

## VII. ROAD LAWS OF MINNESOTA, 1858-95

The admission of the territory into the Union gave Minnesota an opportunity to take stock of her legal machinery. During the closing years of the territorial period, there was a growing dissatisfaction with the existing scheme for local government, and some people felt that many services which they were entitled to receive from their local units of government were denied them. Many of the benefits, they thought, could be obtained only if the plan of county organization were abandoned and a substitute machine set up. So strong was the sentiment for change that, when the constitutional conventions met in the summer of 1857, there was a movement in both the Republican and Democratic wings to write a modification of the county plan of organization into the constitution. Soberer counsel ruled, however, and the revision of the form of local government was left to the legislature. <sup>1</sup>

The first legislature that met after the new con-

1. William Anderson and Bryce E. Lehman, An Outline of County Government in Minnesota, 23 (University of Minnesota, Bureau for Research in Government, Publications, no. 7 -- Minneapolis, 1927); William Anderson and Albert J. Lobb, A History of the Constitution of Minnesota with the First Verified Text, 127 (University of Minnesota, Studies in the Social Sciences, no. 15 -- Minneapolis, 1921).

stitution had been approved by the people -- although it had not yet been approved by the federal government -- took up the task bequeathed to it by the constitutional convention. With but little difficulty, the proponents of change brought about the abolition of the county commissioner form of government which had prevailed during territorial days, and the adoption of a plan of organization on a township basis, with a representative from each of the townships in the county meeting in annual session as a county board of township supervisors to transact such business of the county as could not be delegated to the townships. A similar plan of government had gained favor in the neighboring states of Iowa and Wisconsin, and it represented a decentralization of power in local government based upon the plan in force in Illinois. <sup>2</sup>

2. Anderson and Lehman, County Government in Minnesota, 24; Brindley, Road Legislation in Iowa, 111; General Laws, 1858, p. 190-227; House Journal, 1857-58, p. 862. The legislature which met in the fall of 1857 passed a township law on March 20, 1858. Chiefly because the measure was carelessly phrased, the legislature, in the summer of 1858, repealed it and substituted a new township organization act in its place. The language of the later bill, which became effective on August 13, 1858, differed considerably from the act of March 20, but its general purpose was the same. Many of the townships were organized under the first law, and the legality of their organization was expressly recognized by the act of August 13. The legislative committee which drew up the latter act reported that one of the chief defects of the first act was its indiscriminate use of the word "supervisor" to designate practically every officer in the town organization. The committee recommended that, in the new bill, the

In this new scheme of government the regulation of affairs pertaining to roads was brought closer to the people than it had been under the county commissioner form of government. It retained most of the features of the territorial law, but, whereas the county commissioners under the territorial form of government had supervised the performance of the road supervisors, the scrutiny of the official performance of the duties of the office was now to be made by the board of supervisors which regulated the affairs of the townships.

The Supervisors in the several towns in this State, shall have the care and superintendence of roads and bridges therein; and it shall be their duty to give directions for the repairing of the roads and bridges in their respective towns; to regulate the roads already laid out, and alter each of them as they, or a majority of them, shall deem proper, as hereinafter provided, to cause the roads and the bridges which are or may be erected over streams intersecting roads, to be kept in repair; to divide their respective towns into so many road districts as they shall deem convenient, by writing under their hands, to be lodged with the Town Clerk, and by him entered in the town records, such division to be made annually if they shall deem it necessary, and in all cases, to be made at least ten days before the annual town meeting; to assign to each of the said road districts, such of the inhabitants liable to work on highways as they shall think proper, having such regard to proximity of residence as may be, and to require the Overseers of Highways, from time to time, as often as they shall deem necessary, to warn all persons liable to work on roads, to come and work thereon, with such tools, carriages, cattle or teams, as the said Overseers, or either of them shall direct. <sup>3</sup>

officials in charge of roads and the poor be designated as "overseers." House Journal, 1857-58, p. 862. The act of March 20 is printed on pages 311-334 of the General Laws for 1858.

