

NEW YORK STATE'S METHOD OF ACQUIRING RIGHTS-OF-WAY FOR PUBLIC PURPOSES

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Rights-of-way procurement is one of the most important phases of any highway construction program. Should there be delay in providing the engineer and contractor with the lands on which to build the highway, the wheels of progress would grind to an instant stop.

In New York State, provisions have been made to assure such vital and necessary land acquisitions without delay, and in such a manner as to assure the expeditious advancement of the great Post War Highway Construction Program now under way. Red tape has been eliminated to the fullest extent.

Section 7, Article 1 of the New York State Constitution provides that:

'Private property shall not be taken for public use without just compensation.'

Further safeguards to its citizens are also provided in this article. This provision is similar to Article V of the Federal Constitution, and the courts of New York State have always been very critical of any public official in his failure to observe these constitutional rights in dealings with property owners. It becomes necessary, therefore, in creating any plan or method for the acquisition of private property for public purposes, that these constitutional guarantees be strictly observed.

The rights-of-way problem is ever evident to the engineer or architect in any design prepared and it plays an important part in his project.

In the early history of the State, the highway, or turnpike, so-called, was the principal means of transportation. This was supplemented in 1825 by the Erie Canal and later on by the railroads.

The coming of the automobile, bus and motor truck has again made the highways a principal means of transportation, thus again within a century and a half there has been an almost complete cycle.

Before the automobile, roads were largely a matter of

local concern and financed by local taxation, but the development of automobile transportation changed the whole problem, and necessitated an entirely new system of highways.

This new system created need for new methods and new types of construction, at greatly increased cost, with attendant responsibilities. Controls of traffic and parking were among the many new problems. Others involved financing, maintenance and operation.

The permanency of the automobile was not immediately appreciated or recognized and although the first state highway was authorized by the New York State Legislature in 1898 it was not until 1905 that the state first authorized a \$50,000,000 bond issue for highway construction. Other issues followed from time to time.

During the depression and World War II, public works construction could not keep pace with even normal demands when monies made available for construction and reconstruction of highways, bridges and other public works were kept below minimum requirements.

During the war, state revenues were saved and plans were developed for Post War construction of public works for restoration of existing highways and the development of new and greater facilities, and, incidentally, to provide employment for the returning veteran.

The Governor and Legislature of New York, having in mind the need for such work, established a Post War Reconstruction Fund from surplus monies accumulated during war years. This fund has enabled the Department to finance without delay, its five year \$840,000,000 program.

This large program made it absolutely necessary to adopt new methods of procedure in several activities of the Department, including acquisition of rights-of-way.

Since 1928, when the \$300,000,000 grade crossing elimination program was inaugurated, the Department had acquired all rights-of-way for railroad grade crossing elimination projects by what is known as the appropriation method, and this procedure had produced excellent results. It is referred to in more detail in the report of the National Interregional Highway Committee of January 12, 1944.

In 1944, the State Highway Law was amended by repealing several sections of this law and enacting Section 30, which gives the State sole responsibility for the procurement of all necessary highway rights-of-way. The procedure now in use is simple and expeditious and prevents delay in the award of contracts and the beginning of construction work.

A map and description of property to be acquired is prepared and filed in the Department of State giving the State

authority to enter upon and take possession of such property and begin construction work. A copy of this map is filed with the county clerk and title is transferred to the State.

By these acts of the State's representatives, a claim is created against the State, which the Department of Public Works may adjust by agreement of the claim can be presented to the State Court of Claims for adjudication in those rare instances when agreements cannot be reached.

Before discussing procedure, however, it would seem advisable to outline the organization of the Department of Public Works.

As provided in the reorganization authorized by Chapter 404, Laws of 1944, under the Division of Administration are two other main divisions - Division of Construction, and Division of Operation and Maintenance. This organization pattern also extends to the ten district offices throughout the State, and the general functions, powers and duties of the Department of Public Works are as authorized by that law.

The law provides that the Department shall be headed by a Superintendent and he shall direct the activities of the Department through these three major channels.

The general duties of the Division of Administration includes the formulation and execution of contracts, keeping of accounts, reporting personnel data, acquiring property, adjusting claims, compiling statistics and engaging in research operations.

The Division of Construction prepares plans, specifications, designs and estimates for the construction, reconstruction, alteration and improvement of highways and other public ways, canals, waterways, public buildings and grounds of the State; also, bridges and grade separation structures and cooperates with the Federal Government on flood control projects. This Division also superintends the construction of such features.

