An Attorney General Looks at Highway Law

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●IN THE PAST years, attorneys general were seldom called upon to "look" at their highway laws. These laws, for the most part, were rarely subjected to judicial scrutiny, and, as they became obsolete, new laws were added with little or no attempt being made to repeal the out-dated or codify the existing.

The principal reason underlying such apathy, was the nature of the traveling habits of the American people themselves. Except for those existing in municipalities, roads were primarily designed for farm-to-market travel and this usually involved mere intra-county operation. Hence, the procedure for land acquisition, standards of construction and a definition of offenses was left largely in the hands of the local governmental units. Condemnations were relatively rare, as the abutters were more than delighted to surrender a 60-ft strip off the south 40 for an improved and better way to town. If they wanted to go to another town or state, the public looked to the railroads. It was not until the improvement and subsequent mass production of the automobile that any serious attention was given to road conditions and such attention was largely confined to the improvement of existing roads rather than shorter routes with better alignment.

Today, as farm-to-market or secondary roads reach perfection for their recognized and admitted purpose, the establishment of a city-to-city, state-to-state, and coast-to-coast network of highways designed to carry high speed traffic with a maximum of safety is sought. Thus, what might be called an era of the "ultimate" in surface transportation is entered. The "ultimate" because highway designers are being asked to visualize the automobile and travel patterns of the public for many years in the future.

Yet, many states are asked to perform this task with a highway law enacted in 1900 or even 1935. The terms "freeways", "access rights", "circuity of travel", "diversion of traffic", and "local service roads" had not been coined at that time. The interpretation and application of present laws and efforts to draft suitable new laws obviously raises many legal problems. An attorney general welcomes the work of the Committee on Highway Laws of the Highway Research Board, which, through its periodical Correlation Service and its Special Reports furnishes him with the basic tools for this job.

As far as an attorney general is concerned, the emphasis today is upon the enormous task of land acquisition. With right-of-way costs rapidly becoming a major item in the budget, the importance of the function of the right-of-way engineer cannot be over-emphasized. In this connection, some recent appellate decisions, with appropriate annotations, involving important areas about which there has been little prior recognition will be discussed.

It is generally known that "just compensation" must be paid when private property is taken for public purposes. Disagreement has always existed as to the amount of such compensation, but until recently there was little argument over the compensability of any particular taking. Today, claims which involve the so-called "taking" of rights in property which were either non-existent or rarely recognized are defended. The question, therefore, is how far one can "take" or "damage" under the police power before the right to compensation arises. Likewise, because the modern highway is no longer primarily designed to serve the abutter, these abutters are found less willing to go along with the acquisition of their property and the resulting tendency to "fight the taking" on technical substantive or procedural grounds.

Paramount in this latter classification is the question of notice. It has long been recongized that personal service in condemnation cases is not always possible and that publication of notice is therefore necessary. The U. S. Supreme Court has recognized this necessity and has approved publication as a substituted means of notice.[1] Until recently, however, this court has been loath to spell out the degree of sufficiency re-

[1] Huling v. Kaw Valley R. and Improv. Co. (1889), 130 US 559, 9 S. Ct. 603, 32 L. Ed. 1045.

quired for such notice under the due process clause of the U. S. Constitution and has gone along with practically all state enactments on this subject.

In Walker v. City of Hutchinson,[2] however, a 1956 opinion, this court withdrew its broad sanction of state statutes providing for notice by publication and declared a Kansas statute on this subject unconstitutional as being in violation of the due process clause of the 14th Amendment.[3] The taking was by a city for street widening purposes and the statute in question[4] permitted either a mailed notice or one publication in a local paper. The landowner was given such notice by publication, a commission was appointed to determine the compensation, the compensation was accordingly fixed and deposited with the proper authority for the landowner's benefit. No appearance was made by the landowner who contended he knew nothing about the pendency of the proceeding until the construction was commenced. After the time authorized by statute for an appeal from the compensation award had elapsed, the owner brought an equitable action to enjoin the construction. The Kansas trial court dismissed the case, holding that the published notice satisfied the statute and that same was not in violation of the due process clause of the 14th Amendment. The Kansas Supreme Court affirmed.[5]

In deciding the Kansas statute was unconstitutional, the U. S. Supreme Court pointed out that the landowner there involved was a resident and that his name was known to the city, and was on the official records. In discussing this the court held:

> Measured by the principle stated in the Mullane case,[6] we think that the notice by publication here falls short of the requirements of due process. It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property. In Mullane we pointed out many of the infirmities of such notice and emphasized the advantage of some kind of personal notice to interested parties. In the present case there seems to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value.
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> There is nothing peculiar about litigation between the Government and its citizens that should deprive those citizens of a right to be heard. Nor is there any reason to suspect that it will interfere with the orderly condemnation of property to preserve effectively the citizens' rights to a hearing in connection with just compensation. In too many instances notice by publication is no notice at all. It may leave government authorities free to fix one-sidedly the amount that must be paid owners for their property taken for public use." (emphasis added).