3. General Laws, 1858, p. 216.

This general supervisory power was further expanded by the provision that the township clerk and the justices of peace of the township, meeting as a board of town auditors, should examine the records of the road overseers and report estimates of funds needed for road improvements in excess of what could be accomplished by poll tax labor. From these records the township supervisors were to assess the "highway labor and road tax to be performed and paid in their town the next ensuing year." Moneys remaining in the hands of the overseers, when they made their annual reports, were to be paid to the supervisors, who were to apply it on roads and bridges within the township. These were functions which the county commissioners had exercised for the counties during the territorial period. In general, if the territorial law is read with the substitution of the word "township" for "county," and "supervisors" for "commissioners," it can be applied to the township system of local government with but few exceptions. One of these was the proviso that the township supervisors were forbidden to lay out, alter, or discontinue state and county roads, although their power with regard to township roads was supreme. Another was in the method of making appeals from the damages allowed to property owners because of road changes. Such appeals were not made to the township supervisors, but to the county board of town supervisors, and three of its members, none of

whom could be resident in the township from which the appeal was made, were to act as a court to decide the case. Both parties to the appeal were bound to accept their judgment as final, but if the payment of damages assessed by such a court would, in the opinion of the board of town auditors, require the levying of an unreasonably heavy tax on the property in the township, the town supervisors could appeal to the county board of town supervisors for relief from all or a part of the damages. The award of the court then would be postponed until the money could be raised by some method other than a specific tax on the property in the township. In other words, the county could assume a part of the cost. <sup>4</sup>

The labor tax system in force during the territorial period remained the law of Minnesota after statehood was achieved. It was modified in that there was no longer a set number of days during which citizens were required to work on the roads. Instead, the number of days of labor was determined by the town supervisors at their annual meetings, but it could not be less than one, nor more than four days, and seventy-five per cent of the work had to be done before August 1 of each year. Commutation of the labor tax by a cash payment was provided at the rate of one dollar and fifty cents for each day of labor assessed.

4. General Laws, 1858, p. 200, 212, 218, 220, 225.

The property tax for roads of the territorial period likewise was carried over. This tax, which could not be assessed at a rate greater than fifty cents on each one hundred dollars of valuation, could be paid in money or in labor at the rate of one dollar per day. <sup>5</sup>

Under the township plan of local government, the county's functions in regard to road matters were subordinated to those of the township, and were operative only where the township did not or could not adequately perform the functions of local self-government. The county was given power to "alter, establish, or discontinue any county road or roads" within its boundaries, but no specific provision was made for it to perform the work. The exception of county and state roads from the list of those which the town supervisors might alter, lay out, or discontinue created a problem, for it was interpreted to mean that the township had no jurisdiction over them. The solution was found in the proviso that all laws in force at the time of the passage of the township act which were "applicable to the board of county commissioners, shall apply to the county supervisors' court." Chapter 13 of the Revised Statutes of 1851, which designated the manner in which county roads should be treated, and the act to create two road commissioners for each county, passed at the extra session

5. General Laws, 1850, p. 218-221.

of the legislature in 1857, provided a means by which the road overseers could take over the construction and maintenance of these county roads. <sup>6</sup>

There were weaknesses in the plan of organization, however, which opened it to criticism, and eventually led to its repeal. In large counties the township board was an unwieldy body, in which the formation of factions and cliques was a natural development, and the meetings of the county boards often degenerated into partisan squabbles. In Goodhue County, for example, the factions in the county board of supervisors almost brought about a county-wide disturbance. The first board was predominantly Republican -- nineteen Republican to four Democratic members -- and in every vote taken the party lines were maintained intact. In Dakota County, where the number of members was twenty, the board of supervisors earned the name "Hastings Legislature" or "Dakota Legislature," and equally widespread divisions appeared, based solely upon the issue of partisan politics. It was a weakness which was inherent in the plan of organization under the township act. <sup>7</sup>

In his farewell address to the legislature in 1859, Governor Sibley called attention to the accumulation of

6. Ante, p. 225-234; Public Statutes, 1849-1858, p. 221, 248-255.

7. Anderson and Lehman, County Government in Minnesota, 24; Red Wing Republican, June 13, July 16, 23, 30, 1858; Hastings Independent, January 27, February 10, 1859.

