

## Government and Early Roads in Michigan

By the terms of the Northwest Ordinance all laws of the Old Northwest Territories and of the Territory of Michigan had their precedence in the laws of the existing states. It was not until a state constitution was written and adopted that a new state could start writing their own laws, although generally the laws of the new states were merely extensions and refinements of the laws they had adopted while territories. Michigan was no exception in this regard. Consequently the origin of the laws governing Michigan roads, and everything else, can be found in the laws of the earlier states, notably New York, Pennsylvania, and Ohio.

Initially the governing authorities in Michigan had little to do with either the creation or location of roads. Roads were things that "just happened", the results of the needs of the local citizenry. Lewis Cass, Governor of the Territory of Michigan from 1813 to 1831, was well aware of this. Speaking in 1816 of the settlement of Michigan he referred to those who would come to live in Michigan. "He is the pioneer to begin the road, which is to be traveled".<sup>1</sup> And in 1818, "We can expect no roads through this country till it is the property of individuals. There will be no population to make them or keep them in repair".<sup>2</sup> Once the roads had been established the government could make them 'official' highways subject to the laws of the state but it was townships that were required to provide the funds and organize the local citizens to provide the manpower to build and maintain these roads. The government did give itself the authority to create roads: "The Governor is authorized by this Act to lay out two public Highways therein described",<sup>3</sup> but the reality was that the roads were already there and they were still the responsibility of the local citizens.

The Survey of Michigan which started in 1815 did give points of reference from which roads could be created but the survey itself did not create roads. However, it is a consequence of the rectangular survey system which established townships and square mile sections within townships that we have a grid system of roads in southeastern Michigan.

After the survey and with the beginnings of settlement, the government provided procedures allowing citizens to petition for the creation of a road.

An Act to Regulate Highways passed under the governor Lewis Cass effective January 1, 1820 spelled out in detail the manner in which roads were created and the duties and responsibilities of public officials and of citizens with regard to the roads.<sup>4</sup>

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<sup>1</sup> Carter, Territorial Papers, volume X, page 636.

<sup>2</sup> Carter, Territorial Papers, volume X, page 759.

<sup>3</sup> Laws of the Territory of Michigan, volume 2, page 180. This was an 1816 restatement by Governor Cass of an Act passed October 24, 1805.

<sup>4</sup> Laws of the Territory of Michigan, volume 1, pages 449-461. This act includes a section that indicted that it replaced similar acts passed December 1, 1817 and June 10, 1818.

The essential elements of this act gave county commissioners the authority to "establish, open, keep in repair, alter, and vacate all roads and highways, and make and enforce all orders necessary therefore"; instructed that "every free male inhabitant, being above the age of twenty-one and not incapacitated by bodily infirmity, be assessed to work on the public roads and highways"; and required that township supervisors make a list of "who are by this act made liable to work on the highways". It also established the width of roads. "All roads to be herein this territory shall be six rods (99 feet) in width" unless circumstances required that they be narrower, but "no road shall be opened less than 30 feet wide". There were other provisions and qualifiers in this Act but this and the previous Acts established without doubt that Michigan roads and highways were under the jurisdiction of the government.

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When Michigan became a territory in 1805 the Moravian road,<sup>5</sup> which was probably still in use, and the road along the Detroit River, were the only roads in the territory. In 1812 General Hull forced a "road" through the Black Swamp at the west end of Lake Erie from Ohio to Detroit. That road is occasionally referred to as the first road in Michigan but it was little more than a foot path and generally impassible.

Governor Cass was well aware of the need for roads if Michigan was to be settled and he pushed the federal government to provide for them. A road was started towards the settlement of Pontiac in Oakland county and a better road was started to replace the Hull road of 1812.

Finally in 1825 Congress was prevailed upon to appropriate money for the survey and construction of a military road from Detroit to Fort Dearborn (Chicago). It took 10 years to complete. Appropriations for other roads, some justified as being of military importance, followed. A road from Detroit to Saginaw was started in 1829. The Fort Gratiot Road from Detroit to Port Huron was built between 1830 and 1835. The Territorial Road branched off from the Chicago Road at Dearborn and passed through Ann Arbor, Jackson, Battle Creek, and Kalamazoo to St. Joseph. The last road begun in the territorial period, Detroit to Lansing to Grand Rapids was surveyed in 1832.<sup>6</sup>

Meanwhile the settlement of lower Michigan was proceeding and the pioneers were making their way to their land as best they could. Generally they followed the Indian trails. When travel to the interior commenced the first "land lookers", walking or on horseback, used these trails because they were there. These pathways soon evolved from Indian trails to roads as the pioneers struggled to get their belonging to their new homes. And from all accounts it was a struggle.

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<sup>5</sup> The Moravians were a religious sect that promoted Christianity to the Indians. A group of them were allowed by the British to build a community on the Clinton River near present day Mt. Clemens in 1782. They built a road from their settlement to a mill in Detroit. This was the first inland road in Michigan. Dunbar, page 146. The Moravians remained in Michigan only a few years.

<sup>6</sup> Bald, page 152. Bald is incorrect regarding the starting point of the Territorial Road.

