

Report of the Committee on Highway Laws

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● THE HIGHWAY LAWS Committee of the Highway Research Board is well along in its major project designed to provide highway officials with comprehensive reports on the legal aspects of every major highway function. The Committee is actively engaged in a study of constitutional, statutory, and case law, for it is from this vast body of material that the Committee is extracting essential elements of highway law presently in force.

A special meeting of the Committee was held November 17, 1957, at Chicago, Illinois. Many of the top officials of the state highway departments and offices of state attorney generals attended. The staff of the laws project reported in considerable detail on their work in progress and completed reports.

HRB Bulletin 145 was published during 1956, entitled "Highway Laws." It contains discussions of highway law from the standpoint of federal, state, and local officials.

The public utility relocation problem in connection with highway improvement is a continuing one, and, accordingly, there has been steady interest in the Committee's study on this problem, published as HRB Special Report 21, "Relocation of Public Utilities Due to Highway Improvement, An Analysis of Legal Aspects."

REPORTS PUBLISHED OR IN PROCESS

During the year, the Highway Laws Committee was responsible for publication of several valuable and well-documented studies in connection with highway laws.

Expressway Law, An Analysis (Special Report 26)

More than 1,500 judicial decisions and a substantial amount of highway literature were reviewed in connection with the preparation of this report.

In its summary of findings, the report acknowledges that the law relating to expressways does not involve a completely new set of rules, consisting more of a refinement of existing law achieved through an evolutionary process.

The broad framework of the report involves two basic questions:

1. What were the rights and duties of abutters and the states prior to the time of the enactment of modern expressway statutes?
2. What have the states done to clarify, affirm, or change these concepts?

The report notes that the function of the conventional unlimited access highway has been to serve largely the abutting land—to provide a means of ingress and egress from an abutter's property. Accordingly, certain property rights in the existing highway arose for his benefit—the rights of access, air, light and view. However, these rights cannot be fixed inflexibly for all times and all places.

The state, on the other hand, is charged with the responsibility of providing safe and adequate highway systems commensurate with the times. All states have vested in their highway commissions the power to acquire rights-of-way for highways, although this aspect of delegation of power has not been free from controversy.

Under the state police power, highway authorities may, to a certain extent, regulate access to insure safer and more efficient highway travel. Where such regulation of access results in damage to an individual, it is theorized that the use of police power is merely consequential to a superior public interest.

Generally, according to prevailing legal principles, an abutter may not be deprived of all access to an existing highway without compensation, but such compensation will



Figure 1. John R. Fitzgerald Expressway, Boston, Massachusetts—Many aspects of expressway law were involved in connection with this modern expressway running through the center of the city.

3. Definitions.
4. Governmental unit authorized.
5. Standards for exercising authority.
6. Intergovernmental agreements authorized.
7. Requirement of consent of local governments.
8. Provision authorizing control of access on both existing and new roads.
9. Elimination of intersections.
10. Frontage roads.
11. Design.
12. Authority to acquire both private and public property.
13. Authority to acquire fee simple interest.
14. Authority to acquire access rights, air, light, and view.
15. Acquisition of land in addition to immediate right-of-way needs.
16. Precedence in court proceedings.
17. Provisions denying or limiting access.
18. Traffic regulations.
19. Public utility provisions.
20. Provisions relating to roadside services and commercial enterprises.

Acquisition of Land for Future Highway Use, a Legal Analysis (Special Report 27)

The purpose of this report as set forth in its preface is to analyze existing statutes and court decisions involving acquisition of land for future use, and to isolate the important principles which should be considered in drafting legislation authorizing the acquisition of land for this purpose.

be justified only where he suffers a special injury differing in kind, but not in degree, from that suffered by the general public as a result of the obstruction of access. Much confusion has resulted from attempts to determine what constitutes "special injury" as distinguished from non-compensable damage.

In an attempt to solve some of the problems inherent in expressway construction laws, as distinguished from the conventional highway, most states have enacted expressway statutes. This action leans toward the theory that public policy matters should be determined by the legislature as the representative of the people, and not by piecemeal litigation through the judiciary.

