

Chapter

III

SD ASSOCIATION OF COUNTY HIGHWAY SUPERINTENDENTS

Certification Manual



SDDOT Local Roads Plan,
Applicable Codified Laws, &
Roadway Design Elements

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Purposes and limitations of the Manual

This manual was updated in the summer of 2018 at the direction of the South Dakota Association of County Highway Superintendents as a resource for county highway superintendents. This Manual is not all encompassing but is instead presented as a general outline of state statutes governing the operation of county highway departments. This manual does not include every statute and court opinion related to county highways and does not constitute legal advice. Further, laws, and the courts' interpretation of such laws, often change. If you are confronted with a particular issue, contact your state's attorney to research how the latest law applies to such issue.

SDDOT Local Roads Plan

The Local Roads Plan is a document prepared by the South Dakota Department of Transportation, through its office of Local Government Assistance, for use by the counties and cities throughout South Dakota. The Local Roads Plan is a guideline for use in planning, designing, and constructing roads and bridges on local government highway systems. This document is not a standalone document and should be used along with the AASHTO publication, "A Policy on Geometric Design of Highways and Streets," the SDDOT Road Design Manual, and other applicable policies and publications. The guidelines have a great deal of flexibility with modifications or design exceptions based on local need, traffic, and accident history. The ultimate goal is to provide a product that will fit local needs and safety considerations at the most reasonable cost possible. The Office of Local Government Assistance is ready and willing to assist in any transportation endeavor at the local level. If there are any questions concerning current or future project needs, please call (605) 773-8148 to speak with any of the Local Government staff members.

Reference to the SDDOT internet site should be the primary location for the most current version of the Local Roads Plan which can be found at the following link:

<http://sddot.com/business/local/forms/>

The document can be found under "Publications".

S.D. CODIFIED LAWS ON STANDARDS

31-2-20. Adoption of standard plans and specifications. The department of transportation shall advise and adopt standard plans and specifications for road, bridge, and culvert construction and maintenance suited to the needs of the different counties of the state and furnish the same to the several county superintendents of highways.

Source: SL 1919, ch 333, § 7; SDC 1939, § 28.0207.

Cross References

Appeal of county disagreement with superintendent to transportation commission, see § 31-11-5.

Preparation of plans and specifications for building and repairing bridges, § 31-14-4.

Specifications for state purchases, assistance rendered in preparation, § 5-23-7.

Notes of Decision:

Duty of Care

The duty of county to protect the public from injury occasioned by highways, culverts or bridges that are destroyed or out of repair is a statutory duty, not imposed by doctrine of rules of common-law negligence, and hence the liability of county is determined by applying the standard of conduct imposed by statute rather than the standard of conduct of a reasonably prudent person. SDC Supp. 28.0913. Lipp v. Corson County, 1956, 76 S.D. 343, 78 N.W.2d 172.

What should be done by county to protect the public from injury occasioned by highways, culverts or bridges that are destroyed or out of repair is a question for the Legislature, and courts may only determine what duty in such respect the Legislature by statute has imposed on county. SDC Supp. 28.0913. Lipp v. Corson County, 1956, 76 S.D. 343, 78 N.W.2d 172.

31-2-22. Standards and advice to counties maintaining highway systems. The department shall, at the request of any county, give advice regarding difficult construction questions, pass upon the feasibility of any plan of road construction, improvement, and repair, and in general render any reasonable service to aid the county in the construction, maintenance, or repair of its county highway system.

Source: SL 1919, ch 333, § 22; SDC 1939, § 28.0208; SL 1953, ch 138; SL 1993, ch 217.

31-2-20.1. Performance standards to measure overall condition of highways and bridges—Goals for maintenance. *The Department of Transportation shall establish performance standards designed to measure the overall condition of the highways and bridges on the state highway system, along with establishing ten-year goals for maintenance of these conditions. When establishing appropriate performance standards, the department may include nationally established standards and measurements required to be reported to the United States Department of Transportation.*

The department shall, before the fourth Tuesday in January of each year, report to the Senate and House standing committees on transportation on the current and projected condition of the highways and bridges on the state trunk highway system. This report shall include progress on meeting the ten-year goals for condition of the state highway system. If the projections show the ten-year goals will not be met, the department shall report the estimated amount of additional funding needed to achieve the goals.

Source: SL 2015, ch 165, § 24, eff. Apr. 1, 2015.

