

# The Scope of Duty to Maintain & Improve County Highways Running Through Cities

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Practice Area: County and Municipal Governance & Government Law

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Counties, cities and villages cooperate with one another in the provision of many services and, in some instances, with respect to the construction and maintenance of infrastructure. The purpose of this article is to identify a city and county's respective role as it relates to the maintenance and improvement of county highways that run through a municipality. Hopefully, the understanding of statutory responsibilities can assist in developing a long-term plan for counties and municipalities to work with one another in ensuring that our state's transportation infrastructure continues in good working order.

## County Responsibility for Maintenance of Highways Running Through Cities

Section 83.025, Wis. Stat., governs the maintenance of county trunk highways. In short, sec. 83.025(2) requires the county to maintain a county highway that connects with a city street to the width of the highway outside the city as it connects with the street.<sup>1</sup>

Section 83.025 does not define the "width" of the highway. The attorney general has interpreted sec. 83.025(2) to mean that a county is required to maintain the highway to its full width, which extends to the shoulders, ditches and other parts of the highway.<sup>2</sup> Similarly, in *Morris v. Juneau County*, 219 Wis. 2d 543, 579 N.W.2d 690 (1998), the Wisconsin Supreme Court concluded that the area adjacent to the paved portion of the highway, commonly known as the shoulder, is part of the highway as that term is used in Wis. Stat. § 81.15 (regarding damages caused by highway defects).

In interpreting the meaning of "highway" in sec. 81.15, the *Morris* court looked to the definition of "highway" in Wis. Stat. § 340.01(22), which "includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel."<sup>3</sup> The court noted that the definition of highway in sec. 340.01(22) has been used by Wisconsin appellate courts on several occasions to interpret the meaning of "highway" in other chapters of the statutes. Thus, it is likely that the definition of highway in sec. 340.01(22) will be used by courts to interpret the meaning of "highway," and the width of the highway, in sec. 83.025.

Based upon the attorney general's opinion, supported by the supreme court's analysis in *Morris*, the width of the highway that must be maintained by a county in sec. 83.025 includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel, including the shoulder.

**County Responsibility for Improvements of Highways Running Through Cities.**  
*Distinguishing Between Maintenance and Improvements.*

The distinction between an activity classified as maintenance and an activity classified as an improvement is important when it comes to county highways that run through cities. A county has different responsibilities depending upon the classification. Section 83.025 governs a county's duty to maintain a county highway whereas Wis. Stat. § 83.05 governs improvements to county highways running through cities.

"Maintenance" of a county highway is not defined by sec. 83.025. However, the Legislature has provided guidance on the meaning of "maintenance" of county highways, as opposed to "improvements" to county highways.

Pursuant to Wis. Stat. § 84.01(9)(b), the Wisconsin Department of Transportation (WisDOT) is charged with establishing rules providing uniform minimum design standards for the improvement of county trunk highways. An "improvement" of a county highway is defined by Wis. Stat. § 84.01(9)(b) to include "construction, reconstruction and the processes incidental to building, fabricating or bettering a highway, but not maintenance." In its rules for minimum design standards for improvements to county highways, WisDOT defines "maintenance" of a county highway to include "all those measures and activities necessary to preserve a highway, as nearly as possible, in the condition of its construction. Maintenance generally involves no change in horizontal alignment, roadway widths or grade."<sup>4</sup>

As a rule of statutory construction, statutes relating to the same subject matter or having the same common purpose are construed together. Therefore, a court may construe the term "maintenance" of a county highway in Wis. Stat. § 83.025 by applying the same meaning of "maintenance" of county highways in Wis. Stat. § 84.01(9)(b) and WisDOT rules. Based upon this rule of construction, a county's duty under Wis. Stat. § 83.025 to maintain a county highway that runs through a city includes those measures and activities necessary to preserve the highway, as nearly as possible, in the condition of its construction. Presumably, "maintenance" would include such activities as crack sealing and plowing snow off the highway.

#### *County Responsibilities When Performing Improvements Under Wis. Stat. § 83.05*

If the county is performing improvements to a county highway running through a city, Wis. Stat. § 83.05 governs the county's responsibilities. Under Wis. Stat. § 83.05, when a portion of a county highway that runs through a city is to be improved, the city may determine that the roadways<sup>5</sup> of the highway (the part used for vehicular traffic) should be paved to a greater width than 18 feet if funds from the city and county are available therefor.<sup>6</sup> If a city so decides, the city may determine the type of improvement, the width, and all other features of the construction, subject to the approval of the county highway committee.<sup>7</sup> The county highway committee must fix the amount per linear foot of the improvement to be paid by the county which, unless specifically authorized by the county, cannot exceed 22 feet of the width of the pavement, as well as a portion of the costs of grading, draining, and appertaining structures.<sup>8</sup> The balance of the expense of the improvement is borne by the city and may be assessed against abutting property owners.<sup>9</sup>