The report summarizes and discusses the substantive elements extracted from the various expressway laws. These elements are:

1. Declaration of legislative purpose.
2. Separability and severability provision.

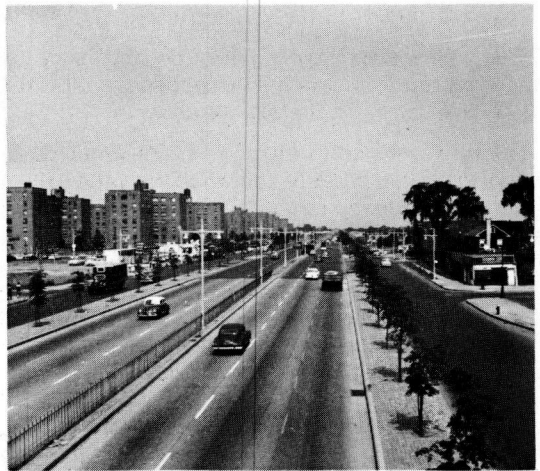


Figure 2. Bruckner Boulevard in New York City—Frontage roads give added protection to expressways.



Figure 3. Fall River Expressway between Taunton and Fall River, Massachusetts—Right-of-way costs will be reduced by advance acquisition of land.

The report is a culmination of a review of state statutes, of hundreds of judicial decisions, and a substantial amount of highway literature, in an attempt to find clues as to concepts, laws, and practices dealing with the legal aspects involved. The resultant findings are expected to be of help to those directly charged with acquiring land for highway purposes and may also serve as a guide to legislators, highway administrators, planning engineers, and others.

Some of the more important benefits to be derived from an adequate program of acquiring land for future highway use include the following:¹

1. Right-of-way costs will be minimized by forestalling development of the land ultimately required for highway purposes.
2. Orderly development of communities will be facilitated.
3. Private developers and property owners will be enabled to plan their private land uses and development wholly consistent, physically and functionally, with an ultimate highway plan.
4. Right-of-way may be acquired more economically when not acquired under pressure of having to meet a deadline for construction by providing an adequate period of time for negotiation.

It was found that at that time 15 states² had specific statutes authorizing land acquisition for future use. In addition, five other states have legislation granting such authority by implication.³

Based upon an analysis of judicial decisions, existing statutes, and needs for modernization of the highway system of the nation, the Highway Laws Committee has set forth

¹ Proceedings, Convention Group Meetings, Papers and Discussions, 1954, American Association of State Highway Officials, "Advance Right-of-Way Purchases for Freeway Construction," E. F. Wagner.

² Arkansas, California, Colorado, Florida, Idaho, Louisiana, Maryland, Nebraska, Nevada, New Jersey, New York, North Dakota, Oklahoma, Virginia, and Wisconsin.

³ North Carolina, Oregon, Tennessee, Texas, and Washington.

in its report 16 elements on characteristics which state legislatures may wish to consider in connection with their land acquisition programs. These elements are:

1. Declaration of legislative policy.
2. Delegation of authority.
3. Words of futurity.
4. Standards for exercise of power.
5. Methods of acquiring property.
6. Determination of necessity.
7. Type of interest acquired.
8. Power to sell lands no longer needed.
9. Power to lease.
10. Application to improved or unimproved lands.
11. Application of acquisition for future use to types of highway projects.
12. Financing acquisition of land for future use.
13. Definition of terms.
14. Designation of offenses and penalty provisions.
15. Severability provisions.
16. Intergovernmental relationships.

The report discusses statutes passed in some of the states which specifically authorize acquisition for future highway use. Generally, these statutes have a common set of elements and characteristics including:

1. Who has the power to acquire for future use.
2. Method of acquisition.
3. Type of interest acquired.
4. Determination of necessity.
5. Power to sell and lease.
6. Words of futurity.
7. Standards for exercise of power.
8. Kind of property acquired—improved or unimproved.

In an appendix to the report is a summarization of statutory and case law concerning acquisition of property for future use by states.

Popularized versions of these two studies were published during the year by the Automotive Safety Foundation. One is entitled "Expressway Laws, Are Yours Adequate?" the other is "Acquiring Rights-of-Way for Future Highway Use, Does Your State Have the Authority?" Both of these documents have gone far and wide, and have brought summaries of the subject to many groups that otherwise might not have had the benefit of knowledge in this particular field.