31-12-18. Width of culverts. Each culvert constructed on the county highway system shall have a width of not less than twenty-four feet.

Source: SL 1919, ch 333, § 20; SDC 1939, § 28.0306; SL 2018, ch 168, § 19.

31-14-1. Bridge and culvert defined. Terms used in this chapter mean:

- (1) "Bridge," a structure, including supports, erected over a depression or an obstruction, as water, highway, or railway, the structure having a length measured along the center of the roadway of more than twenty feet between undercopings of abutments or extreme ends of openings for multiple boxes and pipes where the clear distance between openings is less than half of the smaller contiguous opening;
- (2) "Culvert," any structure not classified as a bridge that provides an opening under any roadway;
- (3) "Department," the Department of Transportation.

Source: SDC 1939, § 28.1441 as enacted by SL 1953, ch 153; SL 2010, ch 145, § 94.

Cross-References

Municipal power as to bridges, see §§ 9-45-3, 9-45-4.

Collateral References

Automobile travel, duty as regards barriers for protection of, 27 A.L.R. 937; 86 A.L.R. 1389; 173 A.L.R. 626.

Cooperation or compacts between states as to construction and maintenance of bridges, 134 A.L.R. 1414.

Duty and liability as to lighting bridge, 47 A.L.R. 355.

Duty and liability of municipality as regards barriers for protection of adult pedestrians who may unintentionally deviate from street or highway into marginal or external hazards, 44 A.L.R.2d 633.

Invalid contract by political subdivision for construction or repair of bridge, right of contractor or persons claiming under, to remove bridge or part thereof, 93 A.L.R. 445.

Liability for damage to highway or bridge caused by size or weight of motor vehicle or load, 53 A.L.R.3d 1035.

Negligence of contractor for construction of bridge as ground of liability upon his part for injury or damage to third person occurring after completion and acceptance of the work, 13 A.L.R.2d 214; 58 A.L.R.2d 878.

Prohibition to control action of administrative officers in matters relating to bridges, 115 A.L.R. 23; 159 A.L.R. 634.

31-25-2. Cattle ways authorized – Application to highway authority – Designation of construction particulars – Maintenance by landowner. Upon application to the department of transportation, board of county commissioners or board of township supervisors, by any person for permission to construct a cattle way across or under any public road, such highway authority maintaining the highway described in the application may in its discretion grant the application upon condition that such way shall be constructed in all particulars as directed by such department or board and shall not interfere with public travel. The grade of the road over the cattle way shall not at any point exceed one foot in ten feet. Applicant must construct and agree to keep the same in repair at his own expense.

Source: SL 1911, ch 221, § 27; RC 1919, § 8569; SDC 1939, § 28.0910.

31-25-5. Dimensions of livestock guard – Passage for wider vehicles. All livestock guards shall be at least ten feet wide on the ground. In addition, at one side of such livestock guard there shall be provided or constructed a gate, at least twenty feet wide to accommodate the passage of teams, and wider vehicles.

Source: SL 1953, ch 154, § 2; 1959, ch 140, § 2; SDC Supp 1960, § 28.0910-2.

31-26-19. Minimum height of utility lines – Liability for damage to lines below minimum height. It shall be a Class 2 misdemeanor for any person, firm, association, or corporation owning or operating any telephone, telegraph, or electric line, or any part of such line in this state, to extend any telephone, telegraph, or electric wire, any part of which shall be less than eighteen feet from the ground, over or across any public highway. No such person, firm, association, or corporation shall be entitled to collect damages from any person who shall cut, break, remove, or otherwise destroy any such telephone, telegraph, or electric wire over or across a public highway if any part of the same is at any time less than eighteen feet from the ground.

Source: SL 1921, ch 251; SDC 1939, § 28.1004; SL 1965, ch 134.

Commission Note

The code commission classified the offense described in the section in accordance with the directions contained in § 43-6, ch 158, SL 1976.

Cross-References

*Minimum height of wires, §§ 49-32-5, 49-32-6.
Penalties for classified misdemeanors, § 22-6-2.*

Notes of Decision:

Duty of utility

Public utility engaged in business of producing and transmitting electricity, although required to exercise degree of care commensurate with danger involved, was not insurer of safety of employee of highway commission who was engaged in surveying proposed relocation of highway across utility's easement, nor was it, in absence of contractual relationship, charged with duty of furnishing commission's employee with reasonably safe place in which to work or duty to instruct him as to hazards of his employment. Hale v. Montana-Dakota Utilities Co., 1951, 192 F.2d 274.

