

The Future of Highway Legal Research

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● A DRAMATIC event in the highway legal field transpired approximately seven years ago. In 1952 highway officials decided collectively to sponsor a thorough study of highway law. Such a project was set in motion by the Highway Research Board, at the request of the American Association of State Highway Officials.

It is the purpose of this paper to summarize briefly what the Board's Highway Laws Project has accomplished to date, what yet remains to be done on it, and some new possible direction for future highway legal research.

ACCOMPLISHMENTS OF HIGHWAY LAWS STUDY

The work of the Board's Highway Laws Study is accomplished in a variety of ways. Its principal activity is centered in a comprehensive analysis of the functional segments of State highway codes. Additionally, monthly memoranda of limited scope are issued, involving new and current legal issues and developments. Assistance is also given to State highway departments and others on specialized subjects, pursuant to special request. Members of the Highway Laws Committee and Highway Laws Staff also participate, as requested, in public meetings of national, regional, or Statewide scope. Finally, the Laws Project has served to stimulate and develop legitimate and necessary interest in highway law, as part of the over-all highway activity. It has also provided a forum for analysis and discussion of current highway legal problems.

The Highway Laws Project is responsible for an increasingly extensive body of published material. Its first publication, issued in 1954, was entitled "Better Laws for Better Highways" (HRB Bull. 88). This document laid the groundwork for the development of the Highway Laws Study as it is known today, and indicated the need for researching the vast body of developing law concerning the highway activity.

The following year, the Laws Study published a document which has since become a classic, "Relocation of Public Utilities Due to Highway Improvement: An Analysis of Legal Aspects" (HRB Special Report 21, 1955). This was an exhaustive study of statutory and case materials dealing with the legal responsibilities for paying for public utility relocation necessitated by highway improvement. It was made available at a time when this issue was being debated by many interested persons, and was helpful to the Congress of the United States, many of the State legislatures, public and private attorneys, and many others.

Throughout its deliberations, the Highway Laws Committee has been sensitive to current needs in the realm of highway transportation. Accordingly, soon after the passage of the Federal-Aid Act of 1956, which recognized the National System of Interstate and Defense Highways (involving control of highway access) on a scale never heretofore known, the Highway Laws group undertook to study the legal problems associated with the Interstate System. In 1957, it published a study on control of highway access entitled, "Expressway Law: An Analysis" (HRB Special Report 26).

Recognizing, too, that the Congress had set up a long-range plan for the improvement of the Interstate System and that the acquisition of lands in advance of actual use was a necessary adjunct of that plan, the Highway Laws Staff undertook to gather and analyze legal and other related materials pertinent to the problem. This study was published as "Acquisition of Land for Future Highway Use: A Legal Analysis" (HRB Special Report 27, 1957).

That same year, at the Annual Meeting of the Highway Research Board, the Highway Laws Committee sponsored a Symposium on Highway Law. It examined highway law from the standpoint of the city, county, State and Federal governments. The papers

given at this meeting, together with a summary of important highway legal developments during 1957, were published as "Highway Laws—1956" (HRB Bull. 145).

The Highway Laws Committee was aware that one of the most vexing problems involving highway modernization concerned the matter of acquiring the necessary lands. Accordingly, it designated land acquisition as having top priority. As a result, the first segment of this study was published in 1958 as "Condemnation of Property for Highway Purposes: A Legal Analysis, Part I" (HRB Special Report 32). The four aspects of the condemnation process included in this segment of the study of land acquisition were the delegation of the authority to condemn, which is basic, property which may be taken by condemnation, the types of legal estate which may be acquired by condemnation, and the designation of the procedure to be followed in eminent domain proceedings.

Perhaps a word is in order here concerning the general format of these studies. Pursuant to the assigned responsibilities of the Committee on Highway Laws of the Board, the constitutions, statutes, and judicial decisions are isolated and analyzed, so that a composite view may be had as to what is now the law on a particular subject. From these materials and analyses, and in light of new needs as they emerge, an effort is made to identify the substantive elements that should be considered in the light of a maximum of adequacy of highway law.