The decision, of course, does not proscribe publication per se, but to be upheld hereafter, it is suggested that the statutory authority limit such publication to those upon whom personal notice could not be made, either because they are unknown or are non-residents or their whereabouts are unknown.

This case is particularly interesting in Colorado as the general eminent domain statute[7] formerly required publication of non-residents even though their whereabouts were known and they were thus capable of out-of-state personal service. It was felt that the constitutionality of this statute was questionable and as it was extremely costly and time consuming, an amendment was obtained[8] to provide that service shall be as

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[2] 352 U. S. 112, S. Ct. 200, 1 L. Ed. 2d 178.
[3] See authorization of publication of notice in general, 1 L. Ed. 1635.
[4] Sec. 26-202, Art. 2, Ch. 26, G. S. Kan. '49 "... at least 10 days notice in writing of the time and place when and where the damage will be assessed, or by one publication in the official city paper, ..."
[5] 178 Kan. 263, 284 P. 2d 1073.
[6] Mullane v. Central Bank and Trust Co., 399 US 306, 94 L. Ed. 865, 70 S. Ct. 652.
[7] 50-1-4, CRS '53.
[8] S. L. "55, p. 369, Sec. 2.

provided by the Rules of Civil Procedure. The rules, are the same as the Federal Rules. This amendment further provided that if service could not be personally made, in accordance with said rules, then a Notice of Condemnation must be published four times in a newspaper located in the county where the land was situate. The notice must include the legal description of the land to be taken, thus bringing it within the requirement of the earlier U.S. Supreme Court cases.[9]

With the advent of this modern highway, or freeway, have come a number of new legal problems involving primarily the control of access.

A freeway, of course, is a highway designed for high speed traffic to which an abutter has either no right of access or the right is extremely limited.

No citation of authority is necessary to establish that the right of ingress and egress to an existing street or highway is a property right appurtenant, the taking or damaging of which requires payment of compensation. A number of cases have been decided recently which hold that compensation need not be paid for a denial of access to a freeway on a new or virgin location.[10] The reasoning behind these opinions, and it appears sound, is that compensation must only be paid for the taking of a right in existence. In the cases of newly constructed freeways, the abutter obviously never had prior access and hence there is no "taking" thereof which would require payment of compensation. However, in this connection it should be pointed out, that there are two schools of thought on the ability of a state to effectively control access to these virgin freeways in the absence of some sort of surrender or relinquishment of an alleged right of access. In Colorado there is no statutory definition of a freeway, therefore it is the view[11] that in the absence of statute declaring otherwise, a common law right of ingress and egress arises in favor of an abutter when a highway is constructed adjacent to private property. Unless there is a statute in existence stating that no such right shall arise in the case of this special type of highway on a new location, or a statutory definition of a freeway so declaring, it has been felt that some sort of recognition of denial should be obtained from the abutter. It is felt that with 23 appellate decisions in Colorado[12] recognizing this common law right of ingress and egress, the chance that the Supreme Court will adopt the American Association of State Highway Officials definition of a "freeway" cannot afford to be taken. For this reason an abutters right of access is acquired, either by deed or decree, even though the highway is on a new location. In voluntary acquisitions, the consideration for the deed is nominal. The answer, of course, is to define "freeway" by statute, but in these days of increased liberality toward landowners, one is loath to disturb existing legislation.

One of the biggest problems to arise in connection with control of access is the question of compensability for circuity of travel. Circuity of travel is the usual result of control of an abutter's access by the construction of local service roads of "outer-highways", as they are often called. In the case of existing highways, the abutting landowner's former direct right of access is taken and an indirect route via the service road is substituted.