Public utility engaged in business of producing and transmitting electricity for light and power purposes, is bound to use reasonable care consistent with practical operation of its business, in construction and maintenance of its lines; such care being that which reasonable man would use under circumstances, taking into consideration the danger which would be incurred by negligence and requirement that care be commensurate with danger involved. Hale v. Montana-Dakota Utilities Co., 1951, 192 F.2d 274.

Public utility engaged in business of producing and transmitting electricity was not bound to anticipate that employee of highway commission, while engaged in surveying for relocation of highway across defendant's easement on private property, would raise surveyor's rod and contact high voltage wire which was suspended over fourteen feet from ground and thereby suffer shock, and there was consequently no actionable negligence attributable to such utility. SDC 28.1004. Hale v. Montana-Dakota Utilities Co., 1951, 192 F.2d 274.

Contributory negligence

Where employee of state highway commission engaged in surveying for relocation of highway across easement on private property of public utility engaged in transmission of electricity suffered electrical shock when he raised surveyor's rod and it came into contact with high voltage line suspended over fourteen feet from ground, and commissions' employee admitted knowledge of presence of wires and that he had made no effort to avoid contact, and it appeared that employee was aware of dangerous nature of electricity, employee was guilty of negligence as matter of law which was more than slight and which was contributing cause of injury and could not recover. Laws S.D.1941, c. 160. Hale v. Montana-Dakota Utilities Co., 1951, 192 F.2d 274.

31-27-18. Minimum overhead clearance – Width of roadway – Approaches. The clearance or overhead room of any subway or undercrossing may not be less than fifteen feet from top of finished grade to bottom of sills of overhead track or trusses. The width or clear roadway of the

subway or undercrossing may not be less than twenty-four feet, clear roadway. The approaches to the undercrossing or overhead crossing shall be straight and under no circumstances may these crossings contain curves.

Source: *SL 1919, ch 333, § 63; SDC 1939, § 28.1105; SL 2010, ch 145, § 132.*

Notes of Decision:

In general

Statutory duty to establish and maintain a minimum clearance of 15 feet beneath railroad undercrossing was placed upon Department of Transportation and boards of county commissioners and not on railroad, and thus railroad breached no duty to truck owner whose truck struck underside of a railroad bridge due to accumulation of snow and ice. SDCL 31-27-1 et seq., 31-27-4, 31-27-18. Homan v. Chicago and Northwestern Transp. Co., 1982, 314 N.W.2d 861.

S.D. CODIFIED LAWS ON CLASSES OF HIGHWAYS

31-1-1. Highway defined. Every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway. The term, highway, does not include a roadway or driveway upon grounds owned by private persons, colleges, universities, or other institutions, but the term includes a roadway or driveway upon grounds owned by any state agency, college, university, or institution if the governing agency, board, or commission by resolution so determines and the Department of Transportation concurs.

Source: SL 1929, ch 251, § 1 (n); SDC 1939, § 28.0101; SL 1968, ch 120; SL 2010, ch 145, § 10.

Notes of Decisions:

Power of Legislature

Legislature has paramount control over all public highways of state, including city streets and county roads, and it may exercise it directly, may delegate power and once delegated, may recall it. SDC 28.0101, 28.0107, 44.0301 et seq., 45.0201 (32, 41, 44, 78, 79, 94, 99), 45.1701 et seq.; SDC 1960 Supp. 28.0209. 44.0301(14), 44.0303. Hurley v. Rapid City, 1963, 80 S.D. 180, 121 N.W.2d 21.

Pre-existing road or way

Road providing access to landowners' home was "public highway" such that county was responsible for maintaining road, in light of evidence that county commissioners recognized road in similar location as public road prior to statehood, county's inability to locate road book allegedly establishing alternate location of recognized road, and absence of evidence that status as public road was subsequently vacated in some lawful manner. SDCL 31-1-1, 31-1-5, 31-3-1, 31-3-22 to 31-3-37; SDCL 31-12-26 (1994), Matters v. Custer County, 1995, 538 N.W.2d 533.

