

such as this one, which is far from development pressure, it really was not necessary to pay at all for the restrictions since they had no effect on market value.

I therefore conclude that all of you ought to consider a range of legal devices, and relate your choice among them to what you anticipate will be the loss caused by your restriction.

LANDSCAPING AND SCENIC ENHANCEMENT

Joseph D. Buscher
Special Assistant Attorney General
Maryland State Roads Commission

My subject assignment for this panel is Title 3 of the Highway Beautification Act of 1965 which title has to do with Landscaping and Scenic Enhancement. I could say to you very truthfully I do not have the solution to your problems or know the answers to your questions, and thank you and sit down.

However, I shall attempt in a few minutes to demonstrate how little I know about the subject even though I attempted to get clarification and guidelines as late as the day before yesterday from the Office of the Bureau of Public Roads here in Washington.

Section 319 (a) of the Federal Aid Highway Act has been on the books since, I believe, the inception of the Interstate System. Under the provisions of this section the states were permitted to include as part of construction the cost of certain landscaping and roadside development. The language of this section has, under the 1965 Act, been broadened. If Section 319 (a) is used for landscaping and scenic enhancement purposes, it is on an applicable matching fund basis -- 90-10 on the interstate, 50-50 on the federal aid primary.

Also as part of the Highway Beautification Act of 1965 Section 319 (b) was added. Under the provisions of this section there is allocated to the States an amount equivalent to 3% of the federal aid

highway funds appropriated annually to each state which shall be used for "landscape and roadside development within the right of way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public."

It is not necessary that the State spend matching money to acquire this 3% "bonus" payment which comes from General Funds and not from the Highway Trust Fund.

To say the least, the statute is ambiguous. For instance, the statute provides that the funds may be used for the acquisition and development of publicly owned and controlled rest and recreation areas. It is seriously doubted that the Congress intended that the state highway departments have the authority to acquire and develop publicly owned rest, recreation or sanitary facilities. It does not appear to be the intent that the State Highway Department should be given the authority to acquire, for instance, a recreation area now owned by the Department of the Interior and to develop same, or to acquire and develop a state owned recreation area. Common sense seems to indicate that it was intended the State Highway Departments be given the authority to acquire land for the purpose of developing thereon publicly owned rest, recreation and sanitary facilities. Again, the Act provides for the acquisition of interests in and improvements of "strips" of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to the highways. The Act also provides for the development of such areas within or adjacent to the right-of-way "reasonably necessary" to accommodate the traveling public. The Act is silent on the length, width, location, size and other physical features of the "strips" of land. The Act is also silent on what is "reasonably necessary" to accommodate the traveling public; nor does it define "other facilities" as used therein. However, the Act does provide that the Secretary of Commerce shall administer the Act and the authority to administer has been delegated to the Bureau of Public Roads.

The Act was approved by the President on October 22, 1965. Almost three (3) months have elapsed and to the best of the writer's knowledge the only official communication from the Bureau of Public Roads relating to this subject took the form of a telegram dated November 17, 1965 from the Chief Engineer of the Bureau. That telegram addressed to the Regional and Division Engineers says that the

best use of 319 (b) funds is for acquisition of interests in adjacent strips of land along interstate and primary highways and the next best use is for highway beautification on such adjacent strips on the primary system.

Your writer has been in frequent communication with representatives of the Bureau attempting to get clarification on the use of 319 (b) money. However, he has met with little or no success.

It appears that the Bureau's procedural memoranda are either prepared by or approved by the Office of the General Counsel for the Bureau. That Office was pitifully understaffed before the Beautification Act and with the additional legal problems occasioned by that Act appears to be woefully undermanned. The PPM's apparently then go to the Engineering Division for clearance. That Division is, as it should be, headed by an engineer. The PPM's apparently also need the approval of the Right of Way Division of the Bureau. That Division is not headed by a qualified appraiser, an economist, an experienced realtor or person qualified in land use but is also headed by an engineer. The PPM must ultimately receive the approval of the highway administrator or his representative. More engineers. It may well be that the engineers are still using their slide rules to determine the location, maximum length and width and description of "strips" of land and attempting to define what is "reasonably necessary" for the traveling public by some mathematical equation. I am informed that after PPM's clear the Bureau, they then must be approved by the Secretary of Commerce, and your guess is as good as mine as to the gymnastics required by Commerce before approving a PPM.