The Highway Laws Project continued to research the land acquisition problem. The next segment of this work was published in 1958 as "Condemnation of Property for Highway Purposes: A Legal Analysis, Part II" (HRB Special Report 33). The particular aspects of right-of-way acquirement dealt with in this report involved the stage in condemnation proceedings at which the condemnor may take physical possession of the needed lands, possession pending appeal, preferential treatment of condemnation cases on the court calendars, and the right of highway officials to make entry upon lands for survey purposes.

This monograph was followed by a study of statutory declarations of legislative purpose in the highway field. As you know, these declarations contain the objective or intent of the legislatures in enacting a particular law. Accordingly, they are very important. An analysis of these laws and their elements are contained in a publication of the Laws Project, entitled "Legislative Purpose in Highway Law: An Analysis" (HRB Special Report 39, 1958).

At the 1958 Annual Meeting of the Highway Research Board, the Laws Committee sponsored an open meeting where a number of important current legal problems were aired, including control of highway access and the police power, the law and highway modernization, the program of legal research at the University of Wisconsin, and the progress of the Highway Laws Project. These materials and the annual report for that year were published as "Highway Laws—1958" (HRB Bull. 205).

About this time, the Federal-Aid Highway Act of 1958 was enacted. In it, the Congress enunciated a new policy with respect to outdoor advertising along the Interstate System. In connection with the provision, it became essential, quickly, to know what the present status of State law was with respect to outdoor advertising. The Highway Laws Project responded immediately, and programmed a study of outdoor advertising legislation as top priority. As a result, it published a monograph, entitled "Outdoor Advertising Along Highways: A Legal Analysis" (HRB Special Report 41, 1958). Various types of State legislation dealing with outdoor advertising were included, and these in the aggregate are compared with the elements of the Federal law on the subject, and the National Standards promulgated in connection with it.

Again, at the January 1959 Annual Meeting of the Board, the Highway Laws Committee sponsored an open session that contained significant contributions to highway laws research. These included papers on the codification of Federal-aid legislation, how an attorney general views highway law, and two State highway law studies. These and a commentary on current legal developments involving the highway activity during the past year are published in HRB Bulletin 237, entitled "Highway Laws—1959."

Heavily involved in highway improvement programs is the matter of highway system classification. The Highway Laws Project has researched this aspect of highway law and has already published "Highway System Classification: A Legal Analysis—Part I

(HRB Special Report 42, 1959), dealing with the primary highway system. Generalized data, showing the relationship of the primary system in the States to other systems, are also included.

The Highway Laws Project also has assembled and analyzed all provisions in State highway codes relating to Federal aid for highway purposes. Provisions involving State assent to the Federal-aid highway program, delegated authority to permit State cooperation in that connection, and related matters have been included. These are now available in published form, issued by the Laws group, entitled "Federal-Aid Provisions in State Highway Laws: An Analysis" (HRB Special Report 48, 1959).

Cutting across many of the daily activities of State and local highway departments is the matter of highway intergovernmental relationships. It is impossible these days, in the very nature of things, to modernize our highway system without the broadest kind of cooperation at all levels of government. This has been made the subject of an extensive study of the Laws Project, identified and published as "Intergovernmental Relations in State Highway Legislation: An Analysis" (HRB Special Report 49, 1959).

Underlying the delegated authority to build and maintain highways in the public interest are the State and Federal constitutions. These organic documents have been analyzed, also, and reported upon by the Highway Laws Committee, in a recent document, entitled "State Constitutional Provisions Concerning Highways: A Legal Analysis" (HRB Special Report 50, 1959).

As already indicated, a supplemental activity of the Highway Laws Project is to issue brief monthly memoranda, setting forth the most important current court decisions, new legislation or related legal items. Since November 1953, when the first Laws Memorandum was issued, the Committee has sponsored 39 similar memoranda. There is good reason to believe that these timely releases are very helpful to State and local highway officials and many others.

The laws reports already published and released have been enumerated in some detail. The Highway Laws group has undertaken other studies, and these are now in various stages of completion.

The final segment of land acquisition law has been researched, reviewed by the Laws Committee and the State highway departments, and a final manuscript is now ready for the printers. It will be published as "Condemnation of Property for Highway Purposes: A Legal Analysis, Part III."