Dedication

In the context of whether owner of realty is offering to dedicate land for public highway, words in plat such as "private road" or "private driveway" establish that owner retains full incidents of his or her ownership even though it may to some extent, be used for vehicular traffic as that owner deems fit. SDCL 11-3-12, 31-1-1. Selway Homeowners Ass'n v. Cummings, 657 N.W.2d 307, 2003 SD 11.

Town was necessary party to landowner's action seeking permanent injunction barring neighbor from creating a nuisance by placing signs, stakes and ropes on the shoulder of road between their properties; landowner claimed the shoulder area had previously been dedicated to the public and therefore neighbor had no legal right to keep the general public from freely accessing that area, effect of injunctive relief would have been a dedication that would have obligated the town to maintain the shoulder area at taxpayer expense, and court's holding that road had been dedicated to the public at some point in the past subjected town to an obligation for road's upkeep. J.K. Dean, Inc. v. KSD, Inc. 709 N.W.2d 22, 2005 S.D. 127.

Streets and alleys

Streets and alleys came within statutory definition of "highway" for purposes of vacation of municipal plat. SDCL 11-3-17, 31-1-1. City of Belle Fourche v. Dittman, 1982, 325 N.W.2d 309.

Statutory term "highways" includes city streets. (Per Zinter, J., with one justice concurring and two justices concurring specially.) Hohm v. City of Rapid City, 753 N.W.2d 895, 2008 S.D. 65, rehearing denied.

Takings

Recreational trail open to public for snowmobiling and bicycling was a “public highway legally established” for purposes of Disposition of Abandoned Railroad Grants Act so that trail established on abandoned railroad right of way within statutory period prevented landowners’ reversionary interest from vesting; accordingly, establishment of trail was not taking as would entitle landowners to compensation. 23 U.S.C.A. §316; 43 U.S.C.A. §§ 912, 913; SDCL 31-1-1, 32-14-1, 49-16A-115; National Trails System Act, § 2 et seq., 16 U.S.C.A. § 1241 et seq.; Const. Art. 6, § 13. Barney v. Burlington Northern R. Co., Inc., 1992, 490 N.W.2d 726, certiorari denied 113 S.Ct. 1265, 507 U.S. 914, 122 L.Ed.2d 661.

31-1-2. Bridges and culverts part of highway. Bridges and culverts erected or maintained by the public constitute a part of the public highway. The terms, road or highway, whenever used in this title include any bridge upon or which form a part of the road or highway constructed, maintained, or to be improved; also any subway or underpass and any overhead crossing.

Source: *PolC 1877, ch 29, § 48; CL 1887, § 1238; RPolC 1903, § 1643; RC 1919, § 8669; SL 1919, ch 333, § 8; SDC 1939, §§ 28.0101, 28.1401; SL 1968, ch 120; SL 2010, ch 145, § 11.*

Cross References

County and township bridges and culverts, see § 31-14-1 et seq.

Notes of Decisions:

Private Culverts

The landowner solely for his own convenience had built a plank culvert, which was never in general use by public, over ditch at intersection of township highways did not show that right of way beyond ditch had been taken over and placed under township maintenance or that culvert had been adopted by township so as to render township liable for failure to erect a barrier to prevent the public from driving into ditch after removal of culvert. SDC 28.0101, 28.0102, 28.0913. Pederson v. Canton Tp., 1948, 72 S.D. 332, 34 N.W.2d 172.

31-1-3. Existing highways--Continuation as established. All public highways lawfully established shall continue as established until changed or vacated as provided by law.

Source: *RC 1919, § 8612; SDC 1939, § 28.0103; SL 2018, ch 168, § 1.*

Cross References

Vacation or change of highways, see § 31-3-6 et seq.

31-1-4. Classification of highways of state. The highways of this state consist of streets and alleys within the limits of municipal corporations, the state trunk highway system, the county highway systems of several counties, and all other highways denominated secondary highways.

Source: *SDC 1939, § 28.0107.*

Notes of Decision:

In general

Statutory term “highways” includes city streets. (Per Zinter, J., with one justice concurring and two justices concurring specially.) Hohm v. City of Rapid City, 753 N.W.2d 895, 2008 S.D. 65, rehearing denied.

