

CHAPTER VII.

THE GENERAL POWERS OF A COUNTY COUNCIL OVER ROADS.

A "County Road" has already been defined in Chapter III., and, speaking generally, a County Council has all the powers over a county road that a Road Board has over a district road. It has exactly the same powers in so far as they arise under "The Public Works Act, 1905," for the effect of Section 106, Sub-section 1 (a) of the Act is that wherever in the Act the term Road Board is used in respect to a district road, that term means County Council in the case of a county road. The reader is therefore referred to the previous chapter, which gives in detail the powers of a Road Board over district roads under the Public Works Act, and it is not necessary therefore to repeat these provisions. All the reader has to do in the case of country roads, is to apply those provisions to such roads; but a County Council has somewhat greater powers than has a Road Board over roads under its control or in its district.

Powers of
County Council
over County
roads.

A County Council has the care and management of all county roads within the meaning of "The Public Works Act, 1905," and it may exercise control over all such roads although the same may not have been formed or made (see Section 245 of "The Counties Act, 1886"). This provision is more far-reaching than is sometimes understood to be the case. There are many roads, such as those on the banks of streams or rivers, or roads that have for some purpose been laid off two or three chains wide, and are only used to the extent of one chain wide, or which have never been formed, and which are partly or wholly enclosed with the adjacent land. If such a road otherwise comes

Care and
management
of County
roads.

within the definition of a county road, the County Council can exercise control over it; and if the road is wider than is necessary, the County can probably close and sell the extra width, provided that it leaves a road on the bank of the river of at least one chain wide.

Power to construct, etc., all County roads, bridges and ferries.

A County Council has, by Section 248 of "The Counties Act, 1886," full power to form, construct, improve, repair, and maintain all county roads and all bridges and ferries thereon.

County Council may be compelled to maintain County road.

In one respect a County Council is at a disadvantage as compared with a Road Board, and that is if the Council neglects to keep a county road in a reasonable state of repair; for Sub-section 2 of Section 248 of "The Counties Act, 1886," provides that the Governor may from time to time order any county road, bridge, or ferry to be made, maintained, or repaired within such period as he may in any such order determine. If the County Council refuses or neglects to make, maintain or repair the road, etc., the Governor may cause the work to be done at the Council's expense. If the Governor takes action under this section and the County Council does not pay the cost of the work, it is deducted from any subsidy otherwise payable to the Council. (There is no provision such as this in any Act that is applicable to the non-repair of any road or street vested in any other local authority other than a County Council.)

County roads in town districts.

A County Council has control of every main road or county road that traverses a Town District that contains less than 500 inhabitants (see Section 3 of "The Town Districts Act, 1906"). In every case, where the Town District contains less than 500 inhabitants, the County Council is responsible for the maintenance of the main and county roads therein, but every such road is subject to any by-laws in force by the Town District through which it passes, as well as to the by-laws of the County Council, and if the by-laws of the Town District and of the County clash, then those of the County are to prevail (see also Section 251 of "The Counties Act, 1886," and Section 32 of "The Town Districts Act, 1881.")

Section 253 of "The Counties Act, 1886," provides that a County Council, with the consent of the ratepayers, may raise a special loan for the construction of a bridge on any county road on security of tolls to be levied thereat: and Section 254 of the Act empowers a County Council to contract with any person for the building of a bridge on a county road upon such terms as may be agreed upon for granting to such person the right to levy and collect tolls on the bridge for a period not exceeding 21 years. In this latter case the scale of tolls must be first approved by the Council, and no contract is to be entered into until the proposed terms have been publicly notified in the County for two months, and every such contract must provide for the County being able to purchase such bridge at any time at a price to be fixed by valuation.

Loan for bridge on County road may be obtained on security of tolls.

Several Counties may unite in any such contract, and if a dispute arise among the Councils as to the scale of charges, such dispute is to be settled by the Governor. Two or more Counties may unite for the construction, repair, use and maintenance of bridges, roads, tramways, and ferries in any of such Counties (see Sections 255 and 256 of "The Counties Act, 1886").

Two or more Counties may unite for such a purpose.