Condemnation of Property for Highway Purposes, A Legal Analysis, Part I (Special Report 32)

With the volume of highway construction increasing steadily, there is every expectation that the power of eminent domain will have to be resorted to more than ever. This is especially true with respect to suburban areas where land use has been intensified and in urban areas where land values have increased so rapidly.

This report, issued in two parts, covers the various aspects of the power of eminent domain including the techniques utilized by state legislators. The four aspects with which Part I is concerned are:

1. Delegation of the authority to condemn.
2. Property which may be taken.
3. Type of legal estate which may be taken.
4. Designation of the procedure to be followed.

The report aims at assisting the states in evaluating present condemnation laws, and sets up guides, bench marks, and materials for this purpose not only for states but for local jurisdictions as well.



Figure 4. Viers Mill Road in Suburban Washington—Development of suburban land increases need for adequate authority to acquire right-of-way.

The four main problems dealt with in the report, as mentioned above, are treated separately from the standpoint of state, county, city, town and village, and special authorities.

Condemnation of Property for Highway Purposes, A Legal Analysis, Part II

This report deals with one of the most troublesome aspects of the entire condemnation procedure—the question as to the particular point at which the condemner may take physical possession of the property and begin construction of the facility. Suggested statutory provisions which will permit the condemner to proceed with construction in a more expeditious manner are included. This report will be published before the end of 1958.

Legislative Purpose in Highway Law has been reviewed by the Laws Committee and the state highway departments and after extensive revision resulting therefrom is now ready for release. This is an analysis of the so-called "declaration of purpose" which is rapidly gaining favor of those charged with the duty of drafting new legislation, inasmuch as it can be of immeasurable help in determining the intent of the legislature.

Highway System Classification, Part I, Primary State Highway Systems, is an investigation of the legal aspects of highway classification involving an analysis of constitutional provisions, state statutes, and judicial decisions. The first draft of this report is being reviewed by the Committee and liaison representatives, and will be ready for publication in the near future. Subsequent reports in this series will analyze state, secondary, county and other local systems.

State Laws Relating to Federal Aid for Highways, presently to be reviewed by the Committee, is a compilation of current state statutes which expressly refer to federal-aid highway laws. The study considers the types of authority delegated by state legislators to agencies and political subdivisions to permit cooperation in the various federal-aid programs and insure the benefit of federal highway appropriations.

Constitutional Provisions Concerning Highways will include a discussion of federal and state constitutional provisions concerning highways directly and indirectly, as well as those relating to taxation and indebtedness.

Intergovernmental Cooperation in Highway Matters, A Legal Analysis

This report deals with cooperative legal relationships between different levels of governmental units (federal, state, county, townships, and special districts) established for the purpose of carrying on highway improvement programs.

ASSISTANCE TO STATES

The staff of the Highway Laws Project also rendered assistance to many of the states with respect to special legal matters. For example, evaluation was made of three proposed access control bills for one state; case materials relating to the authority of highway departments to construct median strips were compiled for another; statutory provisions concerning compensable elements of damage in highway land acquisition were assembled in response to an inquiry from one of the states; and for another, the legal aspects involved in the exchange of property for highway rights-of-way were formulated. A "model" act for the Mississippi River Parkway States was reviewed.

During the year the Committee has issued six monthly memoranda on current highway legal matters. These circulars report legal activities almost as quickly as they occur.

PAPERS PRESENTED AT ANNUAL MEETING

In January, 1958, the Highway Laws Committee met in Washington during the Annual Meeting of the Highway Research Board. Three very important and informative papers were presented. All of these are included in full in this report.

Louis R. Morony, Chairman, and David R. Levin, Secretary, Highway Laws Committee, summarized the various activities of the Laws Committee, including a progress report on current studies and future plans. Mr. Morony also reviewed the history of the Highway Laws Project.

The Law and Highway Modernization

Mr. Clifton W. Enfield, General Counsel, Bureau of Public Roads, outlined the legal problems involved in current efforts to modernize the highway plant. Visualized were the more important issues from a national point of view and particularly with respect to the federal-aid program.

With the enactment of the Federal-Aid Highway Act of 1956, legal deficiencies were discerned in many of the state highway laws. Much of the legislation passed was on a patchwork basis to meet immediate needs only.

