

Revision of Highway Law in Illinois

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●ILLINOIS LAW governing the construction, maintenance, operation, administration, and planning of highways is in the same general state of confusion as that which exists in many, or perhaps most, of the other states.

A number of years ago the Illinois legislature enacted a law permitting the State to build, as a part of the State highway system, entrances from State highways to specifically named State owned or operated facilities. The bill enacting this provision was relatively simple, empowering the Department of Public Works and Buildings, "To lay out, construct, and maintain, as a part of the State highway system, highways and entrances which will connect any State highway with. . . , (certain named facilities)." However, before the State Division of Highways could act under this provision there were nine different questions on which the Attorney General had to rule. For example, to determine what the Legislature meant by "State highway" when it said ". . . will connect any State highway" it was necessary for the Attorney General to refer to and construe four separate sections of the law governing State highways.

One more example, just a few years ago it was deemed desirable, in order to expedite the construction of local roads, to permit the townships to use their allotment of the State collected motor fuel tax to pay the principal and interest on bonds issued for highway improvements where the approval of the State had been secured for the bond issue and the improvements were made in accordance with State standards. However, it is necessary that such bonds include a provision for the levy of a property tax to guarantee their payment but the tax levy is abated when payment with other funds is approved. A bill, correct in every respect, was drafted amending the motor fuel tax law to permit the use of motor fuel tax funds for bond redemptions and was enacted with no opposition. It was not until the first group of bonds had been sold that a rather obscure paragraph in the township law governing bond issues, which prohibited the abatement of the property tax, was discovered. It was two years before this provision could be amended and the desire of the people and clear intent of the legislature carried out. Needless to say there was some criticism of the bill drafters but there are about 400 separate sections in the law governing highways in Illinois, many of which are very obscure.

Countless other examples, many of far greater consequence, could be recounted but those given will suffice to illustrate at least a part of the problem which exists. If there is one single criticism that could be made of Illinois highway law it is perhaps that it is too detailed. There are provisions which duplicate or qualify each other to such an extent that many times even those experienced in the field are not certain which provision governs.

The existence of this situation is attributable to a number of factors compounded over the years. First of all, Illinois is a relatively large state in both area and population. It has more than 123,000 miles of public highways ranging from a 14,000-mile State primary highway system to more than 75,000 miles of township roads. Economically there is a great diversity of interests including such different features as those of the industrial and business characteristics of the metropolitan centers such as Chicago, Peoria, and East St. Louis, the farming and agricultural areas, mining and oil production industries, and even including the growing of cotton in the southern part of the State. To provide uniform highway laws for so diversified an economic pattern is not simple.

Superimposed on this varied economic pattern is a system of highway administration involving more than 2,870 separate governmental agencies including the State government, 102 counties, 1,568 townships or road districts, over 1,188 cities, towns or villages and a dozen or more quasi-governmental agencies. Even among agencies in the same general class there is a wide divergence. For example, a model highway law fulfilling all the needs of a particular county in the State which has an area of 259 sq mi,

a population of less than 7,000 and no railroads would be absurd when applied to another county in the State which has almost five million people and is the railroad center of the nation.

The development of Illinois as a State and its system of laws has also had an effect. Illinois became a State in 1818 and the first constitution adopted at that time was very brief. It contained no provisions concerning highways, eminent domain, or any of the other governmental functions pertinent to the administration of a highway system on either a State or local level. On the State level the powers of the executive branch were comparatively weak. For instance the veto power over legislation, instead of being vested in the Governor, was given to a council consisting of the Governor and the Judges of the Supreme Court. The constitution of 1818 provided for a commission form of government in the counties and while the counties were the dominant unit of government the State Legislature exercised considerable control over their affairs.

By 1848 the development of the State necessitated the adoption of a new constitution. This new document was a great advance in political organization. It strengthened the powers of the executive branch of the government, vesting in the Governor alone the power of veto. It imposed a constitutional limitation of the indebtedness of the State and curtailed the power of the legislature over local affairs. The 1848 constitution also permitted the adoption of the township form of government by the counties. Perhaps the most significant provision, from a highway administrator's viewpoint, was the provision which permitted counties, townships, school districts, cities, towns and villages to assess and collect a tax for corporate purposes thus laying the foundation for local road administration. However, the 1848 constitution contained no specific provision concerning highways.

The next State constitution was adopted in 1870 and with a few minor changes, none of which particularly affect highway administration, remains in effect today. In general, the present State constitution, though often criticized, is a praiseworthy document and serves the needs of the State as well today as it did when first adopted. While maintaining the distribution of powers in effect under the previous constitution, the existing constitution greatly curtails the power of the Legislature to pass special legislation. It also spells out, in great detail, the powers and duties of local governmental agencies.