A County Council can make a water race over or under any road or place to which the public has general access, and it may alter the course or level of the road at such place (see Sub-sections 7 and 8 of Section 272 of "The Counties Act, 1886." A County Council may contribute money for the eradication of noxious weeds or plants, and if the Council seeks to enforce a by-law for the purpose of eradicating or preventing the spread of noxious weeds or plants, it must, before or concurrently with the enforcement of such by-law use all necessary means to eradicate such weed or plant from all roads, river beds, reserves and lands under its control (see Section 292 of "The Counties Act, 1886").

County Council may make water race over or under road and may contribute towards cost of eradicating noxious weeds.

Section 295 of the last-named Act gives County Councils power to lease ferries and ferry reserves for any term, not exceeding fourteen years, on such terms, and for such rent, as the Council thinks fit, without submitting

Power to lease ferries and ferry reserves.

the lease to public tender; but in such case the Council must publicly notify the proposal for two months. It should be borne in mind in this connection that Section 160 of "The Public Works Act, 1905," makes very different provisions, as regards letting tolls at ferries and other places, and as that is the later enactment it probably overrides the portion of the Counties Act above-mentioned that is in opposition to it. The provisions of Section 160 of "The Public Works Act, 1905," have already been detailed in a previous chapter.

A provision of some importance to Road Boards and others in Counties where "The Counties Act, 1886," is not suspended, is contained in Section 145 of "The Counties Act, 1886," which provides that the County Council shall in each year apportion the gross estimated income of the County from all sources in various ways therein mentioned, including payment of the cost of constructing and maintaining all main roads and county roads within the County, and of bridges on such roads, and of ferries. The section also provides that part of the revenue is to be apportioned in constructing, maintaining, or contributing to construct or maintain such bridges, exceeding thirty feet span, on district roads (*i.e.*, roads under the control of Road Boards) as the Council shall think should be so constructed or maintained.

Another provision of importance is contained in Section 321 of "The Counties Act, 1886," which provides that if any dispute shall arise between a County Council and any Road Board, Town Board, Borough Council, or other County Council, or any persons or body, as to the right to receive rates, or to the possession, care, or control of any bridge, road, or other property, the Governor shall alone or finally decide upon such dispute after such inquiry, and also in such manner as he shall think fit. In case of such a dispute being referred to the Governor for decision, it is usual for him to remit the matter to a Commissioner appointed under "The Commissioners Act, 1903." When this is done the inquiry is held in open Court, and the parties have to adduce evidence as in any other judicial proceeding.

Apportionment of County funds towards maintenance of roads and bridges over 30 feet span

Disputes between County Councils and other local authorities.

In addition to the powers to make by-laws regulating heavy and other traffic on roads under "The Public Works Act, 1905," as already detailed in a previous chapter, a County Council has power, under Section 311 of "The Counties Act, 1886," *inter alia*, to make, alter and repeal by-laws:—

Power to make by-laws regulating traffic.

- (4) For the inspection of all public vehicles, and to prevent the use of such as are unsafe or insufficient.
- (5) To provide for the licensing and numbering of all the vehicles plying for hire for the carriage of passengers or of goods within the County, and to prevent unlicensed vehicles so plying.
- (6) For regulating the number of passengers and the quantity and weight of goods which may be carried in each such vehicle, either with regard to the construction and dimensions thereof, or the number of horses required to draw the same, and to prevent such number, quantity, or weight being exceeded.
- (7) For regulating the manner in which the number of each vehicle, or the number of passengers, or the quantity or weight of goods it is licensed to carry, or the scale of fares for the use thereof, shall be shown upon or in the same.
- (8) To prescribe whether and how the name of the owner of any such vehicle shall be shown thereon.
- (9) For appointing the several sums to be paid to the County fund for the licensing of vehicles, as herein mentioned.
- (10) To prescribe the lights to be carried by every vehicle, public or private, within the County, and their position on the vehicle.
- (11) For regulating either in proportion to the weight of load or the number of animals employed, the width of the tyres or wheels which shall be used by all vehicles, whether plying for hire or not, within the County.

- (12) For regulating the weight of any engine, agricultural or other machine, or vehicle of any kind, and the weight of any load or material of any kind which shall be permitted to cross any bridge, and the times when such engines, agricultural or other machines, or vehicles, shall be allowed to cross any bridge.
- (13) For regulating the times when, and the conditions on which traction engines may be allowed to pass along the roads within the County.
- (14) For regulating the pace, mode, or manner, and the times at which any horses, cattle, engines, agricultural or other machines or vehicles shall cross or be driven, led or taken, over any bridge.

