

Continuing Project on Highway-Right-of-Way and Legal Problems

An NCHRP staff digest of the progress and status of NCHRP Project 20-6, "Right-of-Way and Legal Problems Arising out of Highway Programs" for which the Transportation Research Board is the agency conducting the research. The Principal Investigator responsible for the project is Larry W. Thomas, TRB Counsel for Legal Research, serving under the Special Technical Activities Division of the Board.

A major and continuing need of state highway and transportation departments involves the assembly, analysis, and evaluation of operating practices and the legal elements of special problems involving right-of-way acquisition and control and highway law in general. Individual state experiences need to be compared and made available for possible application nationally. A need also exists for research on both immediate and longer range right-of-way and legal problems.

In spite of these critical needs, there had been no mechanism capable of responding in time to be of practical assistance to highway agencies. The Right-of-Way and Legal Affairs Committee of the American Association of State Highway and Transportation Officials (AASHTO) tried all of the known channels in an effort to initiate such research, but the response was negative for various reasons. Accordingly, AASHTO agreed that an appropriate mechanism should be maintained under which needed research of the type suggested could be undertaken and with dispatch. Prototypes of such a device may be found in the various AASHO and HRB road-test projects that have been undertaken and, perhaps more closely related, in the 1956-60 special HRB Highway Laws Project.

NCHRP Project 20-6 was established in 1968 to meet the aforementioned needs. It is a continuing study under the direction of the TRB legal staff involving research on a priority listing of topics selected by the cognizant NCHRP project committee. To date more than 60 topics in the right-of-way and legal areas have been researched under this project. These studies are carried out by TRB lawyers or by outside consultants for an average fee of less than \$10,000 each.

Output from this study has received wide distribution through the NCHRP Research Results Digest series. A list of Digests emanating from NCHRP Project 20-6 is given in Table 1. Copies can be obtained from the Publications Office, Transportation Research Board, 2101 Constitution Avenue, NW, Washington, D.C. 20418.

A new publication, *Selected Studies in Highway Law* (SSHL), was introduced by the Transportation Research Board in 1976 as part of NCHRP Project 20-6. It has been received as a significant contribution to the literature in this field. The term "highway law" embraces many branches of the law, including contracts, torts, eminent domain, evidence, and taxation. Although numerous texts treat these traditional branches, specialized treatment is not given to the large body of case law that has an important impact on the administration and operation of the nation's highway system. The purpose of SSHL is to fill this void in American legal writing by furnishing a reference that is directly and exclusively concerned with highway law. This compilation of cases dealing with highways provides, for the first time, a clearinghouse for analysis and discussion of the rules of law announced therein. To accomplish this objective, critical problems in the field of highway law were identified, and research papers were prepared by the TRB legal staff and consultants.

Volumes 1 and 2 of SSHL, dealing primarily with the law of eminent domain, were published and distributed in 1976. Volume 3, dealing with contracts, torts, environmental and other areas of highway law, was published and distributed early in 1978. An expandable publication format was used to permit future supplementation and the addition of new papers. The first addendum to SSHL, consisting of 5 new papers and supplements to 8 existing papers, was issued during 1979; and a second addendum, including 2 new papers and supplements to 15 existing papers, will be released at the beginning of 1981. With the addition of the second addendum, this 3-volume text will include 48 papers, some 23 of which have been supplemented during the past two years. Contents are given in Table 2.

Copies of SSHL have been sent, free of charge, to NCHRP sponsors, other offices of State and Federal governments, and selected university and state law libraries. The officials receiving complimentary copies in each state are: the Attorney General and the Chief Counsel and Right-of-Way Director of the highway agency. Beyond this initial distribution, the volumes are for sale through the Publications Office of the Transportation Research Board at a cost of \$90.00 per set.

Papers published in *Selected Studies in Highway Law* are also issued on a selective basis as NCHRP Research Results Digests and undergo free distribution to TRB members and sponsors.