Mr. Enfield suggests that highway legislation be kept ahead of modern highway construction by being imaginative and farsighted enough to provide the legal tools required by all those actively connected with the construction and maintenance of highways.

Control of Access and Police Power

Mr. Stanley N. Nissel, Columbia University Law School, summarized the possible use of the police power of a state in achieving access control, as opposed to the use of eminent domain, discussing some of the facts related to this problem and suggesting possible solutions.

A Program of Highway Research at the University of Wisconsin

Professor Jacob D. Beuscher, University of Wisconsin Law School, discussed the interest of the University of Wisconsin in legal and economic research. The paper included a summary of the work of Messrs. Heaney, Vlasin, and Covey, graduate fellows in law, who are engaged in special legal and economic research relating to highway transportation.

The paper touches upon some highly important aspects of highway research including:

- i. Operation of the valuation process as it functions in the acquisition of land for highway use
2. Impact of highway development upon farm owners and operators, the nature and effect of this impact, and possible means of reducing its adverse effects.
3. The relation between the states' police powers and their power of eminent domain in the control of access and roadside development.

Professor Beuscher summarized future plans with respect to legal research in highway law and the furtherance of economic impact studies.

HIGHWAY LITIGATION

During 1957, the Committee on Highway Laws issued six memoranda in the Highway Research Correlation Service Series summarizing the more important cases involving highway litigation. At issue were cases involving fiscal matters, weight restrictions, etc. Summaries of the more important cases decided follow:

Fiscal Matters

Arizona. The Arizona State Highway Commission adopted a construction and right-of-way budget as required by law which involved the amount of \$1,475,000 for a particular project. The Commission then entered into a contract for construction of the project for the sum of \$1,983,659, subject to certain conditions. However, the contract provided that the work done during the fiscal year must conform to the funds actually allotted. Any additional work required in excess of the budgeted amount would be performed after the Legislature appropriated additional funds. The contract would become null and void, except as to funds already budgeted, if no further funds became available.

The state auditor refused to encumber any of the budgeted funds.

The court held that the contract was valid even though the amount exceeded budgeted funds, because the state was not obligated beyond the amount of the original budget. *Duff v. Jordan*, 311 P. (2d) 829, Supreme Court of Arizona. (Memorandum 32, Committee on Highway Laws, Highway Research Correlation Service Circular 350 (November 1957).)

Delaware. The successful bidder for construction of a bridge failed to include in the bidding documents accompanying his bid certification of the names of his suppliers. On request of the state highway department, the names of the suppliers were furnished later.

The department had reserved the right to waive technicalities and the Attorney General advised that the department had the right to waive omission of the execution of the certificate. The department, accordingly, awarded the contract.

The court stated that the law required that a bid must conform substantially to the advertised terms. A slight variance which does not destroy the competitive character of the bid does not require its rejection. The variance in this case was not a substantial one. *Bader v. Sharp*, 125 A. (2d) 299, Supreme Court of Delaware. (Memorandum 30, Committee on Highway Laws, Highway Research Correlation Service Circular 344 (August 1957).)

Florida. Chapter 340, Florida Statutes Annotated, created the Florida State Turnpike Authority which proposed to issue \$185,000,000 in bonds for turnpike construction. The Circuit Court, upon petition for validation of the bonds, entered a decree validating the issue. The state and others appealed on grounds that:

1. The bonds would constitute bonds of the State of Florida in violation of Sec. 6, Art. IX of the Constitution.
2. Authority failed to make adequate engineering studies.
3. The Turnpike Act amounts to an unwarranted and improper delegation of legislative power.
4. The Constitution forbids advancement of money by the State Road Department to the Turnpike Authority.

The Supreme Court affirmed the ruling of the lower court and held that:

1. The bonds in question would be paid solely from tolls, revenues, and other funds derived from operation of the turnpike. The face of the bonds clearly stated that the state would not in any way be held responsible for taxes to service them.
2. Studies and surveys were adequate. The Legislature fixed the termini and general route, and where discretion was exercised by the Authority, such action was taken only after diligent studies were completed.
3. The act defined the projects that might be undertaken and the Authority could not go beyond those limits. Any power delegated was merely ministerial or administrative and in no sense legislative, since limitations were defined.
4. Any money advanced to get the turnpike project under way was merely a temporary arrangement. These funds would be repaid as soon as the bonds were marketed. *State v. Florida State Turnpike Authority, Fla., 89 So. (2d) 653.* (Memorandum 29, Committee on Highway Laws, Highway Research Correlation Service Circular 342 (July 1957).)

