

State Highway Officials and the Laws Project

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● THE American Association of State Highway Officials, being fully aware of the growing highway problem and that the nation's pattern of heterogeneous and outmoded highway laws is a serious deterrent to proper highway modernization, in 1952 requested the Highway Research Board to undertake a study of such existing laws.

The study was not to be for the purpose of writing or dictating policy or a uniform highway code, but to conduct a comprehensive research review of all State constitutions, highway statutes, highway policy procedures and pertinent court decisions and to prepare an analysis and an inventory in an orderly form presenting those essential features encouraging and supporting proper and adequate highway practices.

Much of the basic road law predates the use of the automobile and is predicated upon the prime purpose of a public thoroughfare being to serve the needs of the adjacent property with access being allowed anywhere the owner might select.

The rights-of-way requirements for the majority of the nation's primary trunkline highways were acquired three decades ago when there were only about one-third the motor vehicles in use as now, traveling at approximately half the current average speeds, and when the improved property involved in right-of-way taking was only a fraction of what would be encountered at this time. In fact, a great majority of the expensive property development complicating a highway modernization program was encouraged and enhanced by the existing arterial highway routes. Property values enhanced by the highway itself precludes the economical modernization of the existing route in the majority of cases.

Since the development of the trunkline primary network some thirty years ago, except for all too few instances, the courts have not been involved in major right-of-way acquisition programs and especially the kind geared to modern and future motor needs. Most highway work, because of the effects of the great depression of the 1930's and World War II and the Korean conflict, has necessarily been reconstruction upon existing locations and rights-of-way, and such improvements have not kept pace with motor-vehicle use or needs.

Consequently, the legislator and the lawyer generally has neither had opportunity nor necessity to consider highway statutes in light of changing needs and concepts.

In the past, two types of public roads have sufficed; first, the land-service road, generally now referred to as the secondary or feeder road in our classification procedures; and, secondly, the arterial or primary highway, which usually serves through travel and adjacent property and thereby is a dual purpose facility.

With changing and increasing motor transportation demands and desires, however, after certain traffic densities are reached, a facility cannot efficiently nor safely serve a dual purpose for the two types of traffic characteristics are not compatible.

The need for a third class of highway has developed, a highway located, designed, constructed and operated especially to safely and economically accommodate the long haul, high density, high speed, express travel. The need for and the acceptance of this third class of modern highway has been demonstrated by the construction and popularity of the toll turnpike.

This third class of highway represents a minor, but very important, portion of the total public road and street mileage, and supplying such facilities is not something for the future, but is now overdue. An analysis of the economic cost of time lost, personal injuries and fatalities, excess operating costs and property damage due to inadequate highways eliminates the subject of the immediate need for modern highways being a matter of conjecture or argument.

Because of the present traffic densities involved and trends indicating ever-increasing future demands, design geometrics for modern expressways in most cases preclude the adaptation of present rights-of-way and road locations. The multilane, divided, controlled access facility is the most efficient, the safest highway devised by the highway

engineer. It is extremely expensive to construct, and, in some instances, will utilize the last logical and desirable location remaining between major route control points.

Because of the expense involved and the need to serve not only present, but also future needs, it is evident that every provision must be made to preserve the investment, the location, the capacity and the safety features of the highway, as well as to have sufficient right-of-way available at a later date to add to the facility to serve reasonable future needs. If future needs are not considered during the initial right-of-way acquisition, in all probability, future property developments would make it impossible to acquire the necessary land at a later date when it becomes necessary to provide additional traffic capacity.

These aspects raise the three foremost indicated changes that should be considered in highway law from the modern viewpoint. One, the expeditious acquisition of necessary highway right-of-way at a fair and reasonable cost, coupled with immediate possession to accelerate the construction. Secondly, the authority to acquire rights-of-way for future needs and use. Thirdly, the authority to acquire the rights and be granted the power to control egress and ingress.

It has been demonstrated that random access and ribbon development along a heavily traveled trunkline can decrease traffic capacity by one-half and increase the accident frequency as much as five-fold. Access control is progress in motor transportation and is necessary for the public welfare. The main commodities that the toll road patron gets for the payment of the premium toll are the safety and economic advantages of the access control features of the toll turnpike.

As to the matter of right-of-way acquisition, the purpose of law is to give the public the right to take property needed for the good of the public, yet compensate the property owner for the property taken and damages sustained. At present, so many laws exist and the interpretations are so varied and complex that expeditious right-of-way acquisition at favorable prices to the public is sometimes difficult and time consuming, especially when new locations involving wide rights-of-way and access control features are involved.

The condition is aggravated by our out-dated laws and the courts' lack of comprehension of present and future highway needs and the economics of motor transportation.

Access control will be opposed by those living along the expressway route who want direct access, or by the property owner who wants the road location to result in a financial windfall to him, in addition to receiving fair and just payment for the property taken by the road, or by the enterprising commercial interests wanting to exploit the business potentials of the dense stream of traffic.

The lack of access control can create a ribbon development and traffic friction that in turn works as a malignancy to destroy the efficiency of and the investment in an expensive major highway.

Five states are currently without some legal provision to control access, unless the respective general highway laws may be construed as broad and comprehensive enough to permit the construction of freeways. All the states having access control statutes do not have all the essential elements of an effective statute, and some states having authority show some hesitancy to exercise such rights because of what they feel is adverse public opinion.

It is generally conceded, however, that to construct a national network of modern defense highways without the application of access control would be disastrous and all bills proposing enlarged highway programs that were considered by the Congress in 1955 recognized the inadequacies of at least many state highway laws and provided for the Federal Government to exercise eminent domain and acquire access rights where the state laws were inadequate and when requested by the state in order to insure access control on, and the expeditious construction of, the Interstate System of Highways. Such a provision, however, is not a substitute for proper state highway laws, but only a necessary expedient until the time that the horse and buggy laws of yesteryear may be brought up to the 300 horsepower requirements of today and tomorrow.

After the Highway Research Board started the highway study at the request of the highway officials, it became apparent that a sizeable budget and a special staff would be required for the undertaking involves many ramifications and a tremendous mass of

research work.

The Research Board estimated that three years and \$150,000 would be needed to make the study. The Bureau of Public Roads and the Automotive Safety Foundation provided the funds for the first year, and the Executive Committee of the American Association recommended the several states contribute \$500 each annually for the second and third years, to match a like amount of funds to be provided by the Bureau of Public Roads, and ordered a ballot to be sent to the states whereby the states would make such a financial commitment. Within recent days, balloting has been completed, assuring the full financing, and the project is fully activated. A staff of carefully screened recent law school graduates have been employed by the Research Board, and the study is well under way. In fact, the project has already given assistance in furnishing special data on particular legal problems confronting some of the individual state highway departments.

When the final study report is completed, it might be that the Highway Officials would use the results to develop a basic model highway code, embracing the authority and best practices for efficient highway management and operation geared to current and future needs. Such a code could be considered by any state involved in the process of developing adequate highway laws. In any event, the study will clearly show those laws that are outstanding and promote efficient highway administration and development. Out of the thousands of laws used by the some 35,000 road and street agencies of the various levels of government in this nation, the best and needed features will become known to legislators, to highway officials and to lawyers. We shall see legislation and legal interpretation catch up with the long-range planning of the highway official and the pressing motor transportation needs of the public.

Until there is universal understanding, the highway official hesitates to press for highway law changes for fear the result may be even less adequate than at present. The legislators and the courts should have representation in administering and steering the highway laws study, for by such connections will all involved interests become interested in the subject and the project serve the best interests of our country and yield the maximum returns.