The constitution contains a number of provisions having a direct bearing on highway laws. Following, not necessarily in their order of importance, are the major such provisions. The constitution prohibits the taking of private property for public purposes without the payment of compensation. For many years this provision prevented the enactment of a law which would permit the State to acquire immediate possession to land for highway purposes. Fortunately a legal procedure now has been devised for gaining immediate possession without violating this provision.

To curb the abuses of special legislation the Constitution enumerates a number of subjects on which special legislation is prohibited. Of particular interest to the highway administrator is the prohibition against laws: (a) laying out, opening, altering, and working roads or highways, (b) vacating roads, town plats, streets, alleys, and public grounds, (c) regulating county and township affairs, and (d) in any situation where a general law can be made applicable.

Other constitutional provisions directly concerning the highway field establish a limitation on the local taxing bodies, prohibit the State from imposing a tax on municipalities for municipal purposes, and govern the organization of counties and townships. There are other constitutional provisions which also must be considered in relation to highway law but those enumerated are the major provisions.

There is another factor that has contributed to the lack of uniformity in Illinois highway law. Illinois is not a code state. At various times the Legislature has codified existing statutes concerning a particular subject but there is no over-all systematic arrangement of statutory law in Illinois. Neither is there any single official publication containing all the law in effect at any given time. After each session of the Legislature a book of session laws, containing the laws enacted at the last session of the Legislature, is published but this contains very little of the existing law.

The principal repository of Illinois law is a publication of revised statutes compiled and published biennially by a private legal publishing firm under the sponsorship of the

State Bar Association. Without this very excellent publication, the user of the law in Illinois would be lost, but the situation has its effect on legislative enactments. First of all the arrangement of the law in the revised statutes is dependent upon the compiler and each time a new law is enacted a decision must be made as to the particular chapter in which it should be placed. Over a period of years this has had the effect of distributing the laws concerning highways over a number of different chapters in the publication of revised statutes making it difficult sometimes to find all the law on a particular subject.

It is a constitutional requirement in Illinois that a bill amending a law set out in detail the entire section being amended and that the section being amended be referred to by the title of the bill which enacted it. A reference to the law in the revised statutes is of no effect. This requirement has led to confusion many times. Another result of this requirement, occurring when a section is amended by more than one bill by the same General Assembly, is that there are as many versions of the same section as there were bills amending the section.

Until the advent of the motor vehicle the construction and administration of highways was a matter of local concern and State law dealt in general with the powers and duties of local highway officials and with such isolated problems as the construction of toll bridges. In 1905, a law was enacted establishing a State highway commission and making a small appropriation for certain experimental purposes.

The first comprehensive State highway law was enacted in 1913 when a bill revising the law in relation to roads and bridges was enacted which codified and revised all existing State highway law. The 1913 Act provided for a State highway commission and a state highway department with a chief highway engineer and a small highway staff. However, this code dealt principally with the administration of local roads and the encouragement of the counties to construct a connected system of county highways. To this end the code provided a procedure whereby part of the construction cost of certain classes of roads would be paid by the State with the State assuming maintenance responsibility for such roads. Under the provisions of the 1913 Act, the State highway department and the chief engineer and his staff served mainly in an advisory capacity. The 1913 Act also set forth in detail the procedure to be followed by township and road districts in the construction and administration of roads under their jurisdiction. The 1913 Act consisted of 175 sections grouped under 10 general articles.

Following the enactment of the 1913 Act every session of the Legislature has enacted additional laws governing the financing and administration of county and township highway systems. At the same time each session has amended the 1913 law. While no count is available of the number of such amendments the number is not nearly as serious as is the fact that so many of the amendments either duplicate, or conflict with existing provisions and very little effort has been made to reconcile these discrepancies.

In 1917, an Act assenting to the provisions of the Federal-aid road law was adopted. This Act along with a \$60 million state bond issue Act, approved in 1918, marked the beginning of the State highway system. The \$60 million bond issue Act described in detail the highways to be built and the procedures to be followed in their construction and also, provided for the maintenance of these routes by the State. In 1924, a second State bond issue of \$100 million for highway construction was approved. It, too, contained specific provisions concerning the construction, maintenance, and operation of the roads to be built.

In 1921, between the time of the enactment of the law assenting to the provisions of Federal aid and the law approving the second or \$100 million bond issue, the Legislature enacted a law establishing a system of State highways. This law set forth the powers and duties of the Department of Public Works and Buildings and detailed the procedures to be followed in the construction, maintenance and operation of the system of State highways.

Since 1921 a number of other laws of great importance to the highway administrator have been enacted. A freeway act has been adopted, the law governing the use of eminent domain has been amended to provide for immediate possession, procedures have been enacted encouraging the consolidation of local road administrative agencies and many other statutory procedures adopted. However, there has been little attempt to

coordinate these enactments with each other or with the existing body of highway law. Perhaps one of the most glaring examples of the lack of coordination present in the enactment of highway laws during the past years is found in the law governing the use of motor fuel tax funds for highway purposes which was added to the revenue laws of the state.