This circuity may result in connection with a physical taking of property or it may result without any actual taking. Of necessity, circuity will involve some diversion of traffic, but the cases seem to have classified the true diversion cases to those situations where the highway route is relocated with the old road remaining open, as in the case of a true by-pass. In such situations the courts are rather firmly of the opinion that the diversion of traffic is not compensable, as an abutter can acquire no property

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[9] Huling v. Kaw Valley R. and Improv. Co. (1889), 130 U.S. 559, 9 S. Ct. 603, 32 L. Ed. 1045; Wick v. Chelan Elec. Co. (1929), 280 U.S. 108, 50 S. Ct. 41, 74 L. Ed. 212.

[10] Schnider v. State, 241 P. 2d 1 (Calif.); People v. Thomas, 239 P. 2d 914 (Calif.); State v. Burk, 265 P. 2d 783 (Oregon); Rothwell v. Linzell, 127 N.E. 2d 524 (Ohio); Carazalla v. State, 71 N.W. 2d 276 (Wisc.); State of Missouri v. Clevenger, 291 S.W. 2d 57 (Mo.); State of Wash. v. Calkins, 314 P. 2d 449 (Wash.).

[11] See recent case of Heckendorf v. Town of Littleton (1955), 132 Colo. 108, 286 P. 2d 615.

[12] See cases collected in article appearing in Rocky Mountain Law Review, Vol. 27, No. 1, December 1954, footnote 46.

right in and to a particular volume or flow of traffic past his property.[13]

Long before traffic conditions gave rise to so-called "freeway type" construction, the courts recognized that an abutting owner's easement of ingress and egress was not absolute but, in fact, subordinate to the public convenience and subject to regulation, provided, of course that such right was not destroyed or seriously impaired.[14] While in some jurisdictions, particularly in early cases, the right of ingress and egress could be totally destroyed without payment of compensation in an exercise of the police power,[15] the majority of the jurisdictions recognized only the authority to curtail or regulate the right of ingress and egress and required payment of compensation if the right was completely destroyed or substantially impaired.[16] In 1883 Colorado committed itself to the later doctrine in City of Denver v. Bayer[17] which it has followed in subsequent decisions[18] with remarkable adherence. Thus, as was held in the Bayer case, the injuries that flow from valid regulations are regarded in Colorado as damnum absque injuria unless the impairment to the abutters' right of ingress and egress is substantial and material or is occasioned by an unanticipated extraordinary burden or servitude within the public easement, such as the construction of railroads. Accordingly, the regulatory, or police power to control the use of private property in the interest of public health, welfare and safety has long been employed as the foundation for restrictions upon an abutter's freedom of ingress and egress[19]. Illustrative of such valid restrictions recognized by the courts as non-compensable are ordinaces limiting the use of streets to particular types of vehicles, and excluding all others, such as commercial vehicles;[20] traffic regulations prohibiting left turns, which, in effect, have the result of precluding traffic from one direction;[21] ordinances imposing restrictions on parking;[22] ordinances authorizing installation of parking meters which interfere with abutter's free access;[23] and regulations prohibiting two-way traffic.[24]

One of the most difficult questions involved in access control, therefore, is to determine at what point regulation ceases and the right to compensation starts. The subject

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[13] See 118 ALR 921, and references cited therein, for collection of cases prior to 1938. Recent cases involving diversion show a tendency to group diversion of traffic and circuity of travel together. See City of Los Angeles v. Geiger, 210 P. 2d 717; Quinn v. Mississippi State Highway Comm., 11 So. 2d 810; State v. Linzell, 126 N. E. 2d 53; State v. Carrow, 114 P. 2d 896; Holloway v. Purcell, 217 P. 2d 665; Walker v. State of Washington, 295 P. 2d 328.

[14] See cases collected 100 ALR 491, 47 ALR 902, 22 ALR 942, 66 ALR 1052.

[15] Socony Vacuum Oil Co. v. Murdock, 1 N. Y. S. 2d 574; Farmers Market Co. v. City of Reading, 165 Atl. 398; Barrett v. Union Bridge Co., 243 Pac. 93.

[16] Illustrative of this rule, see Anzalone v. Metro. Dist. Comm. of Com. of Mass., 153 N. E. 325; Breinig v. County of Allegheny, 2 A. 2d 842; State v. Dept. of Highways, 8 So. 2d 71.

[17] 7 Colo. 113, 2 Pac. 6.

[18] See footnote 12, infra.

[19] See re: general authority to regulate, 25 Am. Jur., Highways, Sec. 253; 40 C. J. S., Highways, Sec. 232.

