;eport of Committee on Highway Laws

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on; and DAVID R. LEVIN, Secretary, Chief, Division of Highway and Land Admin-
tration, Bureau of Public Roads

DURING the period covered by this report (February 1959 through May 1960) the ommittee on Highway Laws of the Highway Research Board was mainly concerned ith its primary function of studying all the various branches of highway law.

Study procedure consists of defining a limited area of law, such as condemnation land or control of roadside billboards, and then making a thorough examination of ertinent constitutional provisions, statutes, and cases in all the States. The materi- is carefully analyzed to identify the important elements and principles in the partic- ar area. In the published reports, these elements are grouped together, using ta- es where appropriate, to facilitate comparison of the law in different jurisdictions. ie narrative sections of the reports further point out similarities and differences be- een State laws and identify significant trends.

From 1955 until 1960, the committee has maintained a staff of attorneys to carry this research. As the end of fiscal 1960 approached, however, most of the com- ittee's original research objectives (HRB Bulletin 88) were well on their way of hav- g been accomplished, and, therefore, the staff of attorneys was disbanded. The ommittee is arranging for the few remaining projects to be undertaken by individual searchers, on a contract basis.

During its five-year existence, the staff contributed a great deal to the understand- ig of highway law throughout the United States. Its many reports, constituting excel- ent and exhaustive analyses of the law, have been well received by highway officials iroughout the nation.

MEETINGS

A business meeting of the Committee on Highway Laws was held in Boston on Octo- er 11, 1959, during the AASHO Annual Meeting. Committee activity was reported nd discussed. A resolution was approved to the effect that the member States had ound the work of the committee most helpful and that this work should be continued.

An open meeting was held during the HRB Annual Meeting in January 1960.

PAPERS PRESENTED

The following are summaries of papers presented at the 1960 Annual Meeting:

"Legal Problems Related to Transportation in the Metropolitan New York Areas," y Sidney Goldstein, General Counsel of The Port of New York Authority, reviewed ie organization and purpose of the Port Authority and explained the governmental amework within which its bridges, tunnels and highways are planned, constructed id operated. As examples of legal problems with which the Port Authority is faced, e described the controversies involving the home rule provisions of the New York onstitution, and taxation and zoning restrictions in New Jersey.

"The Future of Highway Legal Research," by David R. Levin, Chief, Highway and and Administration Division, Bureau of Public Roads, summarized the accomplish- ents of the Highway Laws Project since its inception in 1952 and pointed out some ssible new directions for future highway legal research. The proposed future pro- cts include the coordination of the various individual reports already published by e Committee on Highway Laws; reporting new developments to keep the basic Laws oject's works up-to-date; drafting model highway legislation; investigating the use electronic computers in legal research; and research into special current prob-

lems, such as control of land use at interchanges and the legal aspects of city and hig
way planning.

After this talk, J.W. McDonald, Manager, Engineering Department, Automobile Club of Southern California, presented a statement by J.E. Havenner, Director, Engineering and Technical Services, and himself in which they stressed the need for research leading to better laws assigning transportation planning and operating authority to state, county and local governments.

"Application of Laws Project Research," by Duke W. Dunbar, Attorney General of Colorado, and member of the Highway Research Board Executive Committee, was pre sented on short notice when Mrs. Anne X. Alpern, Attorney General of Pennsylvania, was unable to appear on the program. The author commented on the research being done by the HRB Laws Committee and what it meant to a State Attorney General. He demonstrated the importance of this type of research by citing several specific instances in which the work of the Laws Project had helped Colorado highway attorneys in the performance of their functions, and concluded that such research was necessary to our greatly expanded modern highway program.

"The Law of Highway Contracts," by Mary O. Eastwood, Edward J. Reilly, Helen J. Schwartz, Alfred J. Tighe, Jr., and Edward J. Zekas, staff members, Committee on Highway Laws, Highway Research Board. These attorneys recently completed a comprehensive study of the law pertaining to highway contracts throughout the United States. In this talk, they summarized the findings of their research effort, which will soon be published (HRB Special Report 57).

The texts of Goldstein's and Levin's talks, and an outline of the talk on contracts are included elsewhere in this bulletin.