By-laws appointing sums to be paid must be approved by Governor.

There is an important proviso to these powers, and that is that no by-laws appointing the several sums to be paid to County funds for the licensing of vehicles shall come into force before the same are approved by the Governor by notice gazetted. The by-laws for the Governor's approval should be sent to the Under-Secretary, Colonial Secretary's Department, Wellington.

Such by-laws may not provide for license fee, but they may authorise registration fee.

The case, also, of *Hamlyn v. Ferrier* (25, N.Z.L.R., 122; 8, Gaz. L.R., 480), shows that Sub-section 13 above does not empower a County Council to impose a license fee thereunder, but it will authorise the imposition of a registration fee. The Court held in that case "that in a by-law made under this sub-section it is a valid condition that the engine must be first registered, and that the owner should pay a small fee to cover the cost of registration; but the payment of a license would not be a valid condition. When a fee is imposed which is intended not merely to recoup the Council the expense of registration, but to be a tax upon the use of the roads, such a fee becomes a license fee, and is a special tax for the imposition of which there must be clear statutory authority, and no such authority is given by Sub-section 13 of Section 311."

County Councils very frequently make Heavy Traffic By-laws under both the Counties Act and the Public Works Act, and as the Minister for Public Works has the power of veto for twelve months after such by-laws have been sent to him, it is advised in cases where the by-laws are made under both Acts, and where license fees are charged, that a copy should be sent to the Minister for Public Works, as well as to the Colonial Secretary's Department; and failure to send a copy of the by-laws to the Minister for Public Works within one week from the date they are made may render them *ultra vires* (see *Adams v. Busham*, 8, Gaz. L.R., 540).

By-laws regulating heavy traffic may be made under Public Works and Counties Acts.

In addition to special powers under the Counties Act, County Councils have special powers under "The Public Works Act, 1905," as follows:—

Powers of County Councils to declare roads to be County or District roads.

A County Council may, by Section 104 of "The Public Works Act, 1905," make county roads throughout the County; and by an order publicly notified, may from time to time:—

- (a) Declare any district road within the County to be a county road, and with the consent of the Road Board, revoke such order, and on such revocation the road to which it relates shall become a district road.
- (b) With the consent of the Road Board in whose district the road lies, the County Council may declare any portion of such county road to be a district road, *vide* Section 104 of "The Public Works Act, 1905," but when "The Counties Act, 1886," is in force, and there is no Road District, that portion of the County is called "an outlying district," and all the roads in such district are county roads by virtue of Section 105, Sub-section (a) of "The Public Works Act, 1905," and the County Council is responsible for the construction and repair of all country roads (see Sections 106 and 107 of the Act).

Power to sell
flax on roads.

The case of *The Chairman, etc., Southland County Council, and others v. Nanhire* (District and Magistrates' Courts Reports, Vol. I., p. 75), shows that a County Council has the power, either before or after the construction of a county road, to sell the right of cutting flax growing thereon, and may sue for damages for an invasion of that right in its own name, and without joining the Attorney-General as plaintiff. The judgment in that case would appear to show that the same right exists in a Road Board or other local authority having roads or streets under its control, and also that the same principle applies to other substances growing on roads, besides flax.

This decision was appealed against, but the judgment was upheld by the Supreme Court (see *Nanhire v. Southland County Council*, 25, N.Z.L.R., 953; see also *McEwan v. Southland County Council*, 24, N.Z.L.R., 652).

Declaring road
to be Govern-
ment, County,
District or
Town Board
road.

The Governor-in-Council has power, under Section 103 of "The Public Works Act, 1905," to declare any road to be a Government road or a county road, or a district road or a Town Board road. This power is absolute, and is not subject to any conditions, and there is no appeal. Any Order-in-Council made under this provision can also be revoked from time to time, and a fresh Order-in-Council issued as often as the Governor thinks fit. It will be seen from this that there is power for the Governor-in-Council to interfere as between a Road Board and a County Council if for any reason one of them is aggrieved at the action of the other in refusing to make any special road a county or district road; but it is presumed that it would require a very strong case, in which injustice is clearly shown, before the Governor-in-Council would consider himself justified in interfering in such a case.