a huge debt on the part of the local units of government because of the bulky machinery set up for the government of the towns and counties. While this did not apply specifically to road affairs, yet they were included, for the administration of the road laws was a function of the local governments. Sibley urged that the township act be repealed and the former county commissioner form of government be restored. The township form of government might be applied satisfactorily in a well settled region, he acknowledged, but he held that its enforcement in a frontier state was not conducive to the financial solvency of the state or local units of government. The soundness of Sibley's advice was not questioned, but he was followed in the governor's chair by a man who held firmly to the tradition of town government. Governor Ramsey, addressing the legislature less than a month after Sibley had appealed to it for a renunciation of the township form of government, urged the legislature not to give it up. He admitted that the criticisms made were largely true, and that the law perhaps was not suited to a frontier state, but he pleaded that "the system of town government, now beginning to be understood and soon to become necessary need, need [sic] not be entirely abandoned." If it was found to be unworkable, he suggested that a compromise be effected, retaining the township organization, but abolishing the county board of town supervisors in favor



of a three or five man board of county commissioners. <sup>8</sup>

The legislature followed the recommendation of Governor Ramsey, and the modified form, which combined the county commissioner and the township plans of government, has remained in force ever since with but few alterations. Sentiment in favor of the supervisor system was strong for several years, however, and, as late as 1870, an attempt was made to change back to that plan. One newspaper editor, commenting on the failure of the plan, exclaimed: "Good! The present system is far preferable to the one proposed." <sup>9</sup>

In recasting the laws to reorganize the local government of the state, the lawmakers crowded into a single chapter of the statutes for 1860 the laws regulating roads. The new chapter of the statutes varied little from the law of 1858, except where it had to be changed to conform to the revised legal structure of township and county government. The power of the townships to regulate their roads and bridges was restated, and some of the difficulties inherent in the law of 1858 were removed.

The Supervisor[s] of the town may alter or discontinue any road, or lay out any new road when petitioned by any number of legal voters not less than six, residing within one mile of the road so to be altered, discontinued or laid out; said petition shall set forth in writing a description of the road, and what part thereof is to be altered

8. The messages of Sibley and Ramsey, dated December 8, 1859, and January 2, 1860, respectively, are in House Journal, 1859-60, p. 22, 166.

9. Saint Peter Tribune, February 16, 1870.

or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point near which it is to terminate; Provided, That the said Supervisors shall not have power to vacate, alter or change any State road, any portion of which passes through any of the unorganized counties of the State, nor shall they vacate any portion of any mail route, or change the same in any manner so as to make the same materially longer, and when any change is made in any such route, the Supervisors shall cause the same to be immediately opened and made passable; Provided, That State roads not opened within two years from the time they are laid out may be vacated as other roads. 10

The relation of the township to existing roads was clarified by the statement that "Public roads and parts of roads, whether Territorial, State, or County, now legally existing, are declared the highways of towns in which they shall be, and may be altered, discontinued, or re-opened by their respective town authorities as other roads." These two clauses clearly established the relationship of the township to the roads within its boundaries. One other addition which this law made to the road code of Minnesota was the extension of the road laws to towns and cities. Cities, for all road purposes, were to be considered as townships in themselves. They were required to set up a system of officials corresponding to those of the townships for the enforcement of road laws. 11

In 1862 the legislature took away the power of the

10. General Laws, 1860, p. 87.

11. General Laws, 1860, p. 92, 93.

townships to alter or discontinue county roads by the passage of an act which declared that "every State road or other continuous road passing through or into more than one organized county, is hereby declared a county road, and shall only be altered, changed or vacated by an order of the board of county commissioners." County roads were placed under the supervision of the county commissioners, who might appropriate "such sums of money from the county treasury as they may think advisable, not exceeding one thousand dollars in any one year." More money might be appropriated and spent upon a ratification by the voters of the county, the funds to be expended upon bridges and county roads under the direction of the commissioners. A county road running through more than one township in the county might be located, established, changed, or vacated, upon petition of twenty-four freeholders in any county containing more than one hundred legal voters, or twelve freeholders in any county containing less than one hundred voters. Upon approval of the petition for the road, the county commissioners were required to notify the supervisors of the towns through which the road was to pass, and it then became the duty of the townships to open, alter, or vacate the road ~~in~~ question. Adequate safeguards for the owners of property affected by the change were provided, whereby the county had to pay the damages awarded. When once the road was constructed, it became