In making these statements I do not intend to be critical of individual Bureau personnel. All with whom I have talked from the Administrator down have been personally cooperative. However, the net result of the Bureau's joint action is, to say the least, non-productive and disappointing.

All of the states have been allocated substantial sums of money to spend in implementing the Highway Beautification Act during the current fiscal year. This money will be lost to the states in less than 5-1/2 months if not used. Nevertheless there are no concrete guidelines from the Bureau on how this money can be spent.

There was a question and answer session at a meeting held on December 1 in Washington, D. C. on this subject. One of the questions asked of a Bureau official was, "What is a maximum width of a scenic strip you might approve under Section 319 as amended?" Answer: "You come back after about five years and we will tell you the biggest one

we have acquired by that time." The answer goes on to state - "The former Act had a provision that the strips of land would be of limited width. That particular provision is no longer in Section 319 of the Act as it now stands." In another part of the answer to the same question the official said, "but the limitations are those of judgment, and I say a limitation will be on what you can see from the highway right of way and from the rest area on the highway right of way or within this adjacent strip of land or a scenic overlook." The latter guideline appears to be of little help since in many areas, particularly mountainous areas, you can see for miles into the valleys and the area of vision would not only embrace 5 or 10 or 100 acres, but maybe a thousand or more acres.

One part of this official's answer is, I think, helpful. He stated, "There is a little matter of economics in here on the part of the highway department as to undertaking to acquire interests in a strip of land, and the fact that they will be expected and required to maintain the condition which they achieve by acquiring such an interest."

I tried to obtain specific cases from the Bureau where requests for approval of the purchase of areas for scenic easements have been approved or rejected. I was unable to get much which would be of assistance to you. However, in one case the Bureau did approve a request from the State of, I think, Kentucky, to acquire 5 acres adjacent to one of that state's highways for the restoration and improvement of a scenic or historic area. In another case one of the states, I believe New York, made the request to spend 319 (b) funds to acquire land adjacent to a federally aided highway in a city for the purpose of establishing a public park. This park would be used by residents of the area. This request was rejected and I think rightfully so.

In conclusion, I believe the only information I can give at this time is for you to advise your highway departments that they should use 319 (a) funds for beautification within the existing highway right of way and that they may use 319 (b) funds for the acquisition and restoration of scenic areas and for the acquisition of land on which to construct and maintain rest, recreation and sanitary facilities adjacent to the right of way of the Interstate or Federal Aid Primary Systems.

Short of specific advice from the Bureau, it would seem that the several highway departments should use their own best judgment in determining the length, width and size of the strips to be acquired, keeping in mind that it will be the duty of the highway department to maintain them, and that the several departments use their own best

judgment in determining what type of rest, recreation and sanitary facilities shall be constructed in areas acquired for such purposes. (I might tell you that the Bureau has unofficially advised me that the construction of a picnic area within a recreation area is permissible). In giving this parting bit of advice I hope the Bureau's engineers and the State Highway Departments use the same dictionary in defining "good judgment".

WESTERN EXPERIENCE WITH SCENIC VIEW AND PROTECTION EASEMENTS

Leonard I. Lindas, Administrator
Legal, Right of Way and Utilities
Nevada State Highway Department

My part of this program is to discuss western experience in the acquisition of scenic view and protection easements, in furtherance of the national beautification program.

Beauty is said to be an assemblage of graces or properties satisfying the eye, ear, intellect and aesthetic or moral sense. It just occurs to me that beauty is not the same thing to all persons. I am acquainted with a quite famous geologist who once observed with me a large segment of land, occupied by many homes, that had detached itself from the mainland and was slowly sliding into the Pacific Ocean. He thought the view was beautiful. Apparently the younger generation's idea of beauty, or at least with some of them, is a hair style that likens them to some species of sheep dogs. In fact, I have an adjective book that lists some 231 adjectives that can be used with the word "beauty". For instance, pristine, evanescent, ravishing, unattainable, naked and bridal, to mention a few. So much for my opening remarks regarding beauty.

There seems to be a complete dearth of experience in the western states in the acquisition of scenic easements, with a few minor exceptions. The bulk of the states who answered my inquiries have had no experience whatsoever.

The State of Washington, prior to 1965, had a very limited experience. If they desired to preserve an area because of its scenic value, they would purchase the land involved as a roadside rest area, but the conveyance to the state would not spell out the real purpose of the acquisition.