Power for
County Council
to apportion
cost of main-
taining District
roads.

There is power under Section 108 of the last-mentioned Act for a County Council to apportion the cost of maintaining any district road in the County among the local authorities within the County, and with the consent of the Town Board a County Council has power to declare any part of a county road in a Town District to be under the control of the Town Board. These matters will be treated

more in detail in a later chapter dealing generally with the question of vesting roads and bridges that benefit more than one district, and apportioning the cost of constructing and maintaining the same among local bodies of such district. The same remark applies also to the case of boundary roads between Counties and Boroughs, and between two Counties, under Sections 110 and 111 of "The Public Works Act, 1905," and Section 250 of "The Counties Act, 1886."

In addition to their powers under Section 311 of "The Counties Act, 1886," the Westland, Grey, Inangahua, and Buller Counties are, by "The Westland, Grey, Inangahua, and Buller Counties Vehicle Licensing Act, 1892," respectively authorised from time to time to make, alter, or repeal by-laws to provide for the licensing of all vehicles drawn upon or along any road within the County, and to prevent unlicensed vehicles using any of the said County roads, and for appointing the several sums to be paid to the County Fund for the licensing of vehicles as herein mentioned; which sum may be appointed to vary in respect of different classes of vehicles, the number and species of animals used in drawing the same, the weight of the load laden on such vehicles, the width of the tires of the wheels, or the number of passengers to be carried respectively. The Act, however, provides that no vehicles shall be entitled to any exemption from being licensed as aforesaid by reason of carrying His Majesty's mails, if any goods, merchandise, or passengers are conveyed in the same vehicle; but this provision does not apply in respect of any vehicle used for the carriage of mails under any contract entered into before the passing of the Act, until after the expiry of the said contract.

An Act called "The Counties Vehicle Licensing Act, 1893," enables the Governor-in-Council to apply the same provisions to the Counties of Waitemata, Rodney, Bay of Islands, Whangaroa, Mongonui, Otamatea, Whangarei, Hobson, Hokianga, Taranaki, Clifton, and Waimea, and the provisions of that enactment were accordingly applied to these Counties by an Order-in-Council published in the *New Zealand Gazette* of November 10th, 1893, page 1586.

Powers of certain County Councils to license vehicles.

Powers of certain other County Councils to license vehicles.

The Taranaki County Council made a by-law under this enactment appointing a scale of fees, as follows:—

- (1) On each coach or other vehicle, regular or intermittent service, conveying passengers for profit, if drawn by four or more horses, £20; for daily use, £10; tri-weekly, £7 10s; weekly, £3 15s; occasional, £2.
- (2) Ditto, if drawn by three horses, £15, £7 10s, £5, £2 10s, and £1 5s.
- (3) If drawn by two horses, £10, £5, £3 15s, £1 17s 6d, £1.

On this by-law being contested the Court held that the County Council had no power to provide for a license fee varying according to times or distance travelled. Also that the by-law was uncertain and unworkable. Also that the fees were too high, and were unreasonable and unduly oppressive, and that the by-laws were *ultra vires* (see *Taranaki County Council v. Pennington*, District and Magistrates' Courts Reports, Vol. 1., p. 100).

Bridge fund.

Sections 77 to 79 of "The Local Bodies' Loans Act, 1901," give a County Council special powers to raise money for the purpose of providing funds for the reconstruction of bridges.

Section 77 states as follows:—

Bridge rate.

(1) Notwithstanding anything in "The Counties Act, 1886," limiting the amount of general and separate rates which may be made in any year by any local body, the Council of any County, if duly authorised in that behalf by a poll of the ratepayers taken in manner prescribed by this Act in the case of a proposal to raise a special loan, may, by special order, make and levy in addition to the general and separate rates authorised by the said Acts to be raised, a special rate, to be called a "bridge rate," for the purpose of providing funds for the reconstruction of bridges on roads under the jurisdiction of the Council, but such rate shall not in any one year exceed the amount of one farthing in the pound on the capital value of all the rateable property in the County.

Such a licence cannot be varied according to times and distance travelled.

(2) Such special rate may be levied on the whole County when the bridge proposed to be constructed is for the benefit of the County generally; or the Council, if it thinks fit, may levy the rate on one or more ridings which are specially benefited by that bridge. Rate may be general or local.