the duty of the townships through which it passed to maintain it. In 1865 the legislature amended the provision for appropriating money by the addition of a clause permitting an annual appropriation of "one thousand dollars to each five hundred thousand dollars of assessed valuation of real estate in such county." In effect, this increased the appropriating power of most counties, for the assessed valuation in many of them was in excess of five hundred thousand dollars. <sup>12</sup>

The laws of territorial Minnesota had required that public roads be four rods wide. The same width was made the legal standard under the township organization law. The territorial law also had provided for the opening of cartways two rods wide, to allow owners of property off a public road to gain access to their land. The township organization law legalized cartways, but failed to set any standard of width for them. This the road law of 1860 did, by providing for the opening of cartways two rods wide under the same terms as those governing the opening of any other public road. In 1863 the legislature amended the provisions of the law applying to cartways by providing that the towns should bear the

12. General Laws, 1862, p. 138-141, 1865, p. 71. In 1862 fourteen counties had real estate assessed at five hundred thousand dollars or over. By 1863 nineteen were in this classification, and by 1867 twenty-five. See the reports of the state auditor dated January 1, 1864, December 31, 1864, and December 28, 1868, in Executive Documents, 1863, p. 476, statement R; 1864, p. 160, statement O; 1868, p. 406, statement J.

cost of surveying them, but that the individual for whom the cartway was laid out should pay all damages to property through which it passed, the amount of which was to be determined in the same way as in the case of public roads. If the land through which the cartway passed was enclosed, the owner was allowed to erect gates, and penalties were provided for leaving them open as well as for maliciously damaging them. <sup>13</sup>

The road code of Minnesota was evolved over a period of many years. In 1867 a law regulating the establishment of ferries was adopted, which made unnecessary the cumbersome legal machine in force during the territorial period, and removed the difficulties that had produced trouble. The new law, for example, provided that a license to operate a ferry over a stream which served as a boundary between two counties might be obtained from either county, but that once obtained, "the county commissioner[s] of no other county shall have any power to exercise any jurisdiction over such ferry, while the same is in legal existence." To further safeguard the ferry operators, the law provided that if applications were filed in two counties for ferries at the same point, the person who made application first should have preference. Taxation only by the county commissioners in the county in which the ferry was located, at rates varying

13. Ante, p. 227; General Laws, 1858, p. 226, 1860, p. 92, 1863, p. 103.

from five dollars to two hundred dollars per year, was legalized, and the commissioners were likewise given the authority to regulate the rates of ferriage. Cities, villages, boroughs, and incorporated towns were given the privilege of licensing ferries within their own boundaries. To encourage adequate bridging of streams, the same session of the legislature adopted a law authorizing supervisors of organized townships to issue bonds for building bridges within their towns, and provided for the redemption of the bonds by taxation. <sup>14</sup>

One other law was added to the body of road laws by the session of 1867. "An Act to legalize the building of free turnpikes in this State" provided that the county commissioners might construct such a road when a majority of the legal voters along the route which it was desired to convert into a free turnpike petitioned for it, and when voluntary pledges totaling at least two hundred dollars had been subscribed for every mile of the proposed turnpike. Free turnpikes were required to be laid out at least four rods wide, "and shall be bedded with stone, gravel or such other material as may

14. General Laws, 1867, p. 45-43, 53; ante, p. 239-242. The bridge bond law was amended in 1868 to correct an obvious slip in the language of the bill. The 1867 law provided that the vote of two-thirds of the legal voters of the town had to favor the measure. The amendment of 1868 provided that the vote of two-thirds of the legal voters of the town present at the meeting was required for this purpose. General Laws, 1868, p. 87.