Through the years, a vast body of statutory and judge-made law has developed on the matter of highway contracts, and the accelerated highway program has further stressed the current importance of this subject. Accordingly, the Highway Laws group has just completed a comprehensive study, entitled "Highway Contracts: A Legal Analysis." It has been duplicated, and is being submitted to the Laws Committee and the State highway departments for review.

A variety of administrative forms of organization and management characterizes the highway activity of the nation. The extent to which this has a legal foundation in the State statutes has been researched by the Laws Project, and a monograph on this subject will be available shortly for review. It will be entitled "Highway Administration: A Legal Analysis."

As already indicated, Part I of the highway system classification has already been published, dealing with primary State highways. The other segments, involving secondary highway systems, county road systems, urban systems, township road systems, and miscellaneous systems, is being put together in report form and will soon be released for review in a document, entitled "Highway System Classification: A Legal Analysis—Part II."

An outline for a study by the Laws Project of maintenance and drainage law has been prepared. The group is seeking to go forward with this analysis at the earliest possible time.

Mindful of the current importance of the highway finance problem and the interest of the Congress in factual information on the subject, the Highway Laws group has also begun work on the law of highway finance. It is in the process of reviewing what is already now available on the subject, so that a minimum of duplication will result. It plans to tackle the matter almost immediately.

In addition to these many subjects, already researched or now under way, there are other aspects of highway law that remain to be analyzed. These include traffic engineering; toll roads; budgeting, accounting, and reporting; public relations; design; construction; landscaping; size and weight regulation; and others. None of these are particularly voluminous in nature, and, accordingly, should require only a minimum period to complete. It is the hope of the Highway Laws Committee that these can be largely completed by the end of 1960.

This effort completed, the Highway Laws Project will have accomplished the mission it originally set out to undertake, as it is understood by the Highway Research Board and the American Association of State Highway Officials.

COORDINATION OF SEGMENTS OF LAWS RESEARCH

With this task completed, one might inquire: What remains to be done, from this point on? Is not everything done that remains to be done?

The answer is emphatically in the negative. While the initial objective has been accomplished, additional research in the highway law field is obviously needed. One such additional task is the coordination of the many components of highway law that already have been researched or will have been researched by the end of this year.

As an illustration of what this might encompass: the matter of statutory or legal definitions of terms and concepts might be the beginning. Generally included have been terms and definitions in connection with the individual subjects studied; such as, expressways, land acquisition, design, etc. Authorities on State statutory code design indicate that all terms and definitions with respect to a major segment of the statutes should best be grouped together in a single chapter, instead of being scattered throughout 100 or 200 pages of text; and that these should not generally vary in their application to different aspects of the same subject; in short, the definition of control of highway access used in connection with an authorization for expressways should be the same as one used in connection with the acquisition of the necessary rights-of-way for such facilities.

Again, the matter of highway system classification should be considered. The Committee has sought to group together, in two monographs on this subject, many of the related statutory provisions. Yet, in the very nature of things, when the individual segments of the Laws Project were being researched, it was impossible to do a thorough job of coordination. Highway system classification is partially involved in inter-governmental relations in the highway field, because this frequently involves several different levels of government. Highway system classification also can involve legislative declarations of purpose, because such declarations are found to exist in connection with the designation of highway systems in a number of States.

In short, approximately 25 individual components of highway law will have been researched by the end of the year. What needs to be done after that time is to put these individual pieces of the jig-saw puzzle together, so that they all fit snugly together; so that every part is reconciled with every other part, particularly where parts are interrelated.

This effort at synthesis and reconciliation would involve only a small fraction of the resources that were required to do the larger task that is now nearly completed. But to stop short now, without taking this next step, would be to sell a good investment short. If it is estimated that approximately \$150,000 will have been spent on the Highway Laws Project by the end of the year, an additional 5 to 10 percent would make the principal investment pay off much more adequately than it otherwise will. This cannot be stressed too heavily.