(3) The proceeds of any such rate shall be paid into a separate account at the bank, to be called "The (name of local body) Bridge Fund Account, and a separate account thereof shall be kept by the Council. Proceeds of rate to be paid to separate account.

(4) The cost of raising the rate shall be charged against the General County Fund, and no part of such Bridge Fund shall be used for any purpose save as in manner hereinafter provided. Cost of raising rate chargeable to County fund.

Section 78 states as under:—

(1) Where by reason of any accident of flood, fire, or other mischance, or on account of dilapidation, it becomes necessary to renew any such bridge exceeding thirty feet in span, the Council may make application to the Treasury for a loan for that purpose. Loan for bridge may under certain circumstances be granted without a poll of the ratepayers.

(2) Such application shall set out:—

(a) Particulars of the span and locality of the bridge proposed to be renewed, and an estimate of the cost thereof.

(b) A certificate of the amount then standing to the credit of the Council's Bridge Fund Account, signed by the agent of the bank at which the said account is kept.

(c) A statement signed by the County chairman, showing the total charges to date against the Bridge Fund Account, and the amount of interest and sinking fund required to pay off all bridge loans already granted to the Council under the next succeeding section.

Section 79 provides:—

(1) The Treasurer, upon being satisfied that the circumstances of the case, and the funds at the disposal of the Council, as hereinbefore provided, warrant him in so doing, may, without reference to the ratepayers of the County, grant such loan. Treasurer may grant loan.

(2) The Bridge Fund Account of any County shall be used solely and exclusively for meeting the interest and charges on loans raised under the provisions of this section.

Power to raise loan without poll under section 118 Public Works Act.

A County Council or other local authority has power to raise a loan, without a poll of the ratepayers, for the construction of any bridge, or the establishment of any ferry or ford authorised by the Governor to be constructed, established, or rebuilt under the provisions of Section 118 of "The Public Works Act, 1905."

PRIVATE BRIDGES AND FERRIES.

Private bridges.

Sections 257 to 259 of "The Counties Act, 1886" (set out below) contain provisions under which private persons may construct or establish bridges and ferries, and may charge tolls for the use thereof. These provisions are useful in some cases, but they have not been taken advantage of to any appreciable extent, and no regulations as referred to therein have hitherto been made.

Conditions under which private bridges may be erected.

Sections 257 to 259 of "The Counties Act, 1886," provide that the Governor may, subject to such conditions as he may think fit, authorise any person to construct a bridge across any river, creek, or stream, or to establish a ferry across any river, creek, stream or lake, and to permit the maintenance of such bridge or ferry for such period as he shall think fit, and the occupation for such period as he shall think fit of such portion of any highway or Crown lands as may seem to him to be necessary as a site for any such bridge or ferry, but every such bridge and ferry is deemed to be respectively a public bridge or ferry, and must be open to the use of the public at all hours, subject to any regulations made regulating the use thereof respectively.

Power to make regulations as to private bridges.

Section 258 provides that the Governor may from time to time, as occasion may require, make, alter or revoke regulations either applicable to such bridges or ferries generally, or applicable only to any one such bridge or ferry.

- (1) For the management of such bridges or ferries, and the approaches thereto, in the occupation of the person authorised to maintain the same, and for the maintenance of such bridges or ferries in good repair.

- (2) To fix and appoint the tolls to be levied on such bridges, and the fares to be chargeable for the conveyance of passengers, animals, or goods by such ferries.
- (3) To declare what exemptions shall be allowed from the payment of any such tolls or fares.
- (4) Regulating the collection of any such tolls or fares, and for preventing the evasion thereof.

(No regulations appear to have been made hereunder.)

Section 259 provides that the Governor-in-Council may from time to time delegate to the chairman of any County Council for the time being by his office and not by name, as he thinks fit, all the powers vested in him by the two last preceding sections; subject, however, to the condition that no occupation of Crown lands shall be authorised under any such delegation without the sanction of the Governor. In any case the chairman can only exercise his delegated powers under the authority of the Council, and by virtue of such delegation so exercised he may do by public notification whatever the Governor is hereby empowered to do by Proclamation.

Power to delegate Governor's authority to County chairman.