be found on the line thereof, and faced with broken stone or gravel so as to form an even hard surface, with good and sufficient ditches on each side whenever the same is practicable; the arch or bed of such road shall be at least eighteen feet wide, and shall be so constructed as to permit carriages and other vehicles conveniently to pass each other, and to pass on and off of said turnpike where it may be intersected by other roads." In addition to the two hundred dollars per mile of road raised by voluntary subscription, the county commissioners were required to levy a tax annually for three years, amounting to one-third of the estimated cost, less one-third of the subscription. The tax was to be applied to the communities at either end of the road, and to householders living within one-half mile of the road on the first mile from either end, within one mile along the second mile, within a mile and a half along the third mile, within two miles along the fourth mile, within two and a half miles along the fifth mile, and within three miles along the remaining portion of its length. The subscriptions made to aid in building the road were to be paid in instalments, each not less than twenty per cent of the total amount, payable every sixty days. When the road was completed, the commissioners were required to levy an annual tax to keep it in good repair, and the road overseers along its route were to do

the work. 15

An important addition to the legal framework of the road system was made by the legislature of 1872, when an act was passed authorizing the judges of district courts to order the laying out of roads through two or more counties within their respective judicial districts. Under the terms of this law the judges were authorized to appoint commissioners to lay out such roads upon receipt of a petition signed by twenty legal voters resident in the counties. The judges, however, were not permitted to authorize any road laid out more than six miles outside their judicial districts, and a road could be ordered opened only after thirty days' notice had been publicly given in each county through which it would pass. The cost of laying out such roads, and of any damages to property consequent to its opening, was to be borne by the counties. Damages were to be awarded by the commissioners appointed by the court, and, in case of dissatisfaction with the amount awarded, property owners might have a jury trial upon written petition to the court, filed within thirty days of the awarding of the damages. The construction of judicial roads was to be performed by the townships through which they passed. In many cases this law obviated the necessity for going to the legislature for authority to open roads extending



through more than one county, and made possible a quicker procurement of needed roads. <sup>16</sup>

In 1873 the legislature performed its periodic task of revising and rewriting the statutes of Minnesota. The revised statutes of 1873 gathered into one chapter the laws relating to roads which had been enacted since the last revision of 1866. Most of the amendatory acts were passed to clarify meaning, and did not greatly alter the law. Consequently, the revised law differed from the edition of 1866 chiefly because of the addition of the sections relating to free turnpikes, to steam traction roads, and to judicial roads. <sup>17</sup>

In the local administration of road problems the new code extended the power of taxation for road purposes not only to real estate, but to personal property as well. The limit of such taxation was placed at one dollar for every hundred dollars of assessed valuation. If the township supervisors refused to lay out, alter, or vacate any highway, the code provided that, unless the

16. General Laws, 1872, p. 100; Walter S. Booth, The Township Manual for the State of Minnesota, 64, note a (fifteenth edition, Minneapolis, 1899). Where a road extending through or into two judicial districts was desired, according to an amendment to the law of 1872 made in 1889, judges were permitted to act in conjunction, and, if the road was decided upon, they appointed a commissioner from each county affected, not more than five in all, to lay out the road. General Laws, 1889, p. 296.

17. Minnesota, Statutes at Large, 1873, vol. 1, p. 513-527; ante, p. 255.

decision was appealed from within the thirty days stipulated by law, the petition could not again be considered for one year. There had been no statement in previous laws indicating the methods to be followed in appealing from the decisions of the supervisors or county commissioners where the road involved was a town line road, although the law of 1858 had stipulated in detail the way such roads should be laid out, and had provided a means of division so that each township should assume its share of the cost of construction and maintenance. The code of 1873 extended to town line roads the same rights of appeal which had been granted in cases of other township roads. Roads, under territorial laws as well as under state laws, had been limited to a width of four rods. This regulation was changed so that roads six rods wide might be laid out, provided that all the residents on lands along the road so desired. <sup>18</sup>