Section 83.05 is silent on the particular improvements to be performed by the county other than paving the roadway of the highway. There is nothing in Wis. Stat. § 83.05 that requires the county to perform street improvements such as constructing curbs, gutters or sidewalks.<sup>10</sup> Rather, Wis. Stat. § 83.05 contemplates that the city will make street improvements in the manner provided generally for making street improvements.<sup>11</sup>

The county's role under Wis. Stat. § 83.05 regarding street improvements is to inspect the work and pay any cost share approved by the county highway committee.<sup>12</sup> If there are water, gas, or heat mains or sewers that have been laid on the street to be improved, the city council must require water, heat, sewer and gas service pipes to be first laid in such street, at the cost of the property fronting therein.<sup>13</sup>

Such work may be done by contract or by the city directly without the intervention of a contractor, under the supervision of the board of public works, or in the case of service pipes of a municipal owned utility under the supervision of the board or officers charged with the management of such utility.<sup>14</sup>

Section 83.05 does not require a county to pay any particular amount for street improvements. The county highway committee, in its discretion, may determine how much the county will pay per linear foot of improvements, except that the amount cannot exceed the cost of 22 feet of the width of the pavement without specific authorization from the county, as well as a portion of the costs of grading, draining, and appertaining structures.<sup>15</sup>

## Conclusion

A county's duty under Wis. Stat. § 83.025 to maintain county highways running through cities includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel, including the shoulder. When making improvements to county highways running through cities, Wis. Stat. § 83.05 allows a city to have the roadways of the county highway paved to a greater width than 18 feet and allows the city to make additional street improvements subject to approval by the county highway committee. In that situation, the county can choose to cost-share in the improvements. However, once the improvements are made, the county is not required to maintain the county highway to a greater width than the width of the county highway as it connects with the city street.<sup>16</sup>

Although a county has a limited oversight and cost sharing role when a city determines to improve city streets in conjunction with county highway improvements, a county and city should cooperatively discuss improvement projects and work collaboratively on the improvements in an effort to achieve efficiencies in the highway improvement process.

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<sup>1</sup> Wis. Stat. § 83.025(2) states in relevant part:

The county trunk system shall be marked and maintained by the county. No county shall be responsible for the construction and maintenance of a city or village street on the county trunk highway system to a greater width than are those portions of such system outside the village or city and connecting with such street. ...

<sup>2</sup> See 44 OAG 97 (1955).

<sup>3</sup> *Id.*, 219 Wis. 2d. 543, ¶ 29 quoting Wis. Stat. § 340.01(22).

<sup>4</sup> Wis. Admin. Code § Trans 205.01(1).

<sup>5</sup> Although "roadways" is not defined in sec. 83.05, the Court in *Morris, supra*, found that "roadways" generally means "that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder." See *Morris*, 219 Wis. 2d at 560 citing Wis. Stat. § 340.01(54).

<sup>6</sup> Wis. Stat. § 83.05 states:

83.05 Improving streets over 18 feet wide.

(1) When a portion of the system of county aid highways in any city is to be improved, and the funds from the city and county are available therefor, the city may determine that the roadways shall be paved to a greater width than 18 feet. If it so decides, the city may determine the type of improvement, the width, and all other features of the construction, subject to the approval of the county highway committee. And said committee shall fix the amount per linear foot of the improvement to be paid by the county. The city shall then improve the street in the manner provided generally for making street improvements. The work shall be done under the supervision of the city, but subject to the inspection of the county highway commissioner.

(2) Upon the completion of the work the county's share of the cost shall be paid to the contractor as though the county had been an immediate party to the contract. Unless specifically authorized by the county, the payment by the county shall not exceed the cost of 22 feet of the width of the pavement, as well as a portion of the costs of grading, draining, and appertaining structures. The balance of the expense of the improvement shall be borne by the city, and shall be provided in the manner in which expense of street improvement is ordinarily met. Assessments of benefits may be made by the city against abutting property in the manner provided where the improvement is done solely at the expense of the city, but such assessments of benefits shall not exceed the difference between the cost of the improvement and the amount contributed thereto by the county.

(3) The provisions of subs. (1) and (2) shall apply to villages and towns subject to the approval of the county board.

<sup>7</sup> See Wis. Stat. § 83.05(1).

<sup>8</sup> Wis. Stat. § 83.05(1) and (2).

<sup>9</sup> Wis. Stat. § 83.05(2).

<sup>10</sup> See *id*; see also Wis. Stat. § 83.03(1) ("The county board *may* construct or improve or repair or aid in constructing or improving or repairing any highway or bridge in the county.") (Emphasis added).

<sup>11</sup> See Wis. Stat. § 83.05(1) ("The city shall then improve the street in the manner provided generally for making street improvements.")

<sup>12</sup> *Id.*

<sup>13</sup> See Wis. Stat. § 62.16(2)(a).

<sup>14</sup> *Id.*

<sup>15</sup> See Wis. Stat. § 83.05(1) and (2).

<sup>16</sup> See Wis. Stat. § 83.025