Future work in this continuing project will include research on

TABLE 1. NCHRP RESEARCH RESULTS DIGESTS EMANATING FROM PROJECT 20-6

<u>No.</u>	<u>Title</u>
3	Relocation Assistance Under Chapter Five of the 1968 Federal-Aid Highway Act (1969, \$1.00)
6	Standing to Sue for Purposes of Securing Judicial Review of Exercise of Administrative Discretion in Route Location of Federal-Aid Highways (1969, \$1.00)
11	Valuation Changes Resulting from Influence of Public Improvements (1969, \$1.00)
19	Advance Acquisition Under the Federal-Aid Highway Act of 1968 (1970, \$1.00)
22	Valuation in Eminent Domain as Affected by Zoning (1970, \$1.00)
25	Federal Environmental Legislation and Regulations as Affecting Highways (1971, \$1.00)
31	Proposed Legislation to Authorize Joint Development of Highway Rights-of-Way (1971, \$1.00)
32	Changes in Existing State Law Required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (1971, \$1.00)
39	Legal Effect of Representation as to Subsurface Conditions (1972, \$1.00)
40	Appeal Bodies for Highway Relocation Assistance (1972, \$1.00)
41	Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain Cases (1972, \$1.00)
42	Supplemental Condemnation: A Discussion of the Principles of Excess and Substitute Condemnation (1972, \$1.00)
45	Exclusion of Increase or Decrease in Value Caused by Public Improvement for Which Lands Are Condemned (1973, \$1.00)
47	Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation (1973, \$1.00)
54	Trial Strategy and Techniques Using the Income Approach to Valuation (1973, \$1.00)
68	The Meaning of Highway Purpose (1975, \$1.00)
79	Personal Liability of State Highway Department Officers and Employees (1975, \$3.00)
80	Liability of State Highway Departments for Design, Construction, and Maintenance Defects (1975, \$3.00)
83	Liability of State and Local Governments for Snow and Ice Control (1976, \$3.00)
95	Legal Implications of Regulations Aimed at Reducing Wet-Weather Skidding Accidents on Highways (1977, \$3.00)
99	Liability of the State for Highway Traffic Noise (1978, \$3.00)
103	Payment of Attorney Fees in Eminent Domain and Environmental Litigation (1978, \$3.00)
108	Trial Strategy and Techniques in Highway Contract Litigation (1979, \$3.00)
109	Control of Conflicts of Interest in Highway Construction Contract Administration (1979, \$3.00)
110	Liability of State and Local Governments for Negligence Arising out of the Installation and Maintenance of Warning Signs, Traffic Lights, and Pavement Markings (1979, \$3.00)
111	Trial Aids in Highway Condemnation Cases (1979, \$3.00)
112	Legal Implications of Control of Access to Uncontrolled-Access Highways (1979, \$3.00)

<u>No.</u>	<u>Title</u>
113	Right to Compensation in Eminent Domain for Abrogation of Restrictive Covenants (1979, \$3.00)
116	Payments to Public Utilities for Relocation of Facilities in Highway Rights-of-Way (1980, \$3.00)
119	Recovery of Condemnation Blight Under Inverse Law (1980, \$3.00)

NOTE: Research has been completed on the following two studies, and copies of the uncorrected draft final reports have been distributed to NCHRP sponsors. The final reports will not be published by TRB, but loan copies are available upon written request to the NCHRP. Copies of the draft report may be purchased from University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

Study No. 45 - The One-Offer System of Right-of-Way Acquisition (1976, 106 pages)

Study No. 54 - Outdoor Advertising Control Under the Highway Beautification Act of 1965 (1979, 200 pages)

TABLE 2. CONTENTS OF "SELECTED STUDIES IN HIGHWAY LAW"

VOLUME 1

Chapter I. Eminent Domain: Conceptual Foundations

- Where Does Police Power End and Eminent Domain Begin?
- Damnum Absque Injuria and the Concept of Just Compensation in Eminent Domain
- The Meaning of Highway Purpose
- Eminent Domain: A Look at Current Problems and Future Developments

Chapter II. The Trial of a Highway Condemnation Case

- Overview of Rules of Compensability and Valuation Evidence for Highway Land Acquisition
- Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation
- Trial Strategy and Techniques Using the Income Approach to Valuation
- Trial Strategy and Techniques Using the Cost Less Depreciation Approach to Valuation
- Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain
- Trial Aids in Highway Condemnation Cases
- Rules of Discovery and Disclosure in Highway Condemnation Proceedings

Chapter III. Valuation Problems in Condemnation

- Valuation and Condemnation of Special Purpose Properties

VOLUME 2

- Valuation and Condemnation of Advertising Signs and Related Property Interest Under the Highway Beautification Act
- Valuation and Condemnation Problems Involving Trade Fixtures
- Valuation in Eminent Domain as Affected by Recognition of Benefits to Remainder Property
- Valuation in Eminent Domain as Affected by Zoning

- Valuation Changes Resulting from Influence of Public Improvements
- Right to Compensation in Eminent Domain for Abrogation of Restrictive Covenants

Chapter IV. Special Problems in Highway and Land Acquisition and Use

- Supplemental Condemnation: A Discussion of the Principles of Excess and Substitute Condemnation
- Theory and Practice in Inverse Condemnation for Five Representative States
- Recent Developments in the Law of Inverse Condemnation
- Recovery for Condemnation Blight Under Inverse Law
- Liability for Highway Drainage Damage
- Advance Acquisition of Highway Rights-of-Way
- Liability of the State for Highway Traffic Noise
- Legal Implications of Control of Access to Uncontrolled-Access Highways
- Payment of Attorney Fees in Eminent Domain and Environmental Litigation
- Payments to Public Utilities for Relocation of Facilities in Highway Rights-of-Way

