

Procedure for West Virginia Highway Laws Revision

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• THE WEST VIRGINIA Highway Laws Study is being made under an agreement between the West Virginia State Road Commission and West Virginia University, the proposal for the study having been made at the request of the State Road Commission in cooperation with the U.S. Bureau of Public Roads. The study has been conducted primarily by the members of the faculty of the College of Law of West Virginia University.

The West Virginia Highway Laws Study is the only one to date in which the faculty of a law school has assumed a major responsibility. For the past five years members of the faculty of West Virginia University have, and now are, engaged in various research projects for the West Virginia State Road Commission under agreements between that agency and the University. Therefore, it was natural to turn to the College of Law when the State Road Commission felt the need for research and drafting concerning the highway laws. Further, except for a few years after World War II, there has been no summer session in the College of Law and members of the faculty have continuously had the opportunity of doing research and drafting for interim committees or agencies of the West Virginia Legislature. Accordingly, the proposal, research, and drafting for the West Virginia Highway Laws Study has been done by attorneys with rather extensive experience in law revision.

The West Virginia Highway Laws Study was conceived with objectives and procedures basically different from those in many other States. This was for several reasons. First, the West Virginia highway laws had been recently revised in a rather basic manner. In 1951, the Legislature had made a rather comprehensive study of the laws pertaining to motor vehicles, including provisions for administration, registration, anti-theft, licensing of operators, traffic regulations and laws of the road, and financial responsibility of owners and operators. At that time, four new chapters were added to the Code, being approximately 200 pages in length in the Acts of the Legislature. In addition, in 1957 the Legislature considered further extensive changes in the highway laws, and passed fourteen acts concerning motor vehicles and three acts concerning roads and highways; these acts were about 54 pages in length. In view of this history of legislation, it was feared that the Legislature might not be receptive to extensive modification of the highway laws at this relatively early date.

In fact, the first proposal for this research contemplated that the study would not be undertaken unless the 1962 Regular Session of the Legislature adopted a resolution calling for the appointment of a legislative committee to work with the faculty of the College of Law in carrying on its study of the highway laws. A resolution to this effect was presented to and adopted by the House of Delegates. This resolution was also presented to the Senate, but was not adopted by that body due to the last-minute pressure of legislative business. However, no opposition to the resolution was encountered.

Nevertheless, because the resolution was not adopted by both houses, representatives of the State Road Commission and of the Bureau of Public Roads attended a joint meeting of the Legislature's interim joint Committee on Government and Finance and the West Virginia Commission on Interstate Cooperation held on April 3, 1962. As a result of this meeting, these interim bodies of the Legislature appointed from their membership a Subcommittee on the Public Road Program to work and cooperate with the Highway Laws Study staff, with the understanding that the staff would make progress reports to this subcommittee and seek from the members thereof suggestions as the

study proceeded. Thus, the West Virginia Highway Laws Study looked initially to the objective of enactment of any proposed revision of the highway laws.

A second reason existed for not seeking a comprehensive revision of the West Virginia highway laws at this time. Representatives of the Bureau of Public Roads and of the State Road Commission had recognized that there are within the State law certain deficiencies that should be corrected expeditiously so that the most efficient use of Federal and State funds can be accomplished in the construction and maintenance of State highways. These defects were viewed as "brush fires" which needed to be extinguished before a more comprehensive revision of the highway laws was undertaken. This probability was also recognized in the proposal that was the basis for the research agreement; a rather comprehensive study was outlined in the proposal, but it was recognized therein that the suggested areas of study might be "too numerous" and that they should be examined with "the view of eliminating some of the suggested areas" inasmuch as the duration of the study was to be "relatively short." The agreement contemplated that only five members of the law faculty would work full time from June 1 until September 15, 1962, and on a part-time basis from that date until December 31, 1962. The two faculty members serving as co-directors of the project were to continue on a part-time basis to appear before committees of the Legislature considering the proposed legislation and to complete the reports on the project after the 1963 Legislature adjourns. Except for secretarial assistance, no other staff members were contemplated or used except that a third-year law student served as a research assistant for 2½ months during the summer of 1962.

During the first month of the study, the staff made a detailed examination of the present highway laws of the State and of the Federal statutes under which funds might be received by the State in aid of highway construction. As to State laws, this study included not only the statutes and cases decided thereunder but also the opinions of the Attorney General of West Virginia and of the State Road Commission concerning these statutes. In this manner the staff became familiar not only with the present State highway laws but also with many problems heretofore encountered by the State Road Commission under the present law. Other problems faced by the State Road Commission became apparent through study of the Commission's Legal and Right of Way Division Operation and Procedure Manual. In addition, during this first month, written digests of all the State statutes and opinions of the Attorney General and of the State Road Commission dealing with highway matters were started. During the period of the study, these digests were completed, and thereafter a detailed index to these statutes and opinions was prepared. Incidentally, a more efficient use of the staff's time might have been made had this index and the digests been available when the study was started. It was anticipated that the index and digests would be available for the major part of this study because the proposal provided for the part-time work to start on January 1, 1962. However, the agreement was not executed until May 9, 1962.