KEEPING THE LAWS PROJECT UP-TO-DATE

In addition to coordination and reconciliation of the components of the Laws Project with each other, the need has been mentioned to keep the basic materials developed by the Laws Project up-to-date. The hope was expressed by the American Association of State Highway Officials two years ago that this could be done through the Research Correlation Service of the Highway Research Board. Depending on the thoroughness

with which the task is undertaken, at least one, and possibly two full-time legal researchers would be needed to do the job. It could involve both the statutory and judge-made law. Periodic memoranda and publications would be the natural outlets for the material thus developed.

A MODEL HIGHWAY CODE

The ultimate objective of highway laws research is to assist in the revision and upgrading of highway laws, so that a better highway system can be provided the nation, at minimum cost. While the research already accomplished, it is hoped, has been and will continue to be helpful in this respect, the most effective packaging of the findings of laws research, from the standpoint of State and local highway departments, could well be in the form of model highway legislation. In a completely coordinated manner, this might be identified as a model highway code.

It is true that the States themselves are perhaps in the best position to determine, individually, what type of legislation they want to recommend and enact. But anyone familiar with the nature and pace of today's highway activities will readily admit that it is thoroughly unrealistic to expect that each State will devote the time and resources necessary to do a workmanlike job. The fact is, that the States banded themselves together in the form of the Highway Laws Project to do collectively what they realized they would not do individually. Moreover, they realized that great efficiencies would be achieved by doing a job together, in comparison with doing the job individually.

There are some who have a mistaken notion of what is involved in the derivation of sound and reasonable model highway legislation. They mistakenly believe that this pre-empts policy decisions which the States and local units should make for themselves. Model legislation, if properly formulated, does no such thing. All it seeks to do is to set forth, in well-drafted and researched form, all of the elements necessary to be considered in connection with each phase of the highway operation. From this, each State can approve that which it believes to be applicable to its own situation and reject that which it believes to be impractical in its case. Model legislation at least alerts everybody concerned as to what the components are of each problem.

The case of the model limited-access highway law, promulgated at the request of the States before World War II might be considered. This law purports to authorize the control of highway access, sanctions the acquisition of property in connection with such facilities including access rights, deals with certain intergovernmental relations problems involved, provides for the provision of frontage roads, etc. The author thinks it is a fair statement to say that that the States generally have found this model act very helpful.

Now the model limited-access highway law did not purport to usurp any of the policy decisions of the State. If a particular State wanted to control highway access through the legislative process, it could use those portions of the act that were pertinent; if it did not want to do so, it just did not enact the law. If State X wanted to control access only partially, it could do so; if it wanted to establish freeways, with full control of access, it was enabled to do so by using the model act. In short, access could be controlled or it could not be controlled at all, or if controlled at all, such control could range from something over 0 to 100 percent of access control. The model act gave the States the cue to the power to control access permissively, not mandatorily.

The matter of land acquirement might be considered to give a current illustration of how helpful it would be to have model legislation. It is true that constitutional provisions vary among the States with respect to the taking of property for public purposes by eminent domain. In this field, it might be necessary to produce two or perhaps even three model acts, or one act with three variable provisions, depending on what the constitutional provision involved would be.

Or even the field of highway administration could be considered. Model legislation would not seek to set up inflexibly the single-executive type of highway department or the commission type. In this instance, at least two different models would be prepared, or two variations of the same model. In other words, if a State wanted to embrace the commission-type of highway organization, it could turn to that model, and get the sub-

stantive elements necessary to do the job. If they were more interested in the single-executive type, that model would give them the answers.

A helpful monograph on the subject of intergovernmental relations in the highway field could be written. But would it not be much more helpful to have a model act or model provisions on the subject of intergovernmental relations, so that the States could examine something more specific, and accept or reject the elements of the model act, according to its application in a particular State.

The preparation of model legislation, is, in many respects, similar to the work undertaken so effectively through the years by the Commissioners on Uniform State Laws. That group has dealt with a wide variety of subject matter, and has done so in a manner wholly acceptable to the several States, in fact, sponsored by the States and derived from State action as such.

Another striking illustration of effective action in this field over a period of years is the Uniform Motor Vehicle Code, which has been so helpful in seeking betterment in the field of motor vehicle operations.