[20] Illinois Malleable Iron Co. v. Comm. of Lincoln, 105 N. E. 336; Blumenthal v. City of Cheyenne, 186 P. 2d 556.

[21] Jones Beach Blvd. v. Moses, 197 N. E. 313; Beckham v. State, 149 P. 2d 296.

[22] Pugh v. City of Des Moines, 156 N. W. 892; Village of Wonewoc, 233 N. W. 755; City of Clayton v. Nemours, 182 S. W. 2d 57.

[23] Morris v. City of Salem, 174 P. 2d 192; Hickey v. Riley, 162 P. 2d 371; Foster's v. Boise City, 118 P. 2d 721.

[24] Cavanaugh v. Gerk, 280 S. W. 51, Chissell v. Mayor and City Council of Baltimore, 69 A. 2d 53, wherein the court held that, "An abutting owner has no vested right in stagnation of street traffic or in appropriation of a street for storage, e. g. for unlimited parking."

is beginning to receive increasing attention in legal periodicals.[25] As one writer aptly stated:[26]

> If every interference with the right of access is compensable, the whole controlled access highway system will be rendered financially unfeasible.

An examination of the vast number of cases involving so-called circuity, leads to one paramount conclusion, namely, that the cases must be organized and grouped according to the particular facts involved or any conclusion is meaningless. Language can be "lifted" from practically all the cases to support either side in a given controversy. For this reason, reference has been deleted to all so-called cul-de-sac cases, where a property is placed on a dead-end street; all cases involving the closing or vacating of streets, and all cases involving impairment of access as a result of change in grade due to viaduct construction, etc. These introduce facts not applicable to the problem here involved.

Circuity of travel can result from a number of different types of traffic control devices, as well as from service road construction. Normally, it results from the construction of curbing in the center of the highway, or by a similar division of the lanes by a median, or by construction of an interchange in connection with either of the above division devises.

The leading case on circuity[27] arose as early as 1935 in New York in connection with the Jones Beach Parkway, one of the first limited access public roads in this country. In that case, notwithstanding the fact that the owner had reserved private easements across the right-of-way, the New York Court of Appeals upheld a parkway regulation prohibiting left turns, which in fact, required the abutter to travel five miles in the opposite direction before he was permitted to make a U-turn. In that case the court held:

> The rights of the abutter are subject to the right of the State to regulate and control the public highways for the benefit of the traveling public." (citing authorities)

While there were no other cases found involving circuity to an extent as great as in the Jones Beach case (i.e. 5 miles), all the cases[28] recognize the right of the public to construct center medians, dividing curbs and other appurtenances that result in considerable circuity, without the requirement for payment of compensation.

As above mentioned, and fortunately, from the standpoint of financial feasibility of the controlled access highway program, every state court that has had an opportunity to pass upon the question[29] recognizes that no right of access even exists in the case of construction of limited access highways at new or virgin locations. Hence, the abutters are not entitled to compensation for a taking or limitation of their "right of access" as such, as none, in fact, ever existed. As previously stated it is doubtful that Colorado will follow these cases because there is no statutory definition distinguishing a freeway from a conventional highway. Most of these cases, however, recognize the established right to damages resulting from severance, which conceivably may be greater than in the case of a severance by a conventional highway without access control

A number of recent cases are particularly applicable to the discussion. In State

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[25] 27 Wash. L. Rev. 111, 121; 13 Mo. L. Rev. 19; 3 Stan. L. Rev. 298; 33 Tex. L. Rev. 357; 33 Ore. L. Rev. 16; 34 N. C. L. Rev. 130; 1 Vill. L. Rev. 105; 42 Minn. L. Rev. 42; 19 Ala. L. Rev. 172; 36 N. C. L. Rev. 87; 43 Iowa L. Rev. 258 (symposium issue on condemnation).

[26] 43 Iowa L. Rev. 258.

[27] Jones Beach Blvd. v. Moses, 197 N. E. 313.

[28] Calumet Fed. Savings and Loan v. City of Chicago, 29 N. E. 2d 292; People v. Sayig, 226 P. 2d 702; City of Fort Smith v. Van Zandt, 122 S. W. 2d 187; Holman v. State, 217 P. 2d 448; Brady v. Smith, 79 S. E. 2d 851; Langley Shopping Center v. State Roads Comm., 131 A. 2d 690; Beckham v. State, 149 P. 2d 296; State v. Linzell, 126 N. E. 2d 53; Cleveland Boat Service v. City of Cleveland, 136 N. E. 2d 274.