Previous laws had provided a means for appealing from the decision of supervisors or commissioners regarding damages claimed as a result of the routing of a road through privately owned land. The law of 1873 rephrased the language of the existing laws, and added to them new features for which legislation had been provided during the intervening years. Henceforth no damages were to be allowed for property taken for road purposes if the land,

18. Minnesota, Statutes at Large, 1873, vol. 1, p. 515, 520, 521.

at the time the road was laid out, belonged to the federal government or to the state of Minnesota. Where a legitimate claim for damages existed, however, an appeal for adjusting them might be made at any time within three years from the date of opening the road. Two ways were provided for making appeals from the awards of the supervisors or commissioners. If the amount of the award was less than a hundred dollars, the appeal was to be made to a justice of the peace having jurisdiction. If the amount of damages claimed was more than a hundred dollars, the appeal was to be made to the judge of the district court. In all cases, the appellant was required to post a bond covering the costs of the appeal. A trial by jury was provided, and if the initial award of the town supervisors or county commissioners was upheld, he had to bear the costs of the trial. If that decision was reversed, the county or township, whichever the case might be, was required to assume the costs. <sup>19</sup>

The code provided that in townships in which no public roads had been laid out, the section lines were henceforth to be considered as public roads, and might be opened to a width of two rods on each side of the line by the town supervisors without the necessity for any survey, excepting where natural obstacles prevented the straight line from being followed. The last section

19. General Statutes, 1866, p. 195-197; Minnesota, Statutes at Large, 1873, vol. 1, p. 523, 524.

of the act contained the provision for laying out roads upon order of the judge of the district court. This completed the road code of 1873. It differed from the previous codes in many places, but in the majority of cases these differences were differences in phraseology rather than in meaning. <sup>20</sup>

Nor were the changes in the code during the next twenty years of great significance. It is true that the code of 1894 varies from that of 1873, but again the differences are not in the fundamental rules of procedure; rather they are differences in the methods of expressing the rules for procedure. The fundamentals laid down in the laws of 1860 remained the basis for the road code until the closing years of the century. The enactment of the law providing for the laying out of roads by the judges of the district courts was the last significant addition to the body of road laws until the good roads movement revamped the structure, and altered the public concept of the road system of the state.

That is not to say that there were no road laws enacted during the last twenty years of the old regime. Whenever special occasions arose which could not be met under existing laws, additions to the body of statutes were made. They did not alter the methods by which roads were opened or maintained; they applied the old prin-

20. Minnesota, Statutes at Large, 1873, vol. 1, p. 526.

principles to new circumstances. An interesting example of this feature of the road laws is afforded by the measure, enacted in 1883, which provided for opening temporary cartways. This legislation was intended primarily to benefit the lumbering interests of the state, for it provided that whenever two or more owners of pine lands in the state desired a temporary cartway to be laid out they should petition the supervisors of the town through which the cartway would extend, or, if the township was unorganized, the petition should be addressed to the county commissioners, who thereupon would order it opened for the period of time specified in the petition. Such a cartway was to be not less than one, nor more than two, rods in width, and the petitioners were to pay all damages to property. The same session of the legislature passed laws intended to provide adequate measures to regulate the obstruction of highways by railroad trains, and an earlier session -- that meeting in 1879 -- had attempted to regulate the practice of seeding grass or other crops on the right of way of highways by permitting owners of such land to seed to within eight feet of the center of the road, provided that in so doing they did not interfere with its free use. Similarly, the legislature in 1874 had dealt with the problem of drainage for highways running through marshy land, by the enactment of a law authorizing the town supervisors to dig ditches, and providing compensation for the owners of the land

through which the ditches were dug by assessing damages in the same way as that provided for in laying out roads. The legislature had provided a special tax for county road and bridge purposes based upon the valuation of real and personal property, but the tax was to be expended upon the roads and bridges of the county by the commissioners. In 1891 this feature was changed to allow the commissioners to appropriate a sum of three hundred dollars or less from the county road and bridge fund for the improvement of roads and bridges in any township in the county. The money was to be paid to the treasurer of the town within which it was to be spent, when the latter officer had given bonds to guarantee the use of the money for the purpose for which it was appropriated, and it was to be expended by the town supervisors.<sup>21</sup>

