



County Technical Assistance Service  
INSTITUTE *for* PUBLIC SERVICE

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# Road Law

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# Road Law

## Private Acts of 1937 Chapter 395

**SECTION 1.** That in all counties of the State having a population of not less than 5250 and not more than 5265, according to the Federal Census of 1930, or any subsequent Federal Census, there is hereby created the office of Commissioner of Highways who shall be elected by the qualified voters of the counties coming within the provisions of this Act at the regular August election of 1938, and. (sic) The Commissioner of Highways shall take office on September 1, 1984, and shall hold said office for a period of four (4) years, or until his successor is elected and qualified. It is expressly provided, however, that the present incumbent shall hold office until the expiration of his term in January, 1938, at which time the Quarterly Court shall elect some individual to serve until September 1, 1938. In the event of any vacancy in the office of Commissioner of Highways, it shall be the duty of the County Highway Advisory Commission, hereinafter created in this Act, to elect some individual to serve until the next regular meeting of the Quarterly County Court, at which time some individual shall be elected by the Quarterly County Court to serve until the next regular election.

The Commissioner of Highways shall be at least 25 years of age at the time of his election and shall hold no other public office. He shall have had actual experience in road building and road maintenance; and shall have demonstrated proved ability in both phases of road work, as a workman and in superintending and supervising road work; and shall have had experience in operating and maintaining various types of road building and road maintaining machinery. He shall have sufficient education so that he may conduct the correspondence of his office, and keep the records of his office efficiently. The salary of the Commissioner of Highways shall be Eight Hundred Fifty Dollars per month, said amount to be paid in equal monthly installments, out of the County Highway Funds, by a warrant addressed to the County Trustee and countersigned by the County Judge. Said Commissioner of Highways shall devote his entire time to the duties of his office, and he shall be furnished transportation while actually engaged in performing the duties of his office.

The Commissioner of Highways, before beginning the duties of his office, shall take and subscribe to an oath before the County Court Clerk to faithfully, honestly and impartially discharge the duties of his office to the best of his ability. He shall execute a good and solvent bond in the amount of \$5,000.00, the conditions of which shall be that he shall faithfully, honestly and impartially discharge the duties of his office and properly account for all funds coming into his hands by virtue of said office.

As amended by:

Private Acts of 1943, Chapter 198  
 Private Acts of 1949, Chapter 409  
 Private Acts of 1951, Chapter 407  
 Private Acts of 1961, Chapter 69  
 Private Acts of 1965, Chapter 281  
 Private Acts of 1970, Chapter 323  
 Private Acts of 1973, Chapter 77  
 Private Acts of 1984, Chapter 177

**SECTION 2.** That there is hereby created a County Highway Advisory Commission, composed of three members, one of whom shall be the County Judge; one of whom shall be a member of the Quarterly County Court to serve only while he shall be a member of the Quarterly County Court; and the other shall be a private citizen and free-holder holding no public office or position and having no official connection with the county. The Quarterly County Courts of counties coming within the provisions of this Act shall elect the two members of this Commission to serve with the County Judge at the regular session of the Quarterly County Court in April, 1937, and said Commission shall serve until November 1, 1938, and shall perform such duties as may be hereinafter set out in this Act. At the regular meeting of the Quarterly County Court in October, 1938, and biennially thereafter, the two members of the Commission mentioned above shall be elected by said Quarterly County Court, and said members along with the County Judge as ex-officio member of said Commission shall take office on November 1, 1938, and biennially thereafter and hold office for a period of two years or until their successors are elected and qualified. It is expressly provided and it is the legislative intent that said County Highway Advisory Commission assume the duties of office from and after the election of the members of said Commission at the regular meeting of the Quarterly County Court in April, 1937, and that said Commission shall work in conjunction with the present Commissioner of Roads, and with the Commissioner who is to be elected by the Quarterly County Court at its regular meeting in January, 1938, to serve until September 1, 1938, and/or any Highway Commissioner duly elected thereafter.

Said County Highway Advisory Commission shall meet in the office of the commissioner of highways upon

the second Monday in each month and at such other times as it may be called by the chairman, who shall be elected biennially by a majority vote of said Commission. The members of the commission shall receive fifty dollars (\$50.00) per month for this service rendered and the chairman of the commission shall receive two hundred dollars (\$200) per month. Such compensation shall be paid from the County General Fund for the Chairman and from the County Highway Funds for the members. Each member of the Commission shall take the oath of office before the County Court Clerk, as is herein provided for the Commissioner of Highways. In the event of a vacancy on said Commission, it shall be the duty of the Quarterly County Court to fill said vacancy for the unexpired term at the next regular meeting of said Court.