[29] See footnote 10, infra.

v. Linzell,[30] a 1955 Ohio decision, an abutter who operated a gasoline station, store and restaurant, instituted a mandamus action against the highway department to force payment of compensation for relocation of a highway. The abutter's property would continue to remain on the old road which was specifically connected to the new road. In denying compensation the court held:

> Relators seem to claim that because of the fact that their property does not abut on the new highway their access to that highway has been destroyed. The fact is, of course, that their property does not and never did abut on the new section of the highway and consequently they do not have an easement of access to that section. Their right of access is to the old highway which has not been obstructed or destroyed and is still open to travel and connected with the same main highway. *** (emphasis added).

In Walker v. State,[31] a 1956 Washington decision, the plaintiff sought to enjoin the highway department from installing a concrete centerline curb in the middle of a 4-lane highway which would preclude traffic from one direction from making a left turn to enter their motel. In denying the injunction and plaintiff's right to compensation, the court held:

> Plaintiffs, and every member of the traveling public subject to traffic regulations, have the same right of free access to the property from the highway. Re-routing and diversion of traffic are police power regulations. Circuity of route, resulting from an exercise of the police power, is an incidental result of a lawful act. It is not the taking or damaging of a property right. (Emphasis added)[32]

One California case stands out as appearing contra to these recognized rules. In People v. Ricciardi,[33] an abutting owner who formerly had direct access to a highway was held to be entitled to compensation when his direct right was acquired by placing him on a service road which followed a circuitous route before connecting with the arterial lanes. The decision, incidentally, was a 4 to 3 decision and provoked some interesting law review comment.[34] It should be particularly noted that in the Ricciardi case, there was a physical taking involved and from the analysis by these law review comments and an examination of subsequent California decisions[35] as well as the circuity cases from other jurisdictions,[36] it is convincing that the court was not allowing recovery for the impairment of the right of access or circuity as such, but merely considering the impaired access of the remaining property as an element of severance damages, as in the leading case of State Highway Commission v. Burk.[37] This would be in line with the appellate decision of Boxberger v. State[38] wherein the landowner was held to be entitled to a definite commitment from the highway department as to the specific nature of the access to be allowed him. Thus, if the department commits itself to direct access to the arterial lanes, it may not subsequently convert same to indirect access without recognition of the property right involved and the probable payment of compensation. It is universally recognized, as above mentioned, that if the property

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[30] 126 N. E. 2d 57.
[31] 295 P. 2d 328.
[32] To the same effect and with language equally definite, see Langley Shopping Center v. State Road Commission, 131 A. 2d 690 (Md., 1957), and Holman v. State, 217 P. 2d 448 (Calif. 1950).
[33] 23 Cal. 2d 390, 144 P. 2d 799.
[34] See 43 ALR 2d, footnote 9, page 1077; 33 Ore. L. Rev. 16 at page 36.
[35] Notably Holman v. State, 217 P. 2d 448; People v. Sayig, 226 P. 2d 702; Schnider v. State of California, 241 P. 2d 1.
[36] See footnote 28, infra.
[37] 265 P. 2d 783.
[38] 126 Colo. 526, 251 P. 2d 920.

is allowed some access, either direct or indirect, the subsequent total extinguishment of same requires payment of compensation.

The only conclusion that can be reached, therefore, is that when there is an actual physical taking and circuity results from the nature of the construction, compensation may be required, not for the circuity as such, but as an element of severance damages, if, in fact, the circuity actually diminishes the market value of the remaining property. Thus, as in State v. Ward,[39] a 1953 Oregon decision, a landowner objected to the introduction of the highway department plans which showed that a service road would be constructed as a part of the project and which would afford him a means of ingress and egress. He argued that the department was trying to use this feature as a substitute for the severance damage that he was entitled to receive. The court recognized the distinction aptly when it said:

> It (the service road plan) is, therefore, not a substitute for severance damage. Without the service road, however, the land in question would be land-locked and practically valueless. Thus, the service road avoids the damage which lack of access would cause. This is mitigation not substitution. (Emphasis added)

Where this is no actual physical taking of property but merely an alteration of existing direct or indirect access resulting in circuity, or greater circuity as the case may be, it is believed that the facts involved in each particular case will have to be examined and that these facts will decide the issue of compensability. If the property was purchased by the abutter after the adjoining road was designated as a limited access highway and to which his access was indirect at the time of his purchase, the police power will permit further modifications of his ingress and egress resulting in similar or greater circuity without payment of compensation. No cases have been found involving this exact set of facts but it is anticipated that the Colorado Supreme Court may soon have to pass upon it.[40] The trial court recently ruled against the damage claim of the abutter in the case in mind.