Idaho. The Legislature created a Department of Commerce and Development, one of whose functions was to publicize the state, its resources, and tourist attractions. The sum of \$50,000 was appropriated from the Highway Fund for the purpose of advertising the state's highways and encouraging travel thereon.

The State Treasurer doubted the constitutionality of the law, refused to transfer the money, and sought a judicial determination of the matter.

The Idaho Constitution provides that the proceeds from motor fuel and motor vehicle registration taxes must be used exclusively for construction, repair, maintenance, and traffic supervision of the public highways and shall not be diverted to any other purpose.

The court held that the use of such funds for advertising the state would violate this constitutional provision since such a function was not one of the specific purposes mentioned in the Constitution as a legitimate use of the funds. *State v. Jonasson, Idaho, 299 P. (2d) 755.* (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

Kentucky. An action was brought against Bracken County and others to enjoin them from expending the proceeds of a special tax levied "for the purpose of improving and constructing, either or both, the roads and bridges of the county." It was contended that the greater part of the proceeds of the levy had been spent for maintenance and repair of county roads and bridges and that such use was improper and illegal.

The Circuit Court of Bracken County in granting the petition, thus reversing a lower court decision, dwelt on the definitions of "improve," "construct," "maintain," and "repair," concluding that "improve" and "construct" mean to better the original status. "Maintain" and "repair," on the other hand, mean to preserve or remedy the original condition. Expenditures for maintenance and repair were not contemplated for funds collected to improve and construct, as called for by the statute, and thus such diversion of funds was in violation of Section 180 of the Kentucky Constitution and KRS 68.110. *Thompson v. Bracken County, Ky., 294 S.W. (2d) 943.* (Memorandum 29, Committee on Highway Laws, Highway Research Correlation Service Circular 342 (July 1957).)

Weight Restrictions and Limitations

California. The City of Redwood City enacted an ordinance specifying certain streets over which trucks exceeding three tons could operate, and prohibited travel of such vehicles over any other streets.

Plaintiff contended that: (1) the alternate route must be entirely within the city;

(2) a city does not have power to enact an ordinance which would have an extraterritorial effect; and (3) the ordinance discriminated against its trucks in favor of other trucks.

The court cited the Vehicle Code as authority for validating the ordinance at issue. The statute did not specify that an alternate route must be entirely within a city. The extraterritorial aspect of the ordinance was also covered by the same Motor Vehicle Code.

Although it was admitted that the ordinance would have the effect of increased expense and inconvenience, the court found no violation of the Federal or State Constitutions. Where regulatory provisions result in added burdens or inconveniences, and such are not unreasonable, all citizens must yield to the common good.

The court concluded that the ordinance at issue was a valid exercise of the police power and the statutory authority conferred by the Vehicle Code. *McCammon v. City of Redwood City*, 308 P. (2d) 831. (Memorandum 31, Committee on Highway Laws, Highway Research Correlation Service Circular 348 (October 1957).)

New York. The court rejected the literal construction of the weight limitation statute holding that the Legislature did not intend to permit the conviction of an operator-employee of an overweight truck without proper proof of knowledge of the breach on the part of such person, or a basis upon which an inference of knowledge could properly be drawn. The defendant was acquitted. *People v. Cubiotti*, City Court of Rochester, 157 N. Y. S. (2d) 784. (Memorandum 29, Committee on Highway Laws, Highway Research Correlation Service Circular 342 (July 1957).)

Ohio. The City of Reading passed an ordinance making it unlawful to operate vehicles with gross weights of over 20,000 pounds over its streets in through traffic.