REPORTS PUBLISHED PRIOR TO 1959

Special Report

21	Relocation of Public Utilities Due to Highway Improvement: An Analysis of Legal Aspects
26	Expressway Law: An Analysis
27	Acquisition of Land for Future Use: A Legal Analysis
32	Condemnation of Property for Highway Purposes: A Legal Analysis, Part I
33	Condemnation of Property for Highway Purposes: A Legal Analysis, Part II
39	Legislative Purpose in Highway Law: An Analysis
41	Outdoor Advertising Along Highways: A Legal Analysis
42	Highway System Classification: A Legal Analysis—Part I
48	Federal-Aid Provisions in State Highway Laws: An Analysis
49	Intergovernmental Relations in State Highway Legislation: An Analys
50	State Constitutional Provisions Concerning Highways: A Legal Analysis

Bulletin

88	Better Laws for Better Highways
145	Highway Laws—1956
205	Highway Laws—1958

REPORTS PUBLISHED DURING PERIOD COVERED BY THIS REPORT

Highway System Classification: A Legal Analysis—Part I (Special Report 42)

This report concerns the primary highway systems of the 50 States and Puerto Ric It is the first of a series of studies on the subject of highway classification, and will b followed by reports covering other State and local highway systems.

There is a vast body of law on this subject which, for purposes of analysis, has be broken down into six categories, as follows:

1. Objectives of the Primary System.—Criteria to be used in designating the pri-

ry highway system; that is, the standards or guides established by the legislature guide the administrative agency charged with the responsibility of designating the stem.

2. Designating the Primary Highway System.—The authority or agency responsible such designation, whether it be the legislature itself, an administrative body, or State constitution.

3. Expanding the System.—Designation of any new facilities which may be added to system, including highways constructed over new rights-of-way as well as the ab- rption of existing roads from local jurisdictions and the taking over of toll roads.

4. Alteration or Change in the Physical Location of Existing State Highways.—The nits of State highway authority in this respect is an important factor in this area.

5. Contracting the System.—The removal or detachment of a highway from the sys- n, as well as the disposition of the deleted highway.

6. Municipal Connecting Links.—Urban extensions, as well as alternate routes and passes, and the authority pertaining to the designation, alteration, and deletion of ese facilities with respect to the system.

The report also suggests elements for consideration by States which undertake to vise their highway classification law.

deral-Aid Provisions in State Highway Laws: An Analysis (Special Report 48)

This report is concerned with those provisions of State law specifically referring Federal-aid highways and highlights those areas of law in which the States have en- ted legislation to facilitate participation in the Federal-aid highway program.

The statutes are compiled and categorized with reference to the assent of the State gislature to the Federal statutes, the State's pledge to provide matching funds and to intain Federal-aid roads, and the general authority delegated to the State highway partment to cooperate with the Federal government in the construction of such roads. e remainder of this report is concerned with State statutes which pertain to State- deral cooperation in connection with the Interstate System, Federal-aid secondary ads, railway-highway crossings, public utility relocation, and other aspects of Fed- al highway aid.

ergovernmental Relations In State Highway Legislation: Analysis (Special Report 49)

Almost every strip of State highway is of actual or potential concern to more than e unit of government. This study is an analysis of statutory law to ascertain how several States have divided the authority and responsibility for roads in the various ghway systems among the State and local governments, and the extent of cooperating thority granted to the various governmental units.

Some of the statutes pertaining to interaction between governments give officials oad general powers to cooperate in highway matters while other such statutes apply ly to a certain highway function or to roads of a particular classification. This re- rt covers both the general authorizations and the statutes of more limited applica- n. It is recognized that a study of administrative practices, as well as the law, uld be necessary to get a complete picture of intergovernmental relations, but the atutes constitute the basic framework from which the highway administrators must rk and, therefore, this study of the law, in addition to being valuable in itself, is necessary first step of a comprehensive treatment.

ate Constitutional Provisions Concerning Highways: Legal Analysis (Special Report 50)

This report reviews constitutional provisions which are directly or indirectly re- ted to highway operations. Constitutions provide the broad principles with which all ghway legislation and operation must conform and this report, therefore, is con- rned with all phases of highway law. This is somewhat different from most of the ner reports of the Committee on Highway Laws in that they are concerned with Leg-

islation and case law pertaining to limited areas of highway activity.