The last subject which will be covered relates to the question of "public use." It is known that private property cannot be taken except upon payment of just compensation. The 5th Amendment to the U. S. Constitution guarantees such compensation to a citizen as against takings by the Federal Government and the 14th Amendment has been held to apply the same requirement to takings by states and their governmental subdivisions.[41] With two exceptions, the states, of course, have adopted constitutional provisions similar to those of the 5th Amendment to the U. S. Constitution.

Likewise, it is recognized that private property cannot be taken except for a public use or purpose. In the words of Justice Harlan in Madisonville Traction Co. v. St. Bernard Mining Co.:[42]

> It is fundamental in American jurisprudence that private property cannot be taken by the government, national or state, except for purposes which are of public character although such taking be accompanied by compensation to the owner.

The early attitude of the courts toward an acquisition of more property than was actually required for the public improvement is almost in solid opposition.[43] The reason for such judicial opposition, of course, was its insistence upon a strict interpretation of the constitutional requirement that property had to be taken for a public use—a rather fundamental principle in common law jurisprudence.

Illustrative of this early attitude is the case of In Re Opinion of Justices,[44] a case

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[39] 252 P. 2d 279.
[40] The Belleview Company v. State of Colorado, District Court, Arapahoe County No. 12904.
[41] Chicago B. and Q. R. R. v. Chicago, 166 US 266.
[42] 196 US 239, 25 S. Ct. 251; 49 L. Ed. 462.
[43] See cases collected in annotations in 14 ALR 1350 as supplemented in 68 ALR 837.
[44] 91 N. E. 405.

decided in 1910, wherein the Massachusetts House of Representatives submitted certain interrogatories to the Court relative to the constitutionality of a statute which would permit the City of Boston to lay out a wide thoroughfare and acquire considerable property on either side thereof, which property was to be subsequently sold or leased to mercantile interests with certain use restrictions imposed thereon. In rejecting the contention that such use would be public in nature, because of the vast benefits to the community, the court held:

> It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage to the community, and thus the public welfare, may be ultimately benefited by their promotion.

A similar illustrative ruling was handed down three years later in Massachusetts in Salisbury Land and Improvement Co. v. Commonwealth,[45] wherein the legislature authorized the acquisition of some 3½ miles of ocean front property for a state park with the further provision that lands not needed for public use might be sold or leased. In discussing this neat legislative package, the court held:

> Legislation which is designed or which is so framed that it may be utilized to accomplish the ultimate result of placing property in the hands of one individual for private enjoyment after it has been taken from another individual avowedly for a public purpose is unconstitutional.

Since 1950, the judicial trend appears to favor a broader concept of public use than originally recognized. Hence, the courts have sustained the subsurface use of a street for a public parking area as being a public use within the original servitude without the necessity for payment of additional compensation to abutters;[46] they have sustained acquisition of property outside the right-of-way for a parking lot,[47] and they have likewise sustained as a proper public use the acquisition of a tract of ground outside the right-of-way for a weighing station.[48] As stated above, recent decisions favor a broader concept of the meaning of public use.

Time does not permit a discussion of those cases, but it appears that recently at least four appellate courts have stretched the concept of "public use" so as to mean "public benefit," and, obviously, there is no limit to what can be done under this definition. These cases have been cited in the footnotes of this paper,[49] and it is recommended that they be read.

There will be an increasing amount of highway litigation—much of which will present many new and novel questions of law. It is hoped that the courts will continue to recognize existing rights without the creation of new rights. Acquisition costs are already staggering without burdening the program with the unreasonable.

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[45] 102 N. E. 619.
[46] Cleveland v. City of Detroit, 37 N. W. 2d 625.
[47] City of Richmond v. Dervishian, 57 S. E. 2d 120.
[48] Webster v. Frawley, 55 N. W. 2d 532.
[49] State ex rel Thomson v. Giessel, 60 N. W. 2d 873; In Re Opinion of Justices, 113 N. E. 2d 452; Atwood v. Willacy Co. Navig. Dist., 271 S. W. 2d 137; Opinion to the Governor, 70 A. 2d 817.