In 1867 the legislature had taken steps to regulate the authorization of ferries in the state by the counties. The session of 1875, in turn, laid down laws regulating the construction of toll bridges. The measure, intended primarily to establish certain standards in the construction of bridges over the Minnesota River, was extended to apply to the construction of bridges over "any lake or stream of water in the state." Companies wishing to build such bridges were required to conform to the laws of the state regarding corporations, and the privilege

21. General Statutes, 1894, p. 499; General Laws, 1874, p. 200-204, 1879, p. 94, 1883, p. 159, 181, 1891, p. 96.

of constructing bridges over the Minnesota River was extended also to "any county or counties, town or towns, village or villages, interested therein." Such bridges might be toll or free, as the builders desired, but the site of the bridge had to be approved by the governor, and, if a toll bridge was constructed, a standard of toll charges was set up which could not be changed by the legislature until the company was earning a net annual income equal to ten per cent of the fair and reasonable cost of the bridge. <sup>22</sup>

There were six kinds of free roads in Minnesota. The state, from which the other units of government derived their authority to lay out roads, could authorize the opening of state roads. <sup>2</sup> Judges of the several judicial districts could authorize the opening of roads extending through two or more counties within their districts. <sup>3</sup> The townships were authorized to open roads wholly within the townships, while the counties could open roads within the <sup>4</sup>county which extended through two or more townships. <sup>5</sup> Furthermore, county authorities were authorized to lay out and construct free turnpikes with-

22. General Laws, 1867, p. 45-48, 1875, p. 140. Previous to the passage of this bridge law, railroad companies had been authorized to construct bridges across streams for crossing their trains, and "to answer the ordinary purposes of travel and business." They were entitled to charge toll for the use of their bridges unless the bridge was erected within one mile of an existing toll bridge built by an incorporated company. General Laws, 1869, p. 94.

in their counties and roads designed for use by steam traction vehicles. For the purpose of altering or vacating, state roads were considered to be county roads and could be changed or abandoned only by the county commissioners. The responsibility for constructing free turnpikes and steam traction roads belonged to the counties, while the townships assumed the duty of constructing not only township roads, but state, county, and judicial roads as well. The responsibility for the maintenance of roads was likewise divided. County authorities were allowed to levy a tax for the maintenance of county and state roads, as well as of free turnpikes, but the labor tax of the townships through which these roads passed had to be employed on roads laid out by state, county, and judicial authority as well as on township roads, and was not exempted from use on free turnpikes. <sup>23</sup>

The legal code outlined the status of the roads, provided for their construction and maintenance, and gave their users certain inalienable rights and privileges. But the landowner, from whose land the ground for the road was taken and whose labor kept it in repair, had, in addition to his rights as a traveler over the roads, certain other rights and privileges inherent in the ownership

23. On page 64 of his Township Manual (1899), Booth says that the several kinds of roads in Minnesota "differ chiefly in their extent and the authority under which they are laid out, but when laid out and opened they are wholly under the care and superintendence of the supervisors of the towns in which they lie."



of the adjoining land. A southern Minnesota newspaper of the eighties summed up these rights, as well as the obligations which they entailed, in an article entitled "The Rights of Farmers."

Ordinarily the farmer owns the soil of half the road, and may use the grass, trees, stones, gravel, sand, or anything of value to him, either on the land or beneath the surface, subject only to the superior rights of the public to travel over the road. . . . No other man has a right to feed his cattle there, or cut the grass or trees; much less deposit his wood, old carts, wagons, or other things thereon. . . . The owner of a drove of cattle which stop to feed in front of your land, or of a drove of pigs which root up the soil, is responsible to you at law as much as if they did the same things inside the fence. Nobody's children have any right to pick up the apples under your trees, although the same stand wholly outside of the fence. No private person has a right to cut or lop off the limbs of your trees in order to move his old barn or other buildings along the highway. . . . No man has a right to stand in front of your land and whittle or deface your fence, throw stones at your dog, or insult you with abusive language, without being liable to you for trespassing on your land; he has . . . a right to use the road, but not to abuse it. . . . The farmer owns the soil of the road, even if he cannot use it for any purpose which interferes with the use of it by the public for travel. . . . If the road is discontinued or located elsewhere the land reverts to him, and he may enclose it to the centre and use it as a part of his farm. 24