The Division of Operation and Maintenance has the duty to operate and maintain such highways, public ways, bridges and grade separations, canals, waterways, flood control, public buildings and grounds as recited above.

The Main Office of the Department located in Albany is set up to function in these channels. The work in the field is carried on through ten district offices. These district offices are each assigned territorial limits in which to function and are headed by a District Engineer. The same three divisions as recited above are the principle channels of functioning in each of these district offices.

The Bureau of Rights-of-Way and Claims is within the Division of Administration and is under the immediate super-

vision of the Superintendent of Public Works through the Director. The Bureau performs two principal functions:

1st - acquisition of rights-of-way, and

2nd - negotiation, adjustment and assisting in Court of Claims proceedings of all claims against the State in which the Department is an interested party, including rights-of-way, acquisition, and also alleged acts or omissions in connection with contracts and negligence claims.

The Rights-of-Way section is manned by employees classified as Associate, Senior, Assistant and Junior Land Claim Adjusters, Principal and Senior Land Claim Engineers, with the necessary clerical and stenographic assistants.

A further division is made of those employees into four groups -

1st - Control

2nd - Operations

3rd - Statutory Requirements

4th - Clerical, Fiscal and Office Service

The Claims section is headed by a Principal Claims Engineer and Supervising Senior and Asst. Claims Engineers, with the necessary clerical assistants.

This organization applies in the main office and also extends to the ten district offices, with a Senior Land and Claim Adjuster in supervisory charge of the work of this Bureau in the district offices under the direct supervision of the Director at Albany and reporting directly to him.

Having this organization in mind, we can now proceed to review the method of establishing a program of projects.

A project is recommended by the district engineer to the Superintendent through the chief engineer of the Division of Construction. When approved, the district engineer prepares plans and specifications for construction, including rights-of-way maps. Three types of acquisition by appropriation are made: Fee simple, permanent easements and temporary easements. These right-of-way maps are sent to the Bureau by the district engineer and a detailed estimate of the value of the property and legal damages is made of every parcel of land to be acquired.

On receipt of the rights-of-way estimates from the district offices, these are carefully reviewed in the main office and a field check is made of them under the direction of the main office. When approved and accepted by the Director, these estimates are referred to the appropriate deputy chief engineer, Division of Construction, for review and if acceptable to him, referred to the Superintendent for final approval together with a Rights-of-Way Official Order, which, upon

approval by the Superintendent, authorizes the Director of the Bureau of Rights-of-Way and Claims to file maps, adjust claims and approve of payment of claims not in excess of the amounts estimated and authorized in the Official Order.

On receipt of the approved Rights-of-Way Official Order the Director then files certified copies of the maps with the Department of State and the Attorney General's Department as required by law. This step gives the State and its officers and agents the right of occupancy and possession of the property shown by such maps for construction and maintenance purposes, etc.

Section 30 of the Highway Law provides as follows:

1. If a reconstructed highway deviates more than one mile from an existing highway, approval of the Board of Supervisors of the county may be necessary.

2. The Superintendent of Public Works has discretionary authority to acquire by appropriation any and all lands and right which he deems necessary for highway and other purposes.

3. Provides for the preparation of an accurate description and map of any and all property to be appropriated.

4. Provides for permanent filing of original map in the Department of Public Works and certified copies thereof in the office of the Department of State.

5. Authorizes Department of Public Works, its officers, and agents, to enter upon and take possession of property when map is filed in the Department of State.

This is an important provision as it enables the Department to immediately award a contract for any project and proceed without delay in its execution.

6. Requires filing of description and map in the office of the appropriate County Clerk, at which time title to the property passes to the State.

7. Provides for filing of an amended map.

8. Appropriation map may be withdrawn from the Department of State for revision or correction of errors provided map and description have not been filed in the county clerk's office.

9. The Attorney General of the state is required to search the title and certify to the Superintendent of Public Works names of owners of the property, easements and other interests and rights and the Superintendent of Public Works files copy of description and map with county clerk and perfects service of description and map on property owners to complete the appropriation.

10. Requires Department of Public Works to make personal service of description and map on persons within the state and for service of description and map by recording in county

clerk's office if persons cannot be located within the state.

11. Record of personal service with affidavits to be filed in county clerk's office.

12. Provision is made for removal of former property owner 30 days after title passes to the state, by giving ten days' notice to vacate and proceeding under Civil Practice Act.

13. Claims for the value of property and for legal damages may be adjusted by the Superintendent of Public Works by agreement with property owner.

14. Claimant may present claim to the Court of Claims if not satisfied with adjustment offered by the Department of Public Works. Claim may be filed within two years after appropriation is made.

