

Areas of Interest: 11 administration, 12 planning, 14 finance, 15 socioeconomics, 17 energy and environment, 21 facilities design, 23 environmental design, 33 construction, 40 construction and maintenance equipment, 51 transportation safety, 54 operations and traffic control, 70 transportation law (1 highway transportation, 2 public transit, 3 rail transportation, 4 air transportation, 5 other)

Continuing Project on Legal Problems Arising Out of Highway Programs

An NCHRP staff digest of the progress and status of NCHRP Project 20-6, "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 Robert W. Cunliffe, TRB Counsel for Legal Research, serving under the Special Projects Division (B) of the Board.

A major and continuing need of state highway and transportation departments involves the assembly, analysis, and evaluation of operating practices and legal issues associated with highway projects. Individual state legal experiences need to be compared and made available for possible application nationally. A need also exists for research on both immediate and longer range highway legal problems.

NCHRP Project 20-6 was established in 1968 to meet these needs. It is a continuing study under the direction of the TRB Legal Counsel for Legal Research, serving under the Special Projects Division of the Board. To date more than 70 study topics in the highway legal area have been researched under this project. More than 15 study topics are under contract for research, and in excess of 15 study topics are pending with authors being sought or subcontracts being processed. These studies are carried out by the Counsel for Legal Research or by outside legal consultants for an average fee of less than \$10,000 each.

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 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, was released at the beginning of 1981. In December 1982, a third addendum, consisting of 8 new papers, 7 supplements, as well as an expandable binder for Volume 4, was issued. The text, which totals about 3,000 pages (see Table 1 for "Contents"), comprises 56 papers, some 30 of which have been published supplements in the Selected Studies in Highway Law.

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.

Published papers from this study also receive distribution through the NCHRP Research Results Digest series. A list of Digests emanating from NCHRP Project 20-6 is given in Table 2. Copies can be obtained from the Publications Office, Transportation Research Board, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

Future work in this continuing project will include research on new topics of current interest in the highway legal field. 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 approved by the Committee 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, Robert W. Cunliffe, can be reached at (202) 334-3205 and the NCHRP Projects Engineer, Robert Spicher, at (202) 334-3224.

TABLE 1. CONTENTS OF "SELECTED STUDIES IN HIGHWAY LAW"

VOLUME 1

Chapter I. Eminent Domain: Conceptual Foundations

- Where Does Police Power End and Eminent Domain Begin?
- Dammum 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
- Procedural Aspects of Inverse Condemnation - Title or Interest Acquired by Highway Department
- 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
- Local Plans and Land-Use Controls in Relation to Highways and Their Use

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

VOLUME 4

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
- Legal Implications of Highway Departments for Failure to Comply with Design, Safety, or Maintenance Guidelines
- Liability of the State for Injury-Producing Defects in Highway Surface
- Liability of State Highway Departments for Defects in Design, Construction, and Maintenance of Bridges

Chapter IX. Intergovernmental Relations

- The Federal-State Relationship in the Federal-Aid Highway Program
- State Highway Programs Versus the Spending Power of Congress.
- The Effects of Federal and State Public Information Acts on Highway and Transportation Department Activities
- Legal Aspects of Historic Preservation in Highway and Transportation Programs