At many of the State and regional meetings of highway officials during the last few years, State highway departments have been clamoring for model legislation. They have sought this tool because it would save them time, effort and resources. It would place in their hands collectively an effort of a caliber that could not be done individually. Yet up to this point, with an exception or two, very little has been done to respond to this need. It is hoped that the ways and means will be found shortly to assist the States in this very important respect. As far as the author is concerned, it constitutes the logical consummation of the research efforts of the Highway Laws Project.

Now just one caveat about the use of model legislation: Obviously, it should be used only after highway lawyers in a particular State have carefully examined it in relation to the State constitution and the existing body of law and mores in that State, and should be thoroughly reconciled with the existing legal framework.

What has been said in this section on model legislation has been ventured by an individual exposed to the field for more than two decades, rather than by the Secretary of the Highway Laws Committee of the Highway Research Board.

LEGAL RESEARCH VIA ELECTRONIC COMPUTERS

Electronic computers and the punch card are regarded today as most valuable devices to facilitate the accurate and amazingly rapid derivation of all sorts of answers to complex mathematical, physical, statistical, and other types of problems. Even the social sciences, such as economics, find substantial aid and comfort in these electronic gadgets of the mid-twentieth century.

The question might be put abruptly: Why cannot legal research be assisted with electronic computers and the punch card, especially designed to cope with the subject matter involved? If these modern machines could be so put to work for the lawyer, countless hours of valuable professional time could be saved. Anybody familiar with the nature of the legal activity knows that the bulk of the lawyer's time, in most cases, is dedicated to searching statutes, ordinances, court decisions, and other legal sources for material pertinent to the proposition at hand.

It would seem that the first thing lawyers collectively must do is to make up their minds what it is that the machines are to do. The answer to this, must be based on an analysis of various steps constituting the lawyer's activities.

Perhaps one of the most obvious areas for mechanization of the legal research process seems to center around the case law, involving State reports. The profession has evolved, in this connection, State and Federal digest systems, national digest systems, regional reporters, decennial digest systems, and other similar digests and reference works. Most of these classify the principal issues or subject matter of each case on a logical basis. While these systems classify and cross-classify the major issues, minor subjects are either ignored entirely or dealt with rather inadequately. Accordingly, the author can envision the classification and derivation, at a moment's notice, of substantially greater detail, with respect to the subject matter of each case, by the use of punch cards or electronic devices.

If the subject matter—perhaps an enlargement of the so-called key system of legal classification—can be mechanized in an efficient and economical manner, the lawyer would need only to determine which key or code number he is seeking, and a single exertion could yield references to a multiplicity of cases or materials involved. It is possible that a somewhat similar system might be envisioned for the appropriate classification of statutory, ordinance, constitutional provisions, and attorney general opinions.

So important does the legal profession view the possibilities of mechanizing legal research that a special committee of the American Bar Association has been created in the Section of Bar Activities, known as the Committee on Electronic Data Retrieval. (The chairman of the committee is Richard F. C. Hayden of Los Angeles. Professor Layman B. Allen of the Yale Law School is particularly interested in the substance of this program and edits a quarterly newsletter called "MULL" which stands for Modern Use of Logic in Law.) This group has sought to develop in the profession the concept of relevance, so that the body of legal precedents on any given legal point can be packaged in a form that can be identified instantly by the use either of electronic devices or punch cards.

It will be recognized that in this kind of possible mechanization of legal research, the key may be found to speed up, manifold, the quest for answers which the lawyer seeks, working both for public or private ends.

LEGAL RESEARCH ON SPECIAL CURRENT PROBLEMS

Aside from the applications of legal research, referred to in the foregoing sections, there are countless other specific current problems that have legal overtones requiring legal study.

One such problem might be identified as the highway interchange problem. The development of intensive land uses at approaches to expressway interchanges and interchange areas may render these facilities functionally obsolete in a few years unless a proper balance is achieved between the design standards of the access facilities and the pattern of land development in these areas. Research on this problem is already under way, pursuant to a specified research design, at the University of Washington, under the direction of Professor Robert Hennes, by Professors William L. Garrison and Edgar M. Horwood. Study of the problem is also being undertaken by the U.S. Department of Agriculture. Both projects are being undertaken for and financed by the Bureau of Public Roads. Exploration of the possibilities along these lines must necessarily involve a study of the available and potential legal tools that could assist solution of this developing problem, through the use of the State police power, eminent domain, and other measures.