15. Provides for adjustment of indirect or consequential damage to property, if any, providing there is statutory authority for such damage and the courts have heretofore determined in other proceedings that such damage is legal.

16. Expenses for acquisition of property, surveys, administrative duties, services of maps, title searches, removal of owners and general expenses to be paid from funds available for highway improvement.

17. Authorizing surveys on private property and payment of claims up to \$500.00 for damages caused by such surveys.

18. Provides for sale or exchange to former owner of excess property appropriated.

19. Acquisition of property in streets, roads and streams where title to same is complicated by reversionary rights, water rights of unknown character and other contingencies. Search of title, with details of ownership interest, must be furnished to the Department of Public Works by claimant.

20. Provision made for certification that necessity for use of a temporary easement has ceased and for filing same in the county clerk's offices thus terminating such temporary easement.

Section 2 of this law is a saving clause to provide for transfer of authority for acquisition of land from the County Board of Supervisors to the Department of Public Works.

What is outlined above applies principally to highway and thruway procedure and is along the same lines on flood control projects, canals and waterways, grade crossing elimination projects and on other acquisitions of land where the right of eminent domain is involved. One important exception should be noted however in the matter of thruway rights-of-way. No approval by county boards or supervisors is required for delineation of the thruway route.

In grade crossing elimination projects, maps are also

filed with the State Public Service Commission and the railroad company or companies involved.

In flood control projects, copies of maps are filed as above and copies also furnished the office of Chief of Engineers and the appropriate district and division engineer offices of the United States Engineer Corps of the War Department.

In complying with the law, it was necessary to prepare various forms of notices, affidavits, agreements, etc., and copies of such forms, for reference, are available at the office of the Bureau of Right-of-Way and Claims.

As of November 1, 1946, the total estimated cost of construction for which rights-of-way are available total \$51,395,952 and contracts totaling \$47,347,868 have been awarded to contractors for construction.

Estimated costs of rights-of-way for these projects total \$5,287,900 and required the preparation and processing of 6,255 land appropriation maps.

Claims totaling \$1,607,724 have been adjusted by negotiations and many others are being negotiated from day to day. As of this date, no claims for highway acquisition have been filed with the Court of Claims.

New York is the Empire State of the Nation and has ever been in the forefront of progress. The Department of Public Works is its agency in the planning and construction field of the State's activities.

Its 14,000 miles of state highways, its county and town roads, canals and waterways and public buildings suffered during the war years, but with the dawn of peace and with ample funds available, it is now in position to restore and expand these public facilities to their proper degree of care and usefulness.

During the war years, opportunity was afforded to study the needs of the future and to formulate policies, create programs, and prepare in every way possible to meet the coming demands. This has been done and now New York is ready to go forward just as fast as conditions become favorable for such action. Labor and material restrictions have developed since the war's end which were not anticipated, but real progress is being made in the face of these difficulties and it is anticipated that within a reasonable time, the way will be made clear for greater progress.

In his 1945 report to the Legislature, the Superintendent of Public Works said:

'Because public works in general and highway facilities in particular are both the warp and woof on which the pattern of an economic prosperity can be woven, New York State

has launched its program. As it takes form, new gateways to better living will result in every corner of the state. The lessons of yesterday tell us what must be done today if we are to continue great tomorrow. Our efforts have been dedicated to the end that New York State will truly remain the Empire State."

METHOD OF ACQUIRING RIGHTS-OF-WAY

FOR

TEXAS HIGHWAY PROJECTS

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This discussion of the method of acquiring rights-of-way for highway projects in Texas is nowise intended to be a presentation of a 'Model Method for Procurement of Right-of-way', except possibly under conditions identical to those confronting us in Texas. Neither is this discussion intended as an apology for a somewhat awkward and sometimes exasperatingly slow procedure, as to some degree it recovers funds from road user taxes that otherwise would be lost to the road user for highway purposes.

To properly evaluate this procedure, you should have an understanding of the distribution of the monies collected from the road user - both from license fees and the gasoline tax.

The collection of the license plate fee is a function of the county in which the vehicle owner domiciles or offices. The law provides that each county may retain for its road and bridge fund, license fees collected up to \$50,000; thereafter the county and the state share 50-50 until the county receives a total of \$175,000; thereafter all above that amount going to the state highway department. The law provides that the distribution of the state gasoline tax shall be $\frac{1}{4}$ to the public schools (a constitutional provision), and $\frac{1}{4}$ to the retirement of county bonds issued for improvement of county roads