TABLE 2. NCHRP RESEARCH RESULTS DIGESTS EMANATING FROM PROJECT 20-6

| RRD No. | Title | RRD No. | Title |
|---------|--|---------|--|
| 3 | Relocation Assistance Under Chapter Five of the 1968 Federal-Aid Highway Act (1969, \$1.00) | 113 | Right to Compensation in Eminent Domain for Abrogation of Restrictive Covenants (1979, \$3.00) |
| 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) | 116 | Payments to Public Utilities for Relocation of Facilities in Highway Rights-of-Way (1980, \$3.00) |
| 11 | Valuation Changes Resulting from Influence of Public Improvements (1969, \$1.00) | 119 | Condemnation Blight Under Inverse Law (1980, \$3.00) |
| 19 | Advance Acquisition Under the Federal-Aid Highway Act of 1968 (1970, \$1.00) | 129 | Legal Implications of Highway Department's Failure to Comply with Design, Safety, or Maintenance Guidelines (1981, \$3.00) |
| 22 | Valuation in Eminent Domain as Affected by Zoning (1970, \$1.00) | 134 | Procedural Aspects of Inverse Condemnation-Title on Interest Acquired by Transportation and Other Public Agencies (1982, \$3.00) |
| 25 | Federal Environmental Legislation and Regulations as Affecting Highways (1971, \$1.00) | 135 | Liability of the State for Injury Producing Defects in Highway Surface (1982, \$3.00) |
| 31 | Proposed Legislation to Authorize Joint Development of Highway Rights-of-Way (1971, \$1.00) | 136 | State Highway Programs Versus Spending Powers of Congress (1982, \$3.00) |
| 32 | Changes in Existing State Law Required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (1971, \$1.00) | 137 | The Effects of Federal and State Public Information Acts on Highway and Transportation Department Activities (1982, \$3.00) |
| 39 | Legal Effect of Representation as to Subsurface Conditions (1972, \$1.00) | 138 | Legal Aspects of Historic Preservation in Highway Programs (1982, \$3.00) |
| 40 | Appeal Bodies for Highway Relocation Assistance (1972, \$1.00) | 141 | Liability of State Highway Departments for Defects in Design, Construction, and Maintenance of Bridges (1983, \$3.00) |
| 41 | Trial Strategy and Techniques to Exclude Noncompensable Damages and Improper Valuation Methods in Eminent Domain Cases (1972, \$1.00) | 145 | Final Amendment Aspects of Control of Outdoor Advertising (1985, \$5.00) |
| 42 | Supplemental Condemnation: A Discussion of the Principles of Excess and Substitute Condemnation (1972, \$1.00) | 146 | Minority and Disadvantaged Business Enterprise Requirements in Public Contracting (1985, \$5.00) |
| 45 | Exclusion of Increase or Decrease in Value Caused by Public Improvement for Which Lands Are Condemned (1973, \$1.00) | 147 | Mineral Rights in Rights-of-Way: Acquisition, Valuation, and Disposition (1985, \$5.00) |
| 47 | Trial Strategy and Techniques Using the Comparable Sales Approach to Valuation (1973, \$1.00) | 149 | Exaction of Right-of-Way by Exercise of Police Power (1986, \$5.00) |
| 54 | Trial Strategy and Techniques Using the Income Approach to Valuation (1973, \$1.00) | 150 | Planning and Precondemnation Activities as Constituting a Taking Under Inverse Law (1986, \$5.00) |
| 68 | The Meaning of Highway Purpose (1975, \$1.00) | 151 | Liability of State for Injury or Damage Occurring in Motor Vehicle Accident Caused by Trees, Shrubbery, or Other Vegetative Obstruction Located in Right-of-Way or Growing on Adjacent Private Property (1986, \$5.00) |
| 79 | Personal Liability of State Highway Department Officers and Employees (1975, \$3.00) | 152 | Enforceability of the Requirement of Notice in Highway Construction Contracts (1986, \$5.00) |
| 80 | Liability of State Highway Departments for Design, Construction, and Maintenance Defects (1975, \$3.00) | 153 | Liability of the State for Injuries Caused by Obstructions or Defects in Highway Shoulder or Berm (1986, \$5.00) |
| 83 | Liability of State and Local Governments for Snow and Ice Control (1976, \$3.00) | 154 | Trial Strategy and Techniques in Enforcing Laws Relating to Truck Weights and Sizes (1986, \$5.00) |
| 95 | Legal Implications of Regulations Aimed at Reducing Wet-Weather Skidding Accidents on Highways (1977, \$3.00) | 156 | Continuing Project on Legal Problems Arising Out of Highway Programs. A status report (1986) |
| 99 | Liability of the State for Highway Traffic Noise (1978, \$3.00) | 157 | Supplement to Licensing and Qualification of Bidders in Selected Studies in Highway Law (1986, \$5.00) |
| 103 | Payment of Attorney Fees in Eminent Domain and Environmental Litigation (1978, \$3.00) | 158 | Legal and Procedural Issues Related to Relocation Assistance (1986, \$5.00) |
| 108 | Trial Strategy and Techniques in Highway Contract Litigation (1979, \$3.00) | 160 | Acquisition of Uneconomic Remnants Under 23 U.S.C. 109(f) (1987, \$5.00) |
| 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) | | |

