in "all the newspapers printed in this Territory." As soon as the capital stock had been subscribed for and five dollars had been paid in on each share, the stockholders might organize the company. Thirteen stockholders were to be elected directors of the corporation, and one of them was to be selected as president. After this first meeting, annual elections of officers were to be held on the first Monday in May. The presence of nine directors at a meeting was considered a quorum. The corporation was declared to be a legal entity, subject to all the privileges and responsibilities of individuals. All lands needed for the construction of the road might be taken, provided that the right of way was not more than four rods in width and that the owners were paid a satisfactory sum for them. In cases of dispute over the compensation for lands taken for the road, a hearing before a jury of

five impartial citizens of the vicinity was to be held. As soon as five consecutive miles of road had been completed, the company might erect toll gates. A schedule of maximum rates chargeable was outlined, and provision was made for the exemption from toll charges of persons going to or from "military parade at which they are required by law to attend, and persons going to and from public worship." Other clauses provided for increasing the amount of capital stock to complete any unfinished portions of the road, and for the punishment of persons guilty of wilful destruction of company property. One-third of the road had to be completed by January 1, 1851, and the remainder by January 1, 1852. The legislature reserved the right to grant charters for other roads which might intersect this road and to repeal or amend the charter of the corporation at any time. ²⁵

In 1851 the legislature enacted a general law to regulate the incorporation of plank and turnpike road companies, which became chapter 39 of the Revised Statutes. In general, the law followed the regulations laid down in the charter incorporating the St. Paul and St. Anthony Plank Road Company. It provided penalties for failure to keep the roads in good repair, naming as inspectors the justices of the peace in the precincts through which the road passed. The right of way for

25. Laws, 1849, p. 91-95.

plank roads was required to be four rods wide, with a track of "timber, plank, or other hard material" wide enough to permit vehicles to pass one another. The same general regulation applied to turnpike roads. They were to be bedded with stone, gravel, or such other material as might be found along the right of way, and faced with broken stone or gravel. The road bed was required to be at least eighteen feet wide, and both plank and turnpike roads were to be so constructed as not to interfere with intersecting roads. Charters for plank or turnpike roads were rendered void if, within two years, construction work had not been begun and if at least ten per cent of the capital stock had not been expended upon the work. Moreover, the road had to be completed within five years from the organization of the corporation. The law was even more specific than the special act incorporating the St. Paul and St. Anthony company in the matters of regulating the affairs of the company, and of altering, amending, or repealing its charter. If all provisions of the law were adhered to, the charter of such a company was perpetual, although the legislature was free to cancel it at will. In 1866, however, the law regulating plank roads was incorporated into the chapter of laws dealing with corporations, and the general rule applying to corporations organized for public benefit was extended to them. This rule stipulated that no charter could be granted for periods of more than fifty

years, but that upon expiration of this term the charter might be renewed for a like period. In this form the law remained in force until the good roads movement of the twentieth century completely outmoded the old-style toll road. ²⁶

The experience of Minnesota with plank and turnpike roads was disappointing. The charter granted to the St. Paul and St. Anthony Plank Road Company was revoked when the incorporators failed to comply with its terms, and no company was chartered in its place. Perhaps one of the main reasons for the failure of this company to build its road -- aside from the factor of funds -- was the clause which allowed the legislature to revoke, amend, or alter its charter at any time. Responsible citizens could not be induced to invest capital in so uncertain a venture. So, while it was generally a matter of regret that no plank road was constructed, it also was generally accepted that, until the legislature gave some promise of freedom from official interference, no road could be built. ²⁷ No charters for plank or turnpike road companies were granted during the legislative sessions of 1851, 1852, and 1853, but the territorial legislature of 1854 chartered six such companies. Under

²⁶. Revised Statutes, 1851, p. 163-175; General Statutes, 1856, p. 263-268, 286-291, 1894, p. 917-922.

²⁷. Minnesota Democrat, July 29, September 21, 1851; Minnesota Pioneer, January 22, March 18, 1852; S. B. Elliott to William P. Murray, November 15, 1852, in Minnesota History Bulletin, 1: 117 (August, 1915).

these chartered roads were to be built from Minneapolis to Little Falls, from Red Wing to Henderson, from Henderson to Fort Ridgely, from Minneapolis to Lake Minnetonka, from St. Paul to Point Douglas, and from St. Paul to Little Canada. They failed utterly to materialize -- only the company chartered to build a road from Red Wing to Henderson showed any signs of activity. Late in April, 1854, the Minnesota Pioneer announced that shares of the company's stock could be purchased on June 1. No evidence has been found to show that any stock was sold; certainly, the road was never built. ²⁸

No companies were chartered during 1855, although a bill for a plank road from St. Paul to Sauk Rapids was introduced. Two companies -- the Target Lake Plank Road and Ferry Company, designed to operate a ferry over the Mississippi River opposite La Crosse for which it was necessary to build an expensive causeway over marshy ground, and one for a plank road from Shakopee to Chaska -- were chartered in 1856, and bills for at least two more were introduced -- one for a plank road from Lake Superior to Mille Lacs, and another for one from Shakopee to Le Sueur. In the regular session of 1857, six such bills were introduced, only one of which became a law. The La Crescent Gravel and Plank Road Company was formed to improve a street in the village of La Crescent, and