During the first month of the study, the staff also obtained reports concerning other State highway laws studies and brochures summarizing the highway laws of other States. Among the source materials available were the Council of State Governments' Suggested State Legislation Programs; Reports of the Committee on Condemnation and Condemnation Procedure, Section of Local Government Law of the American Bar Association; publications of the U.S. Bureau of Public Roads; and numerous Highway Research Board Bulletins. These last bulletins were particularly helpful. Reviewing all this material gave the staff an insight into the problems that had arisen in other jurisdictions, the solutions attempted, and the results accomplished thereby, both in the courts and in other practical operations. However, no specific West Virginia problem areas were studied during this time with the exception of one that the representatives of the Bureau of Public Roads and of the State Road Commission had indicated as requiring very detailed study; namely, the acquisition of property and property rights for future highway purposes. The experiences of the Federal government and of other States in this area were analyzed and summarized in five papers for future use in the highway laws study.

Thereafter, on June 29, 1962, the staff met with members of the Legislative Subcommittee on the Public Road Program and representatives of the Bureau of Public

Roads and of the State Road Commission. The meeting was well attended. Among the members of the Legislature in attendance at this meeting were the Majority Leader in the Senate and the Speaker of the House of Delegates. An excellent picture of what would be involved in a comprehensive review, evaluation, revision, and codification of the highway laws of a State was presented by David R. Levin, representing the Bureau of Public Roads. In addition, he discussed the major problem areas which are confronting State highway departments. Henry C. Bias, Jr., Director of the Legal and Right of Way Division of West Virginia State Road Commission discussed the specific problems causing most of the difficulties for the Commission.

The matters that had been presented were discussed at length from the viewpoint of whether the Highway Laws Study staff should point toward comprehensive revision and codification of the State laws or toward examination of the basic changes that should be made in the existing statutes to make the State highway program more efficient. The members of the Legislature present advised that the latter course should be followed because a comprehensive revision would have little chance of being enacted into law in view of the fact that only a few years ago the highway laws had been twice extensively revised. It was decided to follow this advice.

This decision to concentrate on the difficulties with which the State Road Commission is presently confronted focused attention on the specific problems that had been discussed by Mr. Bias. The range of points that he had discussed was rather extensive. They varied from the need for greater discretion in the State Road Commissioner in fixing the speed for motor vehicles on highways, through the need for greater control in the development of subdivisions adjacent to highways, to the more detailed and complex problems encountered in condemning property for highway purposes. The greatest number of current problems fell within the last area, including the difficulties both in the condemnation procedure and in the substantive law concerning acquisition for future use. As already indicated, it had been anticipated that these problems would be involved in this study. Accordingly, the papers prepared in advance of this meeting on the experiences of the Federal government and of other States in these areas were distributed. Included in these papers were discussions concerning the statutes of other States authorizing acquisition of land for future highway use, the techniques that had been used in other States for financing acquisition of land for future highway use, a justification for acquisition of property for future highway use, and an itemization of the points that should be considered in drafting legislation that would authorize acquisition of property for future highway use. In addition, the material distributed summarized the points for consideration in determining whether the condemnation law, both substantive and procedural, as it presently exists in West Virginia, should be revised. Because administrative condemnation would be a basic change in West Virginia condemnation law, a paper dealing specifically with this kind of condemnation was presented. These papers and the problems which had been raised by Mr. Bias were discussed, and directions were given to the Highway Laws Study staff to draft proposed legislation covering certain specific points and such other related points as the experiences in other States might indicate were desirable.

At this meeting the members of the legislative subcommittee suggested that an effort should be made to get publicity for the highway laws study so that public acceptance would more likely be assured for any legislation proposed as a result of the study. All persons present agreed that this should be done. Thereafter, representatives of the news media were notified of and given an opportunity to attend the meetings at which progress reports concerning the study were made; several feature articles concerning these reports have appeared in newspapers with statewide circulation.

Following this meeting the co-directors of the study divided the problem areas and drafting assignments not only between themselves but also between the other members of the staff. In making this division, each member of the staff was assigned problems that fitted into related areas and thus each member of the staff has become in a sense a specialist concerning the highway laws in that area.