Municipal ordinances

City's speed limit ordinance for state trunk highway passing through city limits was preempted by state law; state regulatory scheme gave control of state trunk highways to a state agency, speed limits were set by a state agency and violations were state offenses, and Legislature had not expressly authorized cities to regulate speed limits on state trunk highways. State ex rel. Jackley v. City of Colman, 790 N.W.2d 491, 2010 S.D. 81.

31-1-5. Administrative systems of highways – Classification. For the purpose of clarifying the duties and powers of the various governmental state agencies charged with the administration of the highways in South Dakota, the following definitions of highway systems shall be applicable:

- (1) "State trunk system," the highways designated by statute to be controlled and supervised by the Department of Transportation;
- (2) "County highway system," the highways designated by the board of county commissioners in organized counties under the supervision of these bodies that have been approved by the Department of Transportation;
- (3) "Township highways," the secondary highways in organized townships that are administered by a board of township supervisors;
- (4) "County secondary highways," the rural local highways in organized counties, excluding the approved county highway system, that are under the supervision of a board of county commissioners.

Source: *SL 1955, ch 106, § 1; SDC Supp 1960, § 28.0238.*

Cross-References

County highway systems, see § 31-12-1 et seq.

County secondary highways, see § 31-12-26 et seq.

State trunk highway system, see § 31-4-1 et seq.

Township roads, see § 31-13-1 et seq.

Notes of Decision:

In general

Under the legislative plan for division of responsibility with reference to various types of highways, there are no overlapping duties and responsibilities among the different township boards, county commissioners, and State Highway Commission. SDC 28.0107, 28.0301 et seq., 28.0312, 28.0401, 28.1402. Van Gerpen v. Gemmill, 1948, 72 S.D. 265, 33 N.W.2d 278.

County responsibility

In light of statutory scheme for highway administration, which provides for division of burden and responsibility between township, county, and state, county board of commissioners did not have authority to locate a road previously vacated by the township, or vacated by an election of the electors of the township. SDCL 31-1-1 et seq., 31-1-5, 31-3-22. Keogan v. Bergh, 1984, 348 N.W.2d 462.

Township responsibility

Words "shall" and "all" in the statute imposing a duty on boards of township supervisors to arrange for the construction, repair, and maintenance of all secondary roads within the township indicates that the Legislature intended to create a compulsory obligation to repair and maintain all township roads, and thus, the duty to maintain township roads is ministerial and the proper subject for mandamus when a township fails or refuses to act according to the statute. SDCL 21-29-1, 31-1-5(3), 31-13-1. Willoughby v. Grim, 581 N.W.2d 165, 1998 S.D. 68.

The duty and responsibility for construction, repair and maintenance of secondary roads has been placed on township board. SDC 28.0107, 28.0401, 28.1402. Van Gerpen v. Gemmill, 1948, 72 S.D. 265, 33 N.W.2d 278.

Since the duty to construct secondary highway along section line was on township board, and board of county commissioners has no overlapping duties and responsibilities, mandamus judgment directing township supervisors and county commissioners to construct and supervise construction of the secondary road was improper. S.D.C. 28.0102, 28.0107, 28.0301 et seq., 28.0312, 28.0401, 28.0408, 28.1402, 28.0313, 28.0314, as amended by Law 1943, c. 109. Van Gerpen v. Gemmill, 1948, 72 S.D. 265, 33 N.W.2d 278.

Liability for injuries

County maintaining highway is not liable for defective maintenance, unless made so by statute. Cain v. Meade County, 1929, 54 S.D. 540, 223 N.W. 734.

There being no express statutory provision rendering county liable for injuries caused by negligent maintenance of county highway system, a county is not liable for injuries resulting from failure of its officers to repair bridge upon county highway. Hanigan v. Minnehaha County, 1924, 47 S.D. 606, 201 N.W. 522.

Public water supply

Location of bridges along section-line highways operated on county secondary roads under supervision of board of county commissioners did not establish that county owned bridges which were constructed by federal government in course of irrigation project. SDCL 31-1-5(4), 31-18-1, 46-8-16. Bryant v. Butte County, 1990, 457 N.W.2d 467.

Speed limits

City's speed limit ordinance for state trunk highway passing through city limits was preempted by state law; state regulatory scheme gave control of state trunk highways to a state agency, speed limits were set by a state agency and violations were state offenses, and Legislature had not expressly authorized cities to regulate speed limits on state trunk highways. State ex rel. Jackley v. City of Colman, 790 N.W.2d 491, 2010 S.D. 81.