For presentation purposes the pertinent provisions have been grouped into the fol-lowing categories: highway administration; acquisition of property; finance; inter-governmental relations; internal improvements; local, special or private laws; su against the State; and miscellaneous provisions. Further breakdowns under each of these headings provide concise compilations of all the constitutional provisions perta ing to each of the functional areas of highway law.

This document provides a ready source of information on the current and compara tive status of all State constitutions which affect both existing statutes and future legi lation bearing on highway matters.

REPORTS IN PROGRESS

Condemnation of Property for Highway Purposes: A Legal Analysis: Part III

This report, which covers the law pertaining to determination of the amount of co pensation in condemnation cases, has been written and reviewed, and is now being pr pared for printing.

Highway Contracts: A Legal Analysis

This is an analysis of general contract principles and statutes applicable only to p lic contracts, as they affect highway contracts. This report is also complete except for the printing process.

Highway System Classification: A Legal Analysis—Part II

State secondary, county, township, municipal, and other local road systems are the subject of this report. Considerable work has been done on this study, but it is not yet complete.

Highway Finance

A legal analysis of this subject is nearly finished.

Highway Administration

An analysis of the law on this subject has been undertaken and will be finished witl a few months.

Maintenance and Drainage Law

Arrangements for this study have just been made and it will start immediately.

FUTURE REPORTS

The committee contemplates future analyses of the law pertaining to highway plan-ning, location and design; programming, budgeting and accounting; traffic engineeri toll facilities; bridges; public relations; landscaping; elimination of grade crossing regulatory provisions and special legislation.

ASSISTANCE TO STATES

The Highway Laws Project receives many requests for information during the cou of a year. State highway departments and other governmental agencies often ask for comment on proposed statutory provisions or on some new specific legal problem. T committee staff, drawing on its studies of law in all the States, is often of considerat help on questions arising in a particular State. During the period covered by this re-port, the committee assisted States in problems relating to construction contracts, c trol of access, condemnation of property, and outdoor advertising.

A committee of the Oklahoma Legislature is presently working on a revision and c ification of that State's highway laws.

Members of the Highway Laws Committee consulted with the Oklahoma committee concerning some of the problems involved in this project. The Highway Research Board legal studies proved to be of considerable use in these discussions.

REPORT TO SPECIAL SUBCOMMITTEE

A special Subcommittee of the Executive Committee of the Highway Research Board, ointed by Chairman Pyke Johnson and headed by Colorado Attorney General Duke ıbar, commissioned a special task force on April 26, 1960, to investigate several tters related to the Highway Laws Project of the Board. Members of this task force re David R. Levin, Chairman; Louis R. Morony, and Robert L. Reed.

This group found that the Highway Laws Project so far has been highly successful in oplying operating highway officials with scientifically-derived legal factual materials, l proposed that legal research be made a permanent part of the program of the High- y Research Board. It was suggested that future legal research should include the lowing components:

ordination of Segments of Laws Research

By the end of 1960, there will have been published about 25 individual reports on ferent areas of highway law. Several subjects which were studied separately, in ler to divide the work up into manageable portions, are actually closely interrelated l should be considered together to achieve a fully descriptive report. For example, hway system classification involves intergovernmental relations and legislative dec- ations of purpose, yet these three subjects are in different reports. A project uld be undertaken to coordinate such related subjects and to examine the relation- p between them, much of the significance of which was necessarily not developed he original studies.

Also the statutory or legal definitions of pertinent terms and concepts should be hered in one place. This would lead to more precise and consistent use of terms ighway law.

eping Abreast of Legal Developments

It was noted that two years ago the American Association of State Highway Officials gested that after the basic work of the Laws Project is complete the materials de- oped should be continuously kept up-to-date. The task force feels that such sur- llance of the highway legal field is essential if the public interest in the highway tters is to be properly served.

The task force is presently looking into the possibility of having an independent pub- ıer consolidate the individual monographs of the Highway Laws Project. The re- ting documents could probably be published in looseleaf form so they could be easily t up-to-date.

gal Research on Special Current Problems

There are many current problems in the highway field which require legal study. e is the problem of intensive land use development around interchanges which re- es their capacity. There are many legal tools, such as the police power and emi- t domain, which should be explored to determine how they could be applied to this blem.

A study of the legal aspects of the relationship between city planning and highway ıning could lead to more effective coordination of these two functions.

An evaluation of present legal tools for transportation improvement, especially in an areas, and development of improved tools would be worthwhile.