The word "road" in the 1820's, and even in the 1830's and 1840's meant something very different from what it does today. A road then was primarily a cleared strip through the wood. Stumps were cut as short as possible, and the undergrowth was chopped out. That was a road, at least before numerous wagons had passed over it. Ruts soon developed, and in wet seasons mud holes appeared. To make passage possible in such places and through swampy ground, small logs were laid side by side to form a corduroy road. Four to six horses or oxen were needed to draw heavy wagons, and they frequently bogged down. When this happened, extra horses from another team and the use of fence rails or saplings for levers were needed to get started again.<sup>7</sup>

But this was home and things were improved rapidly, at least up to a point. The tree stumps and rocks were moved aside, bridges and culverts created were necessary, and some of the worst holes filled, but there was always the dust and the mud, and there was not much they could do about that. Occasionally a layer of gravel was put on the road making it an "improved" road but there was no base for the road except in the marshy areas where corduroy or planks were used.<sup>8</sup>

Since the federal government was not going to offer much help, it was left to the Legislative Council of the Territory of Michigan to address the needs of the pioneers with regard to roads. This started March 30, 1827 when the Legislative Council passed an Act Relative to the Duties and Privileges of Townships. In this act they established the nature of township government, requiring the election in each township of three Commissioners of Highways and as many Overseers of Highways as there were highway districts in the township.<sup>9</sup>

Two weeks later on April 12, 1827 they passed An Act to Regulate Highways. This act was essentially a repeat, with revisions, of the Cass act effective in 1820 but it contained a number of new sections. It detailed the responsibilities of the Commissioners and Overseers; established rates of compensation, and reduced the width of roads to 4 rods (66 feet) except in the case of private roads, essentially what we know as driveways, which were to be 2 rods wide (33 feet). The Act contained two new important provisions:

Section 19. "That whenever it shall become necessary to have a highway upon the line between two townships, such highway shall be laid out by two or more of the commissioners of highways of each of the said townships, so that such line shall be the center or middle thereof;"<sup>10</sup>

Section 39. "That the commissioners of highways in the several townships in this Territory be and they are hereby empowered and required to cause to be opened a public road on the line of each section of land in their respective townships, not less than four rods wide, one half of the road to be taken from each adjoining section..."<sup>11</sup>

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<sup>7</sup> Bald, page 153. Refer also to the Pioneer Experiences.

<sup>8</sup> The term corduroy road comes from the word "corduroy" meaning a type of fabric created for French monarchs, cloth of the king. If you still don't know what we are talking about find some corduroy fabric for an understanding.

<sup>9</sup> Laws of the Territory of Michigan, volume 2, page 317.

<sup>10</sup> Laws of the Territory of Michigan, volume 2, page 501.

<sup>11</sup> Laws of the Territory of Michigan, volume 2, page 507.

In these paragraphs is the first requirement that roads be created along section lines, and section 39 is the final section of the Act, almost an after thought. Perhaps it was. In the compiled laws of the Territory of Michigan printed in 1833 and in the Revised Statutes of 1837 wording similar to section 19 above is present, but there is no provision for or requirement that roads follow section lines. The local Commissioners of Highways were allowed to determine where roads should be laid out. By then the precedent had been set and it was quite logical that roads should be at the perimeter of a person's property if circumstances permitted it. On those occasions where it was not feasible to place a road on a section line, the road usually followed property lines, most of which were also defined by the survey. The result was that southeastern Michigan developed a grid pattern of roads.

Except for the Territorial Roads.

It was early realized that roads were needed that connected the villages and settlements that were rapidly appearing all over southern Michigan. Another legislative act, An Act Defining the Mode of Laying Out and Establishing Territorial Roads, was approved April 12, 1827.

Be it enacted by the Legislative Council of the Territory of Michigan: That all territorial roads to be hereafter laid out within this territory shall be viewed, surveyed, established, and returns made thereof, agreeably to the provisions of this act, and shall be established and complete returns made thereof, within one year from the passage of the act by which said road or roads may be granted, or authorized to be laid out respectively.

Section 3. That each territorial road shall be laid out, from the place of beginning to the place of termination, on the most direct route, where suitable ground can be found whereon to establish the same, always having regard to the intermediate points, if any, in such road; and all territorial roads that shall be thereafter established, agreeable to the provisions of this act, shall be opened, and considered public highways, not less than one chain wide.<sup>12</sup>

The act contained additional details particularly with regard to the compensation a person might receive if their property was taken for a territorial road. At least six such territorial roads were authorized in 1828 and many more followed.

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The concept of Highway Districts in townships had occurred early. One of the duties of the township Commissioners of Highways resulting from the 1827 Act was to divide the township into districts, creating as many districts as they thought appropriate to ensure proper maintenance of the roads. Each district was to have an elected overseer who would report on the road conditions of their district and organize the local residents when it was judged that road work was necessary. In each district a road tax was assessed and this tax could be paid either in labor at a rate set by the legislature, or with cash if one was wealthy or a non-resident land owner, or declared exempt from laboring by the law.

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<sup>12</sup> Laws of the Territory of Michigan, volume 2, page 593. The two territorial roads located in Superior Township were the Ann Arbor Trail and the Territorial Road to St. Joseph.

The system had its short comings. The districts with heavily traveled through roads were assessed more than remote districts; the quality of the overseers varied, the wealth and the quality of the people varied, and the nature of the terrain varied. It was rather inequitable. Eventually a cash road tax on everyone replaced labor and the state and counties contributed more to the upkeep of through roads. The township Highway Commissions were reduced to one person and the district overseers eliminated. In 1905 the Michigan State Highway Department was created. Legislation was passed authorizing the formation of county highway departments. A series of acts changed the taxing and financing structure of roads and with the 1931 McNitt Act, in which over a period of five years counties took over the responsibility of township roads, the role of townships in the construction and maintenance of local roads was eliminated. About the only thing the townships do now is to contract with the county to perform "special" road maintenance, such as spraying for dust control, and contributing a share of the cost for the maintenance of local roads.

(For more information read The History of Roads in Michigan by Dorothy Pohl and Norman Brown; and Michigan Highways from Indian Trails to Expressways by Philip Mason.)