

A Perspective for State Highway Law

Revision Studies: New Mexico

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• THE NEW MEXICO highway laws study was only the first essential step toward ultimate revision of the highway code. It is considered by the department to be merely a tool with which to work toward the broader objective.

The study of the State's highway laws was performed by highway department employees, using the 1½ percent research funds available under Federal aid. It was a research project under the Planning Division, but attorneys from the department's legal section were used. It is sometimes difficult to persuade people in other divisions of a State highway department that these research projects are worthwhile. If immediate results can be seen, they are all for it. But if it is a project that will take several years to do, sometimes they are not persuaded that it should have a priority over some other jobs that are demanding to be done. This laws study was one of the latter type, and before it was finished three different attorneys worked on this project because other jobs came up that appeared more urgent. Eventually, a lady attorney, Shirley Zabel, was found who was extremely capable and did an excellent job of reviewing, rearranging, and recommending improvements in the highway code.

The mere mechanics of embarking on this study presented a number of problems. After casting about for the most practicable form in which to assemble the material, it was decided that greatest flexibility and maximum utility would be achieved by having typed on file cards each relevant statute or part thereof. The cards were then catalogued under appropriate topical headings with necessary cross-references. Duplicate cards were made for the various subject headings to which the law applied. Each card bore the subject heading under which it was originally filed to make possible its correct replacement in the file after it had been withdrawn for study.

This arrangement of the material brought together all existing law bearing on a particular subject and provided the necessary links to related material. Not only was this a useful and logical way to organize the material for purposes of analysis; it served equally well as a pattern for the published report.

The format of the report was governed entirely by utilitarian considerations. The material is printed on one side of the sheet only and bound in looseleaf form to make possible subsequent additions in their proper place. The law is printed in the left-hand column and all annotations appear in the right-hand column, directly opposite the provisions of the law to which they are applicable. Running heads indicate the four principal parts of the collection, dealing, respectively, with Highway Authorities, Property Acquisition and Disposal by Highway Authorities, Highway Construction and Design, and Highway Use.

Provisions relating to highway revenues were not included in the study. Furthermore, references to motor-vehicle code provisions and Federal statutes and regulations were selective and were not intended to be exhaustive. Only as these had some immediate reference to the law with which the department was concerned were they considered. For example, the motor vehicle code and motor vehicle registration law are administered by another State agency and so are not directly within the highway department's field of responsibility.

To facilitate the arrangement of the statutes under appropriate headings without useless repetition, it was necessary in many instances to divide sections so that various portions appear in different parts of the collection. Moreover, the sections of an act do not always appear in proper sequence, their position being governed by relevance to

the topical headings. It was believed that this arrangement of the material would provide the simplest means of locating any New Mexico legislation relating to a specific highway problem. A full index of subjects with page references is an additional guide to particular items.

Annotations of the statutes are concerned mainly with obsolescence, ambiguities, or inconsistencies in existing highway law, possible conflicts with the State constitution, other State laws, and Federal laws and regulations, and recommendations for substantive changes in the highway law to solve such problems. The basic research for the annotations included detailed study of court decisions with respect to the statutes, to determine what interpretations had been made of the law. Attorney General decisions, Federal acts and regulations, and certain administrative decisions were also reviewed for their relevance and effect.

To illustrate how obsolete some of the laws were, in one instance an old law was found that the department did not even know existed. It provided that on certain projects no structural steel should be used. Obviously that law has been broken for many years. It was passed in the early days of Ponderosa Pine promotion, and because there are large forests of Ponderosa Pine in New Mexico it was natural for the legislature to urge the use of this material for all structural purposes. The law also provided that no other timber should be considered as being of equal or greater strength than Ponderosa Pine unless extensive tests were made to prove its superiority.

Another old law authorizes the legislature to create State highways. Today, the better view is that the State highway commission is the best agency for making these decisions. The law provides that when the legislature creates a State highway it must extend into more than one county. As a result of this, many of the roads that were put on the State highway system in the early days were extended for many miles over other State highways or over local roads or even imaginary roads to cross a county line in order to meet this requirement. This had the effect of padding the system.

Several years ago, a study of the State highway system found that there were almost 2,000 mi of these primitive trails or non-existent roads that had no real function in the highway system. The commission took action to eliminate these segments from the State highway system, but later it was ruled by the Attorney General that the commission had no legal authority to eliminate these roads which the legislature had put on the system. Fortunately, however, the Attorney General pointed to another section of the law providing that if the commission found that there were insufficient State road funds to maintain all State highways the commission could revert to county control of those roads for which they could not provide. Following this, the commission concluded that it did not have sufficient funds to maintain about 2,000 mi of highways, and this mileage was accordingly taken off the State system under the provisions of this law.

It became increasingly apparent during the preparation of this tool for highway code revision that it should be in the hands of someone familiar not only with highway law but with State law in its entirety, the provisions of which often govern highway administration. Coupled with imagination, such broad knowledge enables the researcher to assemble all relevant material and thereby guard against making recommendations for changes that would not be tenable unless the governing provisions were also amended.

From a practical point of view, the researcher who makes the highway laws study should also have a hand in drafting new legislation for review and action. No one will be better acquainted with the innumerable details of existing law or the pitfalls presented by apparently desirable changes.

Another inescapable conclusion of the New Mexico highway laws study is the need for participation of all public and private sectors of the State's citizenry in drafting an adequate highway code. This is a task far beyond the power of any one section, department, or agency. The work that has been done is only the first step along a rocky road.

Some apprehension has been expressed by department attorneys that perhaps this sort of thing should not be attempted unless the climate is right; unless there are legislative leaders who will work closely with the project. There is always a danger that

unless the entire revision is understood and accepted by the legislature only a part of it will be enacted, and this may simply take the highway department out of the frying pan and put it in the fire. The laws study has tried to present a revision that makes sense in its entirety, and when the time is right, hopefully it can be persuasively presented to the legislature.