As amended by: Private Acts of 1949, Chapter 409  
Private Acts of 1961, Chapter 69  
Private Acts of 1974, Chapter 334  
Private Acts of 1990, Chapter 134  
Private Acts of 1996, Chapter 153  
Private Acts of 2018, Chapter 39

**SECTION 3.** That the County Highway Advisory Commission shall ascertain the amount of funds available for road purposes, or that may be available from time to time, and shall budget the amount to be spent by the Commissioner of Highways upon the highway system of the county. In determining the amount to be spent by the Commissioner of Highways, the Advisory Commission shall take into consideration the payment of any deficit which may now exist in the Highway Department, whether said deficit shall consist of outstanding warrants or bills. Said Commission shall order the Commissioner of Highways to pay said deficit as soon as possible, and shall determine the amount to be paid from time to time. Said Commission shall also recognize any transfer of funds which has been made or may be made by the Quarterly County Court. Subject to the approval of the Advisory Commission not more than three per cent (3%) of the highway funds coming into the hands of said Commission may be used to maintain and repair the roads and streets of any municipalities which may be within any county coming within the provisions of this Act, or such funds may be paid by the Commissioner of Highways to such municipalities for the purposes herein provided. It shall be unlawful for the Commission to allow the Commissioner of Highways to expend or to issue any warrants on the Trustee for road purposes unless the funds shall at that time be already in the hands of the Trustee, or a County Tax Levy shall have been made in sufficient amount to cover the same; provided, however, that said Commission shall have the right to anticipate as much as one month of the counties' pro rata part of the gasoline tax fund due from the State; and provided further, that nothing herein shall prevent the Commission from allowing the Commissioner of Highways from entering into a contract authorizing the expenditure of more money than is then on hand with the Trustee, or for which a tax levy has not been made, provided that such funds can reasonably be expected to be available at the time said expenditure will be due according to the terms of said contract. The advisory commission shall approve each purchase or contract which is made by the commissioner and which exceeds two thousand five hundred dollars (\$2,500) before such purchase or contract is a valid and binding obligation of the county.; and to determine the wages and salaries to be paid for all types of works or labor performed by the personnel employed by said Highway Commissioner, but the employment of all personnel shall be left to the Commissioner of Highways.

Said Advisory Commission shall have authority to determine upon what roads and bridges the road funds shall be spent only in the event that it may appear to said Commission that the Commissioner of Highways is not distributing said road funds fairly and according to the needs of the roads and bridges of the various Civil Districts of the county. In this event, the Advisory Commission may order the Commissioner of Highways to expend a certain amount upon a particular road or bridge in a certain Civil District of the county. Said Commission shall cause to be kept at the office of the Commissioner of Highways a minute record of its transactions and no business shall be transacted unless at least two members of said Commission are present. A majority vote of the Commission shall be sufficient for any measure to carry before said Commission. The minutes of said Advisory Commission shall be open to the inspection of the public at any reasonable time. The Commission shall audit all books, accounts and other evidences of expenditures of funds on the part of the Commissioner of Highways, at least once each month, and shall file a report of such audits quarterly with the County Court Clerk as a permanent record which shall at all times be open to the inspection of the public.

As amended by: Private Acts of 1949, Chapter 409  
Private Acts of 1951, Chapter 407  
Private Acts of 1963, Chapter 255  
Private Acts of 1965, Chapter 281  
Private Acts of 1970, Chapter 323  
Private Acts of 1991, Chapter 31

**COMPILER'S NOTE:** Private Acts of 1991, Chapter 31 added "The advisory commission...obligation of the county." However, the act neglected to address the semicolon and the rest of the sentence.