TABLE 3. NCHRP PROJECT COMMITTEE SP20-6

| Chairman | |
|---|---|
| Nolan H. Rogers | |
| Maryland Department of Transportation | |
| Watson C. Arnold | Michael E. Libonati |
| Texas Attorney General's Office | Temple University School of Law |
| Ruth J. Anders | Daniel R. Mandelker |
| Federal Highway Administration | Washington University School of Law |
| Robert F. Carlson * | Spencer A. Manthorpe |
| Carmichael, California | Pennsylvania Department of Transportation |
| Kingsley T. Hoegstedt * | Joseph M. Montano **** |
| Sacramento, California | Denver, Colorado |
| Delbert W. Johnson | Lynn B. Obernyer |
| Washington Department of Transportation | Colorado Department of Law |
| Thomas N. Keltner ** | Jean G. Rogers |
| Oklahoma City, Oklahoma | Federal Highway Administration |
| David R. Levin *** | |
| Bethesda, Maryland | |
| Edward V. A. Kussy | |
| FHWA Liaison Representative | |

- * Formerly with California Department of Transportation
 ** Formerly with Oklahoma Department of Transportation
 *** Formerly with Federal Highway Administration
 **** Formerly with Colorado Department of Highways

TABLE 4. TOPICS APPROVED FOR STUDY

| Topic No. | Title |
|-----------|--|
| 3-20 | Update of Five Papers in Contract Law (In Progress; two papers completed) |
| 4-02 | Liability of Highway Agencies for Failure to Provide or Maintain Highway Barriers, Guardrails and Similar Devices (In Progress; was 2-35, now included in 4-07) |
| 4-03 | Liability of Public Agencies Arising Out of Rejection of Low-Bids and Misaward of Contracts (In Progress; was 3-13) |
| 4-04 | Use of Guarantee and Warranty Clauses in Highway Construction Contracts (Completed) |
| 4-06 | Update of "Payment to Public Utilities for Relocation of Facilities in Highway Right-of-Way" (In Progress) |
| 4-07 | Update of "Liability of State and Local Governments for Negligence Arising Out of the Installation and Maintenance of Warning Signs, Traffic Lights and Pavement Markings" (In Progress) |
| 4-08 | Legal Techniques for Reserving Right-of-Way for Future Projects Including Corridor Protection (In Progress) |
| 4-09 | Flooding and Water Problems Involving Highways (In Progress) |
| 4-10 | Update of Paper on "Local Plans and Land-Use Controls in Relation to Highways and Their Uses" (In Progress) |
| 4-11 | Beautification (Update of Study No. 54 "Outdoor Advertising Control Under the Highway Beautification Act of 1965" (In Progress) |
| 4-12 | Legal Implications of Penalty and Bonus Provisions for Quality Control and the Use of Incentive-Disincentive Clauses in Construction Contracts (In Progress) |
| 4-13 | The Use of Alternative Design Specifications and Value Engineering Clauses in Highway Contracts (Pending) |
| 4-14 | Liability to Abutting Property Owner for Loss or Impairment of Access Due to Conversion of Conventional Road Into Limited Access Highway (In Progress) |
| 4-18 | Second Update of Study No. 2-19 "Liability for Delay in Completion of Highway Construction Contract" (In Progress) |
| 4-19 | Wetlands and Floodplain Protection and the Federal-Aid Highway Program (In Progress) |
| 4-20 | What Constitutes the Administrative Record in Highway Cases (Pending) |
| 4-21 | Effect of Clean Air Act Requirements on Regional Transportation Planning (Pending) |
| 4-22 | Suspension and Debarment of Highway Construction Contractors (Pending) |
| 4-23 | Public/Private Partnerships for Financing Highway Improvements (Completed. Being Published as RRD) |
| 4-24 | Update of Chapter in SSSL on "Legal Aspects of Historic Preservation in Highway and Transportation Programs (Pending) |
| 4-25 | Impact of Civil Rights Act on Departments, Programs and Officials (Pending) |
| 4-26 | Legal Aspects of Hazardous Waste Containments in Highway Programs (In Progress) |

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