On July 9, 1962, a meeting of the Legislative Subcommittee on the Public Road Program was held. The co-directors of the Highway Laws Study appeared before this subcommittee and made a report concerning the earlier meeting with representatives

of the Bureau of Public Roads and of the State Road Commission. Special emphasis was given to the problems related to condemnation and those related to control and jurisdiction over State highways within municipalities. The views of the representatives of the Bureau of Public Roads and of the State Road Commission were summarized. As a result of this meeting, the Highway Laws Study staff obtained additional suggestions from the members of the Legislature for use in preparing drafts of proposed legislation in the problem areas already under study. Furthermore, the members of the Legislature suggested additional points for investigation and study by the staff.

On July 25, 1962, another meeting of some of the members of the Legislative Subcommittee on the Public Road Program and of representatives of the Bureau of Public Roads and of the State Road Commission was held. At this meeting a draft of a proposed statute dealing with the power of the State Road Commissioner to acquire property, or rights or interests therein, for State highway purposes was presented for study and criticism. This draft greatly broadened the powers of the State Road Commissioner, including special reference to acquisition for future highway purposes and correcting the difficulties heretofore encountered by the commissioner in acquiring property for highway purposes. This draft embodied the grant of that which had been found useful in other States and presented questions of constitutionality as to some of the authority granted; a special report on the constitutional aspects of such additional authority was presented at this time. During this meeting the staff was directed to make certain specific changes in the draft.

At the same meeting the condemnation law was discussed in detail. Benjamin Ritchie, an attorney in the Legal and Right of Way Division of the State Road Commission, pointed out what in his opinion were specific faults that had been found in the present condemnation law. Some of these points dealt with substantive law and others with procedural law. This introduced a special problem for the Highway Laws Study staff because procedural matters are controlled in West Virginia courts by rules promulgated by the Supreme Court of Appeals, both under the inherent power of the court and under specific legislative recognition of the power of the court to regulate procedural matters. It was decided that a meeting should be arranged with the members of that Court to discuss this matter. The legislative members in attendance expressed the view that any changes in the condemnation law, substantive or procedural, should apply to all instances of condemnation and not be limited to eminent domain proceedings instituted by the State Road Commissioner. Furthermore, it was decided at this meeting that administrative condemnation should not be proposed for this State.

No drafts of proposed legislation, other than that already mentioned, were presented at this meeting. However, a number of memoranda on problems that had already been mentioned were presented and discussed. These memoranda dealt with the present law in West Virginia as related thereto and with the laws and experiences of other States relating to the same problems. After discussing these memoranda, varying directions were given to the staff. In some instances, proposed legislation was to be drafted; in some cases, additional studies and reports were indicated; and in other instances, further thought was to be given to the matter from a policy viewpoint in view of the additional information that the memoranda had provided the representatives of the Bureau of Public Roads and of the State Road Commission.

On August 13 and 14, 1962, the West Virginia Commission on Interstate Cooperation and the West Virginia Legislative Joint Committee on Government and Finance met. One of the co-directors of the Highway Laws Study appeared before these two bodies and reported in detail the progress that was being made. In addition, he distributed to all the members present the memoranda and drafts of proposed legislation on specific problems that had been prepared as of that time.

On September 6, 1962, a meeting was held with members of the Supreme Court of Appeals, and they were presented with a draft of proposed Rule 71A for the West Virginia Rules of Civil Procedure. This rule was prepared by the Highway Laws Study staff, and it embodied procedural changes to eliminate the difficulties that the State Road Commission had encountered in eminent domain proceedings. The majority leader of the West Virginia Senate, representatives of the Bureau of Public Roads and of the State Road Commission, and one of the co-directors of the Highway Laws

Study were present at this meeting. The members of the Supreme Court of Appeals were receptive to considering the promulgation of the rule but suggested that it should be first approved by both the State Bar Committee on Civil Rules and the West Virginia Judicial Council.

On the following day members of the Legislative Subcommittee on the Public Road Program, representatives of the Bureau of Public Roads and of the State Road Commission, and members of the Highway Laws Study staff met to consider the progress made since the last meeting of this group. Minor changes were made in the draft concerning the authority of the State Road Commissioner to condemn or otherwise acquire property for road purposes. In addition, a draft concerning changes in the substantive law as to condemnation was considered and a few changes therein were directed. This was also true of the draft of proposed Rule 71A. Other problems heretofore mentioned by representatives of the State Road Commission were discussed, memoranda on some of them being presented, and policy decisions thereon being sought. Some such decisions were made and others were deferred. A few problems not heretofore mentioned were referred to the study staff for investigation and future reports.

The next meeting was held on September 20, 1962. No members of the legislative subcommittee were present. During the first part of the meeting, representatives of outdoor advertising concerns were heard, and their comments were referred to the Highway Laws Study staff for investigation and report thereon. Representatives of the Bureau of Public Roads and of the State Road Commission made comments during the second part of the meeting concerning drafts of proposed legislation heretofore presented by members of the Highway Laws Study staff. The staff was directed to make changes in the drafts as suggested at this meeting.