**SECTION 4.** That the Commissioner of Highways shall have general charge and supervision of the work, repair, construction, maintenance, altering, changing, opening and closing of all public roads of the county; and the construction and repair of all public bridges now existing, or that may become necessary; and of all culverts in and along said public roads. Said Commissioner of Highways shall have the right and authority to designate when, where, and in what manner work shall be performed in the construction and repair of all the public roads, bridges and culverts of the county, subject to the restrictions hereinbefore set out in this Act. The Commissioner of Highways shall appoint and select all laborers and other personnel which in his opinion may be necessary to carry on the work efficiently, however, the wages and salaries of said personnel shall be determined by the Advisory Commission as hereinbefore set out in this Act. Said Commissioner shall have authority to discharge any employee for any cause which in his opinion may seem justifiable, however, the Advisory Commission shall approve the appointment (sic) or discharge of any employee; and no employee shall receive any compensation for work performed unless the appointment of said employee has been approved by said Advisory Commission. In the event the Commissioner of Highways shall fail or refuse to submit the name or names of employees selected by him for the approval of the Advisory Commission, said Advisory Commission may appoint such employees as it may consider necessary to carry on the work. The Advisory Commission may also discharge any employee for inefficiency, failure to perform his duties; (sic) intoxication while on duty; or for any other reason that said Advisory Commission may deem sufficient. He shall also have charge of all tools, machinery, equipment and supplies used on the road system of the county. He shall make all contracts regarding material, machinery, equipment, supplies and labor subject to the approval of the Commission as set above. Said Commissioner may employ a bookkeeper or clerk to perform the clerical duties of his office, provided the salary of said employee shall not be more than \$650.00 per month, said salary to be approved by the County Highway Advisory Commission.

As amended by:

Private Acts of 1943, Chapter 198  
 Private Acts of 1949, Chapter 409  
 Private Acts of 1963, Chapter 255  
 Private Acts of 1965, Chapter 281  
 Private Acts of 1970, Chapter 323  
 Private Acts of 1973, Chapter 77

**SECTION 5.** That the Commissioner of Highways shall, upon the order of the Advisory Commission, have the right to condemn land for rights-of-way; for rock quarries; gravel beds; chert beds; and borrow pits, and pay the bills for the acquisition of same out of the County Highway Funds. He may also acquire the same through purchase by agreement with the owner, subject to the approval of the Advisory Commission.

**SECTION 6.** That the Commissioner of Highways shall keep in well bound books a complete record of all receipts and disbursements of the County Highway Fund, showing to whom and for what each expenditure was made and date same was made, and shall have on file in his office a bill or voucher with the statement on each bill and/or voucher "certified true and correct" and signed by the person or authorized representative of the person or firm rendering said bill or voucher for each expenditure made and each bill or voucher shall be so marked and approved before said expenditure is made. He shall make and submit to the Quarterly County Court a complete itemized report showing the receipts and disbursements of the Highway Fund and dates of each transaction in itemized form. Said report shall also show the amount of outstanding warrants and other obligations, and shall set out the condition and needs of all highways under his supervision. A complete statement of the receipts and disbursements of the County Highway Fund, and the exact condition of said fund, shall be published in a newspaper of the county each year. Said statement shall be sworn to by the Commissioner of Highways and by each member of the County Highway Advisory Commission. The Commissioner of Highways shall sign all warrants for disbursements from the County Highway Fund, which when countersigned by the Chairman of the County Highway Advisory Commission, shall be paid by the County Trustee.

As amended by:

Private Acts of 1949, Chapter 409

**SECTION 7.** That at the time the County Court shall levy taxes for other purposes, it shall levy a road tax for the purpose of building public roads and bridges and repairing and maintaining same, which tax shall be not more than thirty cents upon One Hundred Dollars worth of taxable property. Said road tax shall be assessed and collected in the same manner as any other taxes and shall be placed by the Trustee in the County Highway Fund; provided, that it shall not be compulsory for the County Court to levy any county road tax upon the taxable property of the county unless it may appear that the funds now being received as the counties' part of the Gasoline Tax Fund from the State is not sufficient to maintain and build the roads in a satisfactory manner, in which event, it shall be the duty of said Quarterly County Court to levy a county road tax as hereinabove provided.

**SECTION 8.** That the Grand Jury shall have inquisitorial powers over all offenses committed under this Act, and this Act shall be given especially in charge to the Grand Jury by the Circuit and Criminal Judges.

**SECTION 9.** That if any Section, sub-section, sentence, clause, phrase or word of this Act be held to be unconstitutional and void, such decision shall not affect the validity of the remaining portions of this Act. The General Assembly hereby declares that it would have passed this Act and each Section, sub-section, sentence, clause, phrase and word thereof irrespective of the fact that any one or more Sections, sub-sections, sentences, clauses, phrases or words be declared unconstitutional.

**SECTION 10.** That all laws or parts of laws in conflict with this Act be and the same are hereby repealed.

**SECTION 11.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: March 5, 1937.

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