During the territorial period of Minnesota's history, and for many years after statehood was attained, the primary interest of the state in the development of the communication facilities of the frontier commonwealth was accepted. The first territorial law regarding roads had recognized this authority in road matters

24. Preston Republican, May 11, 1882.

by laying down rules for the legislature to follow in laying out roads, and had provided that the legislature pay the cost of this important task, but not that of the equally important task of constructing them. The legislature which met in 1851 was almost without funds, and in response to the warning of the territorial auditor against the practice of financing such roads, the legislature restricted itself.<sup>25</sup> The territorial code provided that the legislature might order roads laid out only when they passed beyond the borders of a county and were petitioned for by residents of both counties. Bills for roads authorized by the legislature thereafter provided that the cost of laying them out should be borne by the counties through which they passed. At the same time that these restrictions upon the authority of the state and territory were being imposed, the power to lay out roads within the counties was delegated to the smaller unit of government. This delegation of authority in no way impaired the right of either the territory or the state to control the administration of roads, nor were any laws passed during the succeeding quarter century for that purpose. The laws establishing the township system of local government in Minnesota, however, delegated to a still smaller unit of government the power to lay out roads within the township, and the passage of

25. Report of the territorial auditor, December 31, 1850, in Council Journal, 1851, p. 182.

the act authorizing the judges of district courts to lay out roads in two or more counties within their judicial districts, together with the supplementary acts to enable judges of adjoining districts to act in concert to lay out a road through two or more such judicial districts, provided the machinery for caring for most contingencies arising from the need for opening, relocating, or vacating roads within the state. They created a machine which made direct legislative action unnecessary.

In 1891 the legislature voluntarily signed away its right to enact special laws authorizing the laying out or vacating of roads. An amendment to the state constitution was proposed that year to limit the vast amount of special legislation which was growing year by year. The amendment which the legislature drew up for submission to a popular vote prohibited eleven kinds of special legislation, the second of which was that for "laying out, opening or altering highways." The third item in the list of forbidden special acts was that to license ferries across streams wholly within the confines of Minnesota. The eleventh class of special legislation which was forbidden was that pertaining to the vacating of roads, town plats, streets, alleys, and public grounds. The measure was adopted by a popular vote on November 8, 1891, as sections 33 and 34 of article 4 of the constitution. The amendment remained in force for a period of ten years, and was superseded in 1892 by a

new amendment, the purpose of which was the same, but which was even more sweeping in the prohibition of special legislation. 26

This restriction of the legislature to lay out roads had a greater significance than merely that of cutting down on special legislation. Minnesota was progressing beyond the frontier stage. During the period when vast areas of the state were unoccupied, there was no organized local government to supply the system of roads which a frontier country needed. The provision for an increasing amount of local, or decentralized, control in the building up of a communication system led almost inevitably to the withdrawal of legislative control. But the withdrawal of the state also typified the indifference to wagon roads as a matter of state concern which prevailed in the United States as a whole during the last thirty years of the nineteenth century. The railroads replaced the long-distance system of wagon roads in the category of human needs. The result was that "the administration of highways ceased to be in any real sense either a national or State function, but was transferred to the various local units of government." That the transition to this

26. General Laws, 1881, p. 21-23, 1891, p. 19-21; Harold F. Kumm, The Constitution of Minnesota Annotated, 97-111 (University of Minnesota, Bureau for Research in Government, Publications, no. 3 -- Minneapolis, 1924); Anderson and Lobb, History of the Constitution of Minnesota, 169.

phase of road history in Minnesota came almost twenty-five years later than it did in the neighboring state of Iowa is at once an indication of the more slowly growing railroad system, and of the lasting influence of the frontier. 27

27. Brindley, Road Legislation in Iowa, 106, 268. Iowa forbade the enactment of special road laws as early as 1857.