These then are some of the highway law problems facing the highway administrator in Illinois. Cognizant of this situation, the last General Assembly created a commission to study and codify the laws relating to roads and bridges. The Commission, consisting of five Senators, five representatives and five citizens-at-large, decided that, due to the complexity of the existing law and the diversity of interests involved, the first step in the revision of the Illinois highway laws should consist of a compilation or codification of all existing law relating to roads and bridges.

It was also decided that the Code should contain no change in the substantive law except in those cases where there were apparent or actual conflicts. In such cases the dictates of the courts were to be followed or if there had been no judicial action the administrative practices of highway officials were to be followed.

The general scheme of the codification was based on bringing together all laws necessary to the operation of a highway system by the governmental agency responsible for the maintenance of the highway. To achieve this result it was necessary that the public highways in the State be placed in one of four systems upon the basis of the agency responsible for their maintenance. These four agencies are the State, counties, townships, and municipalities. A highway which at the time of enactment of the Code was the maintenance responsibility of the State was placed in the State system and likewise for the other three systems. The general body of law was then reviewed to bring together, under a common heading, all law necessary to the administration of a system of highways. There are however certain laws of general application to all four systems which were set out as separate parts of the Code.

Following is the general organization of the proposed Illinois Highway Code:

Article I Short Title, Legislative Intent and Application of Code

Article II Systems of Highways—Definitions

Division 1 System of Highways

Division 2 Definitions

Article III Federal-aid

Article IV State Administration of Highways

Division 1 General Powers

Division 2 State Highways

Division 3 Planning and Research

Division 4 Construction and Maintenance

Division 5 Property Acquisition and Disposal

Article V County Administration of Highways

Division 1 General Powers of County—Designation of County Highways

Division 2 County Superintendent of Highways

Division 3 Planning and Programing

Division 4 Construction and Maintenance

Division 5 Drainage and other Highway Structures

Division 6 Taxation

Division 7 Use of Motor Fuel Tax Funds

Division 8 Property Acquisition

Article VI Administration of Township or District Roads

Division 1 District Organization and Powers

Division 2 Functions and Compensation of Townships or District Officials

Division 3 Laying out, Widening, Altering or Vacating Roads

Division 4 Construction and Maintenance

Division 5 Taxation

Division 6 Road Improvement by Special Tax

Division 7 Use of Motor Fuel Tax Funds
 Division 8 Property Acquisition

Article VII Municipal Administration of Streets
 Division 1 General Powers
 Division 2 Use of Motor Fuel Tax Funds

Article VIII Freeways

Article IX General Highway Provisions

Article X Special Provisions Concerning Bridges, and other Highway Structures
 Division 1 Department Acquisition by Gift
 Division 2 County Construction and Maintenance of Free Bridges on State
 Boundaries
 Division 3 County Toll Bridges
 Division 4 Donation of Highways to Counties by Municipalities
 Division 5 Municipal Bridges, Ferries and Terminals
 Division 6 Municipal Toll Bridges
 Division 7 Municipal Bridges over River Forming State Boundary

Article XI Effect of Code, Repeal and other Provisions

The actual work of preparing the proposed code was done by a staff of four consisting of the executive director of the commission, whose full time occupation is chief bill drafter for the Legislature; an attorney employed specifically for the job and who was unfamiliar with highway law but had had considerable experience as a bill drafter and working with legislative commissions; two State highway engineers, one of whom had more than 30 years experience and whose principal job dealt with the administration of highways by the cities, counties, and townships; and the author of this report. All existing law was reviewed and several preliminary drafts of the proposed Code prepared. Best results were obtained by meeting for consultation two or three times a week and then each individual reviewing such work independently. As the preparation of the Code progressed, periodic reports were made to the Commission by its executive director and from time to time the Commission met to review the progress being made and to hear suggestions from the public. As a matter of interest, practically all of the suggestions received were for substantive changes in the law but since this had been ruled out they were not adopted. Finally about the middle of November, the proposed code was accepted by the Commission and has been prepared in bill form for submittal to the General Assembly.

The proposed Illinois Highway Code will be of tremendous aid to the highway administrator for a number of reasons. This will be the first time in over 40 years that it will be possible to find all the law governing highway administration in one place arranged in an orderly manner. It will also be the first time in many years that once a law is found there will be some assurance that there are not half a dozen other sections on the same subject.

Perhaps the greatest value of the Code lies in the fact that it has focused attention, in a manner that cannot be ignored, upon the duplications, inconsistencies and conflicts in the existing law. The legislative commission, under which codification has been made, was so impressed with this fact that they unanimously agreed to recommend, in addition to the adoption of the proposed code, the creation of another interim commission for the explicit purpose of continuing the study of the highway law in Illinois to develop a law free of such faults.