There is a need to coordinate highway and parking facilities in urban areas. The al authorization for integrated treatment of traffic and parking problems should be died so more effective methods can be developed.

LITIGATION

The Highway Laws Committee reviews current court decisions as they are reported selects those which are of interest to highway officials. During the period covered this report summaries of these cases were published in five Committee on Highway vs Correlation Service Memoranda. Brief abstracts of the principles of the more oortant cases are as follows:

Public Utilities

When a State pays for the cost of relocation of utility facilities necessitated by the construction of a Federal-aid highway project, it may be reimbursed with Federal funds if such payment by the State does not violate State law (23 U.S.C.A. 123). In order to take advantage of this Federal aid, many State legislatures have adopted statutes authorizing the payment of such costs by the State.

Although these statutes are quite similar in nature, courts of different States hav reached different conclusions as to whether or not they are constitutional. The follo ing four cases involved court tests of these utility relocation cost reimbursement sta utes. (See previous Highway Laws bulletins for earlier cases.)

Minnesota: Reimbursement Statute Constitutional.—The statute in question autho ized reimbursement of utility companies from highway funds for relocation of utilitie made necessary by the construction of Interstate highways. The court decided the following points in its opinion: (1) such reimbursement is not a diversion of highway funds for non-highway purposes, because the use of rights-of-way for utility locatior is a proper and primary highway purpose. (2) Relocation costs are valid expenditur for a public purpose because the relocation was made necessary in order to expedite public travel and also because the public would suffer economically if the State failec to take advantage of this Federal aid. (3) The act was not a local or special law because it applied only to Interstate highways rather than to all Federal-aid highways. The classification was germane to the purpose of the law and was based on substanti distinction between Interstate highways and other highways. (4) The act was not an u constitutional impairment of the pre-existing contract between the utility company ar the State. They were the only two parties to the contract and mutually agreed to am rescind or abrogate the contract in whole or in part. Furthermore, such a change i a contract with the State is justified under the police power. Minneapolis Gas Co. v Zimmerman, 253 Minn. 164; 91 N.W. 2d 642 (1958).

Tennessee: Reimbursement Statute Unconstitutional.—The Tennessee statute pro vided for State reimbursement of utility relocation costs when the relocation was required by the construction of any highway project built with Federal-aid funds, and when the Commissioner determined that such costs would result in undue hardship u the utility. The statute was held to be in violation of Article II of the Tennessee constitution which forbids the State's giving or lending credit "... to or in aid of any pe son, association, company, corporation or municipality." The court said the basic test of Article II was whether the expenditure was for a State purpose. The court then ruled that the reimbursement of utilities in such a manner was primarily for th benefit of subscribers of utilities or their stockholders. Thus it fails to serve a Sta purpose and is not a public purpose. A dissenting justice stated that the existence o such facilities benefited the public welfare and that the Legislature was therefore jus tified in enacting such a statute. State of Tennessee v. Southern Bell Tel. and Tel. Co., 319 S.W. 2d 90 (Tenn. 1958).

New Mexico: Reimbursement Statute Unconstitutional.—The Highway Commissio was upheld in its refusal to comply with a New Mexico statute providing for the reim bursement of a gas company for the cost of relocating its lines as required by the wi ening and improvement of a State highway. The court stated that the gas line was solely for the benefit of the utility; that neither the State nor the public had any righ to use the line, and that the gas company was not a subordinate governmental agency nor was it fulfilling a governmental function even though it was serving a highly usef purpose. Therefore, the reimbursement would violate the constitutional prohibition against the donation of State funds in aid of private corporations. The court also sai that there was no damage for taking of property which required payment of just compensation. State Highway Commission v. Southern Union Gas Co., 65 N.M. 84; 332 P. 2d 1007 (1958).

Idaho: Reimbursement Statute Unconstitutional.—The defendant utility company, ordered to remove its facilities from highway right-of-way so as not to interfere wit planned reconstruction, demanded compensation under a State statute providing for reimbursement out of State highway funds in such situations. The Idaho Supreme

urt held that the statute was unconstitutional for the following reasons: The utilities ed for public right-of-way was a permissive use only and not a permanent property ht. This permissive use was for the benefit of the utilities and subscribers and ould not be paid for by the highway users who received no benefit. The court stated t giving the utilities the vested right to reimbursement would constitute an uncon- tutional gift of the credit of the State to a corporation. The utilities are profit mak- corporations and the fact that their activities furnish services to the public is not ficient to remove payment of the relocation cost from the constitutional prohibitions. e order to remove the facilities was a proper exercise of the police power and was a taking of private property without compensation. State v. Idaho Power Co., 346 2d 596 (Idaho, 1959).