Another segment where effective legal research can be most helpful involves city planning and highway planning. There are a number of city planning and highway planning practices and devices. A number of these are now so designed and used as to operate independently of each other. There is urgent need that a number of these be revised, enlarged, or otherwise sharpened up so that a more realistic job can be done, by bringing urban planning and highway planning closer together than they have been in the past, in many areas. (A modest study of this problem is now under way at the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, sponsored by the Bureau of Public Roads.) Here again, the legal aspects of the problem could constitute one of the most important elements of the solution to the difficulties involved.

A third area concerns the derivation of better legal tools for transportation improvement, particularly in the urbanized areas of the nation. The present legal equipment needs to be upgraded and improved in significant ways. Special study could critically evaluate what is available and what is needed to achieve a desirable modernization of highway accommodations. A significant contribution can be made in this area alone by legal researchers. Another subject for legal research might be identified with the need to coordinate highway and parking facilities. In the urban areas, one cannot build expressways without recognizing, at least from a research point of view, the compan-

ion problem of providing the parking accommodations necessary to take care of the vehicle at rest. An imaginative study of how highway facilities can best be integrated with parking facilities could pay handsome dividends. An expert group recently deliberated on this problem, at a Conference on Coordination of Parking and Expressways, Ann Arbor, Michigan, November 19-20, 1959, sponsored by the Transportation Institute of the University of Michigan and the Automotive Safety Foundation. Proceedings will eventually become available. An important aspect concerns the legal aspects, of course.

There are additional areas where effective legal research could supply some urgently-needed answers to current transportation problems. The fact is, only recently has it been realized that research on legal problems affecting the highway activity can pay handsome dividends. This has been demonstrated during the last five years, with the Highway Laws Project, other phases of the program of the Highway Research Board, the activities of the AASHO, the Bureau of Public Roads, and others.

CONCLUSION

Progress that has been made in the field of highway legal research has been discussed. It is apparent, that while progress has been made during the last five years, particularly with the Highway Laws Project of the Board, much remains yet to be done.

To reap the full benefits from the expenditures already made in this field and to supply a current need, the material already developed must be kept up-to-date. Additionally, the many components of the Laws Study that were developed individually should be reconciled and coordinated. The derivation of model legislation seems a logical next step. Finally, many special current legal problems in the transportation field are apparent, and these problems should be solved.

Discussion

J. E. HAVENNER and J. W. MC DONALD, Automobile Club of Southern California—Possibly the most critical deficiency in urban transportation is not in the areas of physical facilities, competent personnel, or adequate financial resources.

The most critical deficiency of all may be in the area of administrative organization—the assignment of responsibility and authority by state, county and local governments. Adequate placement of the responsibility for transportation planning and operations is a prerequisite to efficient use of existing facilities, efficient expenditure of funds, and efficient planning for future needs. In short, an adequate set of laws under which to operate is the foundation for planning and operation.

It is questionable that any urban area has solved the problem of adequate administrative organization for governing metropolitan complexes. Most such areas have not even seriously tackled the problem and are still governed by concepts designed to meet the needs of the horse and buggy.

Certainly, strong support should be given to the work of the Highway Laws Committee as it turns to the fields of law which are involved in metropolitan problems. Only with this house in order can real progress be made toward effective area transportation planning in which highways will play such an important part.

It becomes increasingly apparent that it is essential for the engineer to appreciate the relation between his work and the laws which determine how effective he may be. He should also recognize the importance of laws research as carried on here.

This is true at all levels, from the city traffic engineer who must work within the limitations of his city's ordinances, through state and local engineers whose effectiveness is determined to a great degree by state highway law and vehicle codes, to all engineers whose work is affected by Federal law.

The engineer and the attorney must be brought closer together—the engineer should make better use of the attorney in shaping the legal tools needed to do the job better.

DAVID R. LEVIN, Closure—Mr. Havenner has certainly put his finger on an important and sensitive aspect of the whole highway activity—the matter of administrative organization. In this connection it can be announced that the Highway Laws Project has this subject under study and is making good progress on it.