28. Laws, 1854, p. 108-117, 129-149; Minnesota Pioneer, April 20, 1854.

provision was made for the purchase of the road by the village. The extra session of 1857 produced two such companies: one to build a plank and gravel road between Faribault and Cannon City in Rice County; the other, a plank road from Minnesota Point on Lake Superior to Knife River, about twenty miles up the north shore of Lake Superior. 29

Why were so many plank roads authorized but never built? Joseph R. Brown, who was the moving spirit in the enactment of the plank road legislation, was a territorial leader, secretary of the Council from 1849 to 1851, member of the Council in 1854 and 1855 and of the House in 1857. In 1854, when the great splurge in forming plank road corporations took place, he and David Olmsted had the contract for the territorial printing, and the thesis has been advanced that the motive for Brown's interest in plank road legislation was based on the financial benefit that he derived from the printing of bills -- whether or not they were intended to be enacted into law. It is true that Brown supported most of the bills chartering such companies, but it also should be pointed out that he showed a far greater interest in the development of transportation in Minnesota than most of his contemporaries. 30

29. Laws, 1856, p. 178-183, 315-317, 1857, regular session, 27-29, extra session, 148-153, 195-197.

30. Folwell, Minnesota, 1: 263.

It is difficult to determine whether or not the bills for chartering plank road companies were introduced in good faith. Certainly, some of them were, for Minnesota was growing up during a period when toll roads were a prominent part of the road system of the eastern states. It is obvious that some of the bills were not too seriously considered. Even the most zealous of plank road enthusiasts must have realized that it would be several years before they could interest sufficient capital to build a plank road from St. Paul to Lake Superior. The country between the two places was but sparsely settled in 1854, and it was well known what tremendous engineering tasks confronted the builders of the military road to Lake Superior, which was still far from complete. Similarly, it must have appeared foolhardy to contemplate the construction of a plank road from St. Paul to Sauk Rapids in 1855, or for a good many years thereafter. In 1856 there was a demand for a military road from Lake Superior to Crow Wing, but obviously no serious-minded person would have considered building a plank road across the wilderness that separated Lake Superior and Mille Lacs. The same may be said of the road chartered to be built between Minnesota Point and Knife River. On the other hand, certain of the roads were distinctly feasible. Plank roads from St. Paul to St. Anthony, from Minneapolis to Lake Minnetonka, or from St. Paul to Point Douglas or Little Canada probably would have been profitable investments.

The great number of bills chartering plank roads through areas which could not support them lends credence to the charge that Brown was out for the money he could obtain for printing them. There is evidence, however, which points to a genuine interest in transportation on Brown's part. He was the principal owner of the town-site of Henderson, and he was vitally interested in making it a successful venture. Consequently, he worked for the improvement of means of communication between his town and other centers of Minnesota, and it is not inconceivable that he sincerely hoped that a successful plank road might be built between Red Wing and Henderson and between Henderson and Fort Ridgely.³¹ In the late fifties, Brown had a sizeable stake in the development of transportation facilities in Minnesota and the Northwest. He was one of the incorporators of the Minnesota, Nebraska and Pacific Mail Transportation Company which the legislature chartered in 1857; and he was a partner in several ferry companies which the legislature incorporated, including three along the route of the wagon road from Fort Ridgely to the South Pass of the Rocky

31. Folwell, Minnesota, 1: 379. Folwell points out that the same session of the legislature which incorporated Henderson authorized surveys for nine roads radiating from that place. Brown was also successful in obtaining the location of a military road through his town. Ante, p. 107. The Minnesota Democrat for March 29, 1854, quotes a letter charging that Brown used the plank roads to cover the meager developments at Henderson. A plank road charter, the letter stated, "will at any rate sound large abroad."

Mountains. 32

There is other evidence to indicate that Brown's interest was genuine. At some time during his career, just when is not known, he became interested in the adaptation of the steam tractor to transportation over wagon roads. From long experience he was aware of the slow and expensive methods of transportation in vogue on the frontier, and it is not improbable that he was weighing the practicability of adapting the steam engine to American frontier conditions at least as early as the middle fifties. Good roads were essential for the success of such a program, and plank roads were more desirable for it than earth roads. It was in 1857 that Ramsay Crooks, agent for the Hudson's Bay Company, made arrangements for transporting supplies for that firm to Fort Garry by way of St. Paul and the Red River Valley, instead of by the traditional route through Hudson Bay and York Factory. Brown says that he saw in this arrangement a capital opportunity for trying out his idea of using steam tractors for hauling trains of wagons on wagon roads. Therefore, we know that the idea had been thought out before this time; it may have been developed years before. Brown made the first of his experiments in 1859, and during the summer of 1860 he actually ran a steam tractor on the streets of St. Paul. That fall he