At the next meeting, on September 28, 1962, representatives of the Bureau of Public Roads and of the State Road Commission were present. Drafts of proposed legislation were presented and approved; other drafts of proposed legislation were presented and discussed, and changes therein were suggested. Some of the drafts of proposed legislation approved at this meeting embodied changes in earlier drafts, as directed at earlier meetings; other drafts approved merely embodied changes in the law to meet difficulties heretofore encountered by personnel of the State Road Commission. Several new matters were presented for consideration at this meeting; some were held in abeyance for future policy decisions, and others were held not to be meritorious for further consideration.

Another meeting was held on October 16, 1962, dealing with the specific proposals concerning the procedural and substantive law as to condemnation. In addition to those normally present at these meetings, the State Road Commissioner and an Assistant Attorney General of the State were present. No suggestions for any changes in the proposals were received at this meeting. Representatives of the news media were present, and the meeting received detailed news coverage.

Pursuant to the suggestion of the Supreme Court of Appeals, a meeting of the State Bar Committee on Civil Rules and of the Judicial Council was held on October 25, 1962. Representatives of the Legislature, of the State Road Commission, and of the Highway Laws Study staff were also present. In addition, an attorney with extensive condemnation practice was present at the invitation of the chairman of the State Bar Committee. With the approval of members of the Legislative Subcommittee on the Public Road Program, and of representatives of the Bureau of Public Roads and of the State Road Commission, not only was proposed Rule 71A distributed and explained to those present at this meeting but also were the other proposed changes in the condemnation substantive law presented. A number of suggested changes in the proposals were made at this meeting; all of them were adopted and embodied in the proposals.

The next meeting was held on November 5, 1962, with representatives of the Bureau of Public Roads and of the State Road Commission being present. The State Road Commissioner was present. At this meeting, proposed changes in the law other than those pertaining to condemnation were discussed; some modifications therein were made, and as modified the proposals were approved. Reports were made on some matters

that had been under consideration for some time; after discussion, the Highway Laws Study staff was directed to draft proposed legislation to embody the ideas approved in the meeting. Several new matters that had recently caused the State Road Commission difficulties were discussed, and the staff was asked to investigate the legal problems involved and to draft proposed legislation if this seemed necessary to alleviate the difficulties.

On November 15, 1962, the West Virginia Commission on Interstate Cooperation and the West Virginia Legislative Joint Committee on Government and Finance met. The State Road Commissioner and other representatives of the State Road Commission were present. One of the co-directors of the Highway Laws Study reported on the status of the study and distributed drafts of the proposed changes in the law along with explanatory statements concerning the proposed changes. Some of the proposed changes were discussed, and the members of these two bodies who were present made suggestions as to changes in the proposals that were discussed. The remainder of the proposals were discussed at a meeting of these two bodies held on December 10, 1962; not only was the State Road Commissioner present at this meeting but also five of the seven members of the State Road Commission were present. In addition, representatives of the Bureau of Public Roads and of the State Road Commission were in attendance. Again members of the two bodies made suggestions as to changes in these proposals, especially in the proposals concerning the sale of real property held by the State Road Commission and the regulation of access to State highways.

After the December 10 meeting, the Highway Laws Study staff revised the proposals to embody the changes that had been suggested by the members of the Legislature at the November 15 and December 10 meetings. The proposals, as revised, were drafted in bill form by the staff for introduction in the 1963 session of the West Virginia Legislature which is convening today, January 9. Even though an attempt was made to keep the number of bills to a minimum, the proposals as a result of the study are embodied in 18 new sections for the highway laws and the amendment of 37 existing sections thereof, the bills embodying these proposed changes being approximately 47 legal-size pages in length.

After the bills embodying the proposals that have resulted from this study are introduced in the Legislature and are referred to appropriate committees of the Legislature, the co-directors of the Highway Laws Study staff will be available to appear before these committees to explain the proposals and answer any questions that may be asked. One of the co-directors is preparing a chart showing the following items in separate columns: (a) the language in each statute proposed to be amended or a statement that a new statute is proposed, (b) the wording of each proposed statute, and (c) an explanation of the reasons for the proposed statute. This chart will aid the State Road Commissioner and his staff in explaining the proposed legislation to the members of the Legislature, representatives of the news media, and others. After the Legislature adjourns, this chart will be made a part of the final report on the study, and at least one column will be added to show what disposition the Legislature made of each of the proposed statutes and the effect thereof as related to the proposal.

One of the co-directors will make appearances during this month before the State Bar Committee and the Judicial Council concerning proposed Rule 71A dealing with condemnation procedure.

Whether the procedure followed in seeking revision of the West Virginia highway laws will be successful remains to be determined.