Action was brought to enjoin enforcement of the ordinance on the ground that it violated the equal protection clause of the 14th amendment of the U. S. Constitution as well as the Constitution of the State of Ohio. The Court of Appeals held that the ordinance was void. The power of municipalities to pass ordinances was recognized. However, such municipalities must keep within constitutional limitations. In this case the municipality contended that vehicles weighing over 20,000 lb were damaging streets and endangering safe movement of persons and vehicles. Restrictions were imposed on through traffic vehicles only, yet vehicles of equal or heavier weights not operating in through traffic, and of equally damaging weight were exempt from the ordinance.

The Ohio Supreme Court affirmed the judgment of the Court of Appeals in finding that the ordinance violated the equal protection clause of the 14th amendment in that the ordinance discriminated between residents and nonresidents. *Richter Concrete Corporation v. City of Reading*, 142 N. E. (2d) 525. (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

Other important decisions in the states relating to highways follow:

Arkansas. The data fixed by the State Comptroller for participation of highway employees in Federal Social Security coverage cannot be changed by the highway commission. Such employees are employees of the state and their salaries are paid by the State Treasurer. *Arkansas State Highway Commission v. Clayton*, 292 S. W. (2d) 77. (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

The state highway commission may prohibit parking on truck routes within city limits if such a route is part of the state highway system. *Arkansas State Highway Commission v. City of Little Rock*, 300 S. W. (2d) 929. (Memorandum 32, Committee on Highway Laws, Highway Research Correlation Service Circular 350 (November 1957).)

California. A county may include state highways in a special road maintenance district and the maintenance procedure may be used to operate and maintain street lights on such state highways. *Fischer v. County of Shasta*, 299 P. (2d) 222. (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

Delaware. Legislation first cutting the membership of the state highway department and later raising the membership was held to be constitutional. *State v. Schorr*, Delaware, 131 A. (2d) 158. (Memorandum 32, Committee on Highway Laws, Highway Research Correlation Service Circular 350 (November 1957).)

Louisiana. A construction company which built a temporary bridge for the state cannot subrogate itself to the rights of the department of highways in a suit against a trucking firm whose overloaded vehicle caused the bridge to collapse. *Forcum-James Company v. Duke Transportation Company*, 98 So. (2d) 228. (Memorandum 29, Committee on Highway Laws, Highway Research Correlation Service Circular 342 (July 1957).)

Michigan. A statute requiring opening of a public highway within four years after being laid out is not applicable to a highway established by dedication. *Rice v. Clare County Road Commission*, 78 N. W. (2d) 651. (Memorandum 30, Committee on Highway Laws, Highway Research Correlation Service Circular 344 (August 1957).)

New Jersey. A borough ordinance establishing truck routes over county roads maintained by the county was declared void. The statute authorizing the ordinance provided that such routes would be established on the streets of the municipality enacting such ordinances. Since the county had the duty to maintain county roads it must also have the power to regulate them. *County of Bergen v. Borough of Rutherford*, 125 A. (2d) 568. (Memorandum 30, Committee on Highway Laws, Highway Research Correlation Service Circular 344 (August 1957).)

New York. Existing highway signs lawfully installed prior to adoption of manual of uniform traffic control devices held to be adequate warning. *McDevitt v. State*, 154 N. Y. S. (2d) 874. (Memorandum 30, Committee on Highway Laws, Highway Research Correlation Service Circular 344 (August 1957).)

Claim dismissed for damages allegedly caused by work along the New York Thruway. Plaintiff claimed his property, abutting the Thruway, was being damaged by dirt, dust, vibration, blasting, etc. *Feeley v. State*, 153 N. Y. S. (2d) 272. (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

Oregon. Court upheld the right of the State Highway Commission to classify and reclassify highways comprising state highway system. Since existing statutes did not define "primary" and "secondary" state highways, the Legislature apparently left the determination of classifications to the highway commission and not the courts. (Memorandum 27, Committee on Highway Laws, Highway Research Correlation Service Circular 333 (March 1957).)

Virginia. Provision of bus facilities through and over tunnel-bridge project was held to be a proper exercise of a governmental function. Court ruled that operation of busses was a necessary link in highway activity, especially since prior to construction of the new facility, the state highway commission had operated ferries as connecting links in the system at these points. *Almond v. Day*, 199 Va., 1, 97 S. E. (2d) 824. (Memorandum 31, Committee on Highway Laws, Highway Research Correlation Service Circular 348 (October 1957).)