The following cases involved other public utility relocation problems:

Washington: Utility Must Bear Cost of Facility Relocation.—(No statute) The loca- n of a new limited-access freeway cut across many existing streets in the City of ncouver. This case was to determine whether the State or the public utility district, nunicipal corporation, should pay the cost of relocation of utility facilities required the new construction. The utility contended that its franchise right to occupy the olic streets amounted to private property which could not be taken without compen- ion. The State asserted that a franchise from the city did not create vested rights the utility and that franchise rights are qualified by the police power of the State. e court said that whatever term was used to describe the utility's right to use the eets of Vancouver, it was still subject to the express provision requiring removal en necessary for the public convenience. The court said that the utility could still oply electricity to the whole city, therefore the change was a relocation and as such compensable according to the general rule that utilities operating under a franchise st bear the cost of relocation made necessary by highway improvements. The State Washington has a statute which provides for State reimbursement of utility relocation sts on the Interstate system, but it only applies to contracts let after June 30, 1959, ich excludes this project. State v. Public Utility District, 349 P. 2d 426 (Wash. 1960).

Louisiana: State Must Pay Relocation Costs for Utility Which Has Easement.—In 1935 owner of a parcel of land granted to the gas company a servitude or easement across property for the construction of a pipeline. In 1954 the then owner of the same land nveyed to the Louisiana Department of Highways a servitude for the construction and intenance of a highway. The Highway Department ordered the gas company to lower pipeline and the gas company claimed reimbursement for its cost on the basis that right-of-way or servitude constituted property which has been appropriated for a olic use. The court held that the Highway Department's interest in the land was sub- t to the gas company's pre-existing servitude, and this damage to the free use of servitude required compensation. Arkansas Louisiana Gas Co. v. Louisiana De- rtment of Highways, 104 So. 2d 204 (La. 1958).

Texas: Interference with Pipeline Easement Held Compensable.—In 1956 Texas se- red from certain landowners highway right-of-way easements which crossed a 38-year- easement belonging to a pipeline company. The company made the required adjust- nt in its line and demanded reimbursement for the cost. The State refused compen- ion on the ground that the State could require the adjustment under its police power hout making compensation. The court held that the private pipeline easement was perty within the contemplation of the State and Federal constitutions and that the asion of this property right required payment of just compensation. Sinclair Pipe- e Co. v. State, 322 S.W. 2d 58 (Ct. Civ. App. Texas 1959).

Pennsylvania: Reimbursement for Relocating Nontransportation Utility Facilities t Authorized by Statute.—The case involves the allocation of costs for the relocation electric company facilities required by highway construction in connection with the laware River Port Authority's Walt Whitman Bridge. The Public Utilities Commis- n required the electric company to relocate its facilities and placed the entire cost the relocation upon the Port Authority. The common law rule is that public utilities be required to relocate, at their own expense, utilities which occupy highway right- way. The court recognized that the Legislature had seen fit to change this rule with

respect to transportation public utilities, such as railroads, under certain circumstances. However, the court found no clear expression of Legislative intent to except nontransportation public utilities from their common law burden of relocating their facilities. The facility here was a nontransportation public utility. The Publi Utility Commission's order allocating the full cost of relocation to the Port Authorit was reversed. Delaware River Port Authority v. Pennsylvania Public Utility Commission, 393 Pa. 639, 145 A. 2d 172 (1958).

Kentucky: State Liable to Contractor for Failure to Clear Construction Site of Obstacles.—Because the right-of-way was not cleared of utility lines, the plaintiff contractor was unable to begin performance of his contract on time. The delay was due to a controversy between the State and utility companies over who should bear the cost of removing the lines. The court held that the State would be liable for damage even in the absence of an express contractual obligation to remove the lines, becaus in every highway contract there is an implied condition that a site will be provided upon which the road can be built. This implied condition was distinguished from an implied contract, for the breach of which the State cannot be held liable in damages. Derby Road Bldg. Co. v. Commonwealth, 317 S.W. 2d 891 (Ky. 1958).