Chapter V. Multiple Use of Highway Corridors

- Valuation of Airspace
- Joint Development Under the Model Airspace Act

VOLUME 3

Chapter VI. Highway Contract Law

- Licensing and Qualifications of Bidders
- Competitive Bidding and Award of Highway Construction Contracts
- Bid Mistakes: A Practical Approach to the Problem
- Indemnification and Suretyship
- Labor Standards in Federal-Aid Highway Construction Contracts
- Control of Conflicts of Interest in Highway Construction Contract Administration
- Legal Problems Arising from Changes, Changed Conditions, Disputes Clauses in Highway Construction Contracts
- Legal Effect of Representations as to Subsurface Conditions
- Liability for Delay in Completion of Highway Construction Contract
- Trial Strategy and Techniques in Highway Contract Litigation

Chapter VII. Environmental Law

- Environmental Litigation: Rights and Remedies
- Trial Strategy and Techniques in Environmental Litigation

Chapter VIII. Tort Liability

- Liability of State Highway Departments for Design, Construction, and Maintenance Defects
- Personal Liability of State Highway Department Officers and Employees
- Liability of State and Local Governments for Snow and Ice Control
- Liability for Wet-Weather Skidding Accidents and Legal Implications of Regulations Directed to Reducing Such Accidents on Highways
- Liability of State and Local Governments for Negligence Arising Out of the Installation and Maintenance of Warning Signs, Traffic Lights, and Pavement Markings

Chapter IX. Intergovernmental Relations

- The Federal-State Relationship in the Federal-Aid Highway Program
-

new topics of current interest in both the right-of-way and legal fields. Updating and supplementing the text book will also be continued. NCHRP Project Committee SP20-6 meets periodically to select topics for study under Project 20-6. The membership of this committee is given in Table 3. Topics that were selected for study at the most recent meeting but not yet completed are given in Table 4.

Candidate topics are suggested by members of the committee based on input from a variety of sources. State highway and transportation department personnel may submit suggestions for study topics directly to the NCHRP or, if desired, through their State TRB representative. Suggested topics must be accompanied by a brief scope statement or discussion of the problem.

The Principal Investigator for Project 20-6, Larry W. Thomas, can be reached at (202) 389-6386 and the NCHRP Projects Engineer, Robert J. Reilly, at (202) 389-6741.

TABLE 3. NCHRP PROJECT COMMITTEE SP20-6

Chairman Robert W. Cunliffe Pennsylvania Department of Transportation	
Dowell H. Anders Federal Highway Administration	Harold J. Lewis*** Clanton, Alabama
Allen R. Austin Illinois Department of Transportation	Daniel R. Madelker Washington University School of Law
Kingsley T. Hoegstedt* Sacramento, California	Joseph M. Montano Gorsuch, Kirgis, Campbell, Walker & Grover
John P. Holloway University of Colorado	Ross D. Netherton Federal Highway Administration
Delbert W. Johnson Burlington Northern, Inc.	Nolan H. Rogers Maryland State Highway Administration
T. Keltner Oklahoma Department of Highways	
David R. Levin** Bethesda, Maryland	

- * Formerly with California Department of Transportation.
- ** Formerly with Federal Highway Administration.
- *** Formerly with State of Alabama Highway Department.

TABLE 4. TOPICS APPROVED FOR STUDY

<u>Topic No.</u>	<u>Title</u>
2-01	Legal and Procedural Issues Related to Relocation Assistance (Pending)
2-02	Minority Business or Enterprise Requirements in Public Contracts (Pending)
2-04	Legal Aspects of Historic Preservation in Highway Programs (In progress)
2-05	Local Land-Use Regulations in Relation to Highway Programs (In progress)
2-06	Disposition of Minerals on Highway Rights-of-Way (Pending)
2-07	Functional Replacement As a Measure of Value (In progress)
2-08	Constitutional Limits of Conditions in Federal-Aid Programs (In progress)
2-09	Procedural Aspects of Inverse Condemnation Actions (In progress)
2-10	The Effect of Federal and State Public Information Acts on Highway and Transportation Department Activities (In progress)
2-11	Use of Gurantee or Warranty Clauses in Highway Construction Contracts (Pending)
2-12	Legal Interrelationship of State and Local Governments in Highway Matters (Pending)
2-16	Update of "Environmental Litigation: Rights and Remedies" (Pending)
2-18	Update of "Valuation and Condemnation Problems Involving Trade Fixtures" (Pending)
2-21	Update of "Trial Strategy and Techniques in Highway Contracts Litigation" (Pending)
2-22	"Liability of Highway Departments for Failure to Comply with Design Standards and Maintenance Procedures" (In progress)
2-29	Update of "Valuation and Condemnation of Advertising Signs and Related Property Interests Under the Highway Beautification Act" (In progress)
2-30	Update of "Payment of Attorney Fees in Eminent Domain and Environmental Litigation" (In progress)
2-31	Update of "Rules of Discovery and Disclosure in Highway Condemnation Proceedings" (In progress)
2-32	Update of "Legal Implications of Control of Access to Uncontrolled- Access Highways" (In progress)

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