32. Laws, 1857, regular session, 223-225, extra session, 64, 297.

used it on an experimental trip from Henderson to Fort Ridgely, hauling a freight wagon. The tractor bogged down in soft ground a short distance from the fort, however, and for the time being, Brown's experiments ended. When next he tried them, it was in Nebraska, where the terrain was ^{more level} ~~leveler~~ and the natural obstacles less difficult to overcome. This experiment was cut short at a promising stage when a mechanical defect developed. Before the break could be repaired, the Sioux outbreak of 1862 occurred, and Brown dropped his hobby to hurry home to rescue his family. 33

Evidence to prove that Brown intended to develop a plank road system for Minnesota is at best circumstantial. Yet, there does appear to be ground for such a belief. The fact that he performed his experiments on ordinary roads does not necessarily detract from the plausibility of the belief. There was insufficient capital in Minnesota to develop a system of plank roads, and in their absence his experiments, perforce, had to be carried out on the roads at hand. The ultimate failure of Brown's dream of transportation by steam tractors was foreordained. The railroads determined the outcome. Yet, he had a glorious dream, and in endeavoring to bring it to fruition, he labored hard to give Minnesota a road system which should assure its success. In this light,

33. Folwell, Minnesota, 3: 347-357 (1926). Folwell made an extensive study of Brown's steam engine, and among the Folwell Papers are two folders, one labeled "J. R. Brown" and the other "Steam Engine," relating to it. The Folwell Papers are in the possession of the Minnesota Historical Society.

a fresh significance is given the tradition that Brown wanted plank road charters to enrich his printing contract. He probably did not confide his dreams to his acquaintances, and perhaps it was because of their puzzlement over the great number of plank road charters sponsored by him that they attributed his interest to avarice. The same lack of understanding may have inspired the somewhat cryptic statement which Martin McLeod made in a letter to Henry H. Sibley in 1853: "Wonder if J. R. B[rown] wants any more road charters. Oh, Lord!"³⁴

Brown's interest in this novel means of transportation persisted, and in 1869 and 1870 he was again occupied with plans for developing steam motor transportation between the head of the railroads in the Red River Valley and all the frontier posts. He even contemplated a line to the Pacific coast. At the time that his prospects seemed about to mature, the legislature enacted a law authorizing the construction of special roads for such motors. The law empowered the commissioners of counties to construct roads for steam traction motors if, after they had procured from the owner or operator of a fleet of such motors an agreement to transport the agricultural produce of the county at a reasonable cost, the voters of the county approved the issuance of

34. McLeod to Sibley, March 31, 1853, in Sibley Papers.

bonds in amounts not to exceed three thousand dollars per mile of road. If they failed to approve the expenditure, the road still might be built by private capital at the request of a majority of "freeholders and persons living on United States lands who have filed there [sic] declaratory statement . . . and residing at the time within one mile of the line of said road." Such roads were to be twenty feet wide, and, where a road was to be used by both steam motors and ordinary wagon traffic, one section, twenty feet wide, was to be reserved exclusively for steam tractors. 35

While there is little doubt that Brown enthusiastically backed this plan, it is equally certain that the bill must have had other supporters. One source of such support easily could have been found in the agricultural areas of the state. In the first place, the settlement of the western prairies was retarded by the failure of the frontier to obtain railroads. It was recognized that, no matter how rapidly the railroad-building program was pushed, it would be years before many of the western counties could hope for adequate railroad communication. There the steam motor would have filled a long-felt need. Furthermore, during the year or two preceding 1870, a suspicion had grown in the minds of the agricultural

35. Folwell, Minnesota, 3: 355-357; General Laws, 1870, p. 29-34; Saint Paul Daily Pioneer, November 13, 1870. The law made no provision for the maintenance of the roads.

population of Minnesota that the development of the railroad system was not an unalloyed blessing, for high freight and passenger rates and discrimination against communities already had become a major issue in the opinion of the Patrons of Husbandry. So onerous was the weight of excessive freight charges that farmers along the route of a portion of the Winona and St. Peter Railroad were hauling wheat "alongside of the road with teams," and so productive of good was the method of competition that "the railway company have reduced the freight 4 cts. a bushel on that part of the road." If horse and wagon competition brought the railroad company to its knees, the effect of competition by steam tractors, hauling trains of wagons on ordinary roads, conceivably might have been much greater. It was unfortunate that Brown died before he could put his plan into operation, for the scheme died with him. 36

36. Solon J. Buck, The Granger Movement; A Study of Agricultural Organization and Its Political, Economic and Social Manifestations, 1870-1880, 160 (Harvard Historical Studies, vol. 19 -- Cambridge, 1913); Saint Peter Tribune, March 9, 1870. For a statement of the grievances because of unfair railroad rates, see Governor Austin's message, dated January 5, 1871, in Minnesota, Executive Documents, 1870, vol. 1, p. 38-41. So far as is known, no agreements were ever made with any counties for the construction of roads for steam motor vehicles, in spite of the fact that the statute remained in force for more than thirty years.