Authority

The next six cases dealt with the authority of highway agencies.

Ohio: Authority of Director of Highways Over Federal-Aid Routes in Cities.—A statute provided that the Director of Highways could proceed with relocation of Fede al-aid routes within a city, despite lack of consent by a city, if he made a declaratio that the work was necessary. The city could appeal the Director's decision to the courts.

In the first use of this statute the City of Lakewood refused consent to the Directo plan and offered alternate proposals for the relocation of a Federal-aid route within the city. The court, in upholding both the statute and the Director's action under it, stated that the statutory procedure was constitutional even though it did not provide the city with an opportunity for a hearing before the Director, and that, although the was no Federal money involved in this particular project, it was on part of the Fede aid primary highway system and, therefore, the statute applied. The State loses no control or supervision over them. City of Lakewood v. Thormyer, 154 N.E. 2d 777 (Ohio, 1958).

Georgia: Highway Board Cannot Enact Traffic Rules Having Authority of Law.—T defendant was convicted of involuntary manslaughter resulting from a collision when he crossed the unbroken yellow centerline of a two-lane highway. Nowhere in the la the court noted, was it established what such a yellow line meant. The State Highwa Board had adopted a traffic control manual but the Board is an administrative body a cannot enact laws involving a criminal penalty. In the absence of any properly place sign explaining the meaning of the yellow line, the crossing of the line by a motorist is not of itself a penal offense. The court added that as a matter of fact the public generally knows that a yellow line means a no passing zone, but this does not mean that its violation is a crime as a matter of law. Maxwell v. Slate, 97 Ga. App. 334; 103 S.E. 2d 162 (1958).

Florida: City Has Power to Regulate Driveway Openings.—Plaintiffs applied to ci for permission to open a parking lot with driveways on two streets. The City of Mia Commission granted the parking lot permit, but with access to only one street. Acc to the other street was denied because of traffic difficulties and proximity to a fire s tion. The court held that while the city charter did not mention the regulation of dri ways as such, the question of public safety was involved and municipal corporations had implied powers to regulate driveways. The action of the city in denying the requ for the driveway would only be overruled if it were plain to the court that the restric tion bore no reasonable relation to the health, comfort, safety or general welfare. No such showing was made here. City of Miami v. Girtman, 104 S. 2d 62 (Florida, 1958).

Idaho: Highway Directors Have Power to Appoint Legal Counsel.—The Board of

Highway Directors appointed the plaintiff as its attorney. The State auditor refused to pay the attorney's salary on the ground that only the Attorney General or his assistants could act as counsel for the Highway Directors. The court ruled that the constitution did not vest powers in the Attorney General which were not subject to legislative change. It was further held that the Legislature had imposed upon the Highway Board many duties which required legal advice and that the Legislature intended that the Board should have exclusive control over employing persons to fill its positions. Padgett v. Williams, 348 P. 2d 944 (Idaho 1960).

Missouri: Court Cannot Enjoin Highway Construction Where Highway Commission Has Acted Within Its Authority.—A village sought to enjoin State construction on an Interstate route which would obstruct three of the five public streets connecting the north and south parts of town. The Highway Commission alleged that to provide grade separations for the remaining streets would cost in excess of $500,000 while saving only a few blocks of travel. The court pointed out that there was no allegation of fact showing that the obstruction of access imposed unreasonable burdens on the traveling public or extreme impairment of fire prevention efficiency. The court said that constitutional and statutory powers to locate and design State highways are exclusively conferred upon the Commission and that this denies the court the right, absent an allegation of fact showing bad faith or manifest abuse of authority, to enjoin the Commission in the construction of this highway. State v. Elliott, 326 S.W. 2d 745 (Mo. 1959).

South Dakota: Highway Commission's Authority to Set Speed Limits.—Under its authority to establish limited speed zones, the Highway Commission established a 60 mph maximum on all State trunk highways. Defendant here was convicted of driving his automobile in excess of this 60-mph limit. The conviction was reversed on the grounds that the authority to establish limited speed zones did not include the authority to establish a speed limit for the whole State trunk system. State v. Devericks, 94 N. W. 2d 348 (S.D. 1959).

Ohio: Attorney's Fees Incurred in Successful Taxpayer's Action May Not Be Paid from Highway Funds.—In a previous taxpayer's suit the plaintiff here had succeeded in preventing an expenditure of $64,500 by the Director of Highways. In this case the plaintiff is attempting to recover, from the funds which he preserved, his attorney's fees in the previous suit. The court held that such funds could not be used to pay attorney's fees because these expenses were not within the scope of the highway purposes for which the use of the funds was limited by statute. Grandle v. Rhodes, 169 Ohio St. 77; 157 N.E. 2d 336 (1959).

Pennsylvania: Highway Closed for Construction but Open to Local Traffic Does Not Cease to Be a "Highway."—The defendant was convicted of violating a statute which makes it unlawful to "operate on any highway" with a load in excess of the prescribed weight limit. The road was under detour by the Highway Department for construction purposes. Barricades were erected with appropriate signs indicating that the road was closed except for local traffic. The violation occurred within the barricades but on that portion of the road which was not actually under construction. The defendant contended that since the road was not open to the public generally it was not a "highway" and thus the weight limit statute did not apply to it. The court ruled that although travel on a highway is prohibited to all but local traffic, the status of that portion of the highway which is open to local traffic does not change for purposes of Vehicle Code provisions pertaining to highways. Commonwealth v. Weik, 188 Pa. Super. 391; 147 A. 2d 164 (1958).

New York: Interpretation of the Term "Current Prices" in Highway Contract.—An engineering firm sued the State of New York on a contract for engineering services. The part of the contract in dispute called for the preparation of project plans and itemized cost estimates "computed at current prices as used by the Department of Public Works." For this work the contractors were to be paid "three and one-half percent of the estimated construction cost at current prices, of the project as approved by the superintendent." The contractor contended that he should be allowed to determine the prices used in preparation of the cost estimates (which would be the basis for computing his fees) on the basis of the "market" or "going" or, "realistic" prices. The court held that the prices which the contract referred to were those which the Department of

Public Works compiled from the bids of successful bidders for State construction contracts. Although the engineering contractor made the cost estimate in 1952, he was required to use 1951 prices which were the "current prices" available at that time. Edwards v. State, 14 Misc. 2d 748; 178 N.Y.S. 2d 287 (Ct. Cl. 1958).

Massachusetts: Change in Staking of Excavation Entitled Contractor to Additional Compensation for Extra Work.—The cross-section plan for one of the cloverleaf quadrants on this highway contract called for the removal of all material therein. The engineers staked out the quadrants in such a way as to leave an island of rock between the access ramps. After excavation in accordance with the stakes, the engineer ordered the island of rock removed. The court held that such staking of the area by the engineer was an act of "omission or commission" which entitled the plaintiff to additional compensation under the contract. The court said that "the right in the engineer to alter the work does not mean that an interpretation binding on the contractor can be changed with impunity after the contractor has acted on the interpretation supplied." Campanella and Cardi Construction Co. v. Commonwealth, 158 N.E. 2d 304 (Mass. 1959).

Missouri: Statewide Vehicle Weight Law Applies in Cities.—A Missouri statute imposed a gross weight limitation upon vehicles operated on the highways of the State. A special statute imposed a limit on the number of pounds per axle for vehicles operated in cities. The defendant who operated vehicles exclusively within St. Louis was convicted of violating the statewide gross vehicle weight limitation. He appealed contending that the special statute limiting pounds per axle, which he did not violate, was the only weight limitation which applied to him. The court held that the special statute was not an exception to the general statute and that in cities both statutes applied. The conviction was affirmed. State v. Chadeayne, 313 S.W. 2d 757 (Mo. 1958).

Tennessee: Weight Limit Statute Which Exempts Common Carriers Is Unconstitutional.—A State statute authorized counties to prescribe maximum gross weights for vehicles using county roads. The statute exempted passenger buses and common carriers duly certified by the Tennessee Public Service Commission, for the Interstate Commerce Commission. Defendant, a common carrier, was convicted of exceeding the county weight limit which was much less than the gross weight limit imposed under the general law of the State. The court pointed out that the purpose of the State statute was to protect the streets from unnecessary injury or damage and that since there was no difference in the amount of damage inflicted by common and private carriers, there was no justification for the obvious discrimination between the two types of vehicles. The court, therefore, held that the statute violated the equal protection clauses of the United States and the Tennessee constitutions. Dilworth v. State of Tennessee, 322 S.W. 2d 219 (Tenn. 1959).