

Statement of Committee Objectives: Modernization of State Highway Laws

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● MEN of vision in the highway field see the time coming when all highway programs presented for the consideration of state legislatures will be based on the integrated findings of engineering, fiscal, and legal studies. In the past, the legal side has been largely ignored, with the result that unlooked-for obstacles have cropped up in trying to implement the proposed improvements.

Deficiencies in existing laws must be correlated with engineering and financial needs if our lawmakers are to have a complete picture of the highway problem. Only when all three elements are provided for will resulting legislation meet the problem squarely and stand a good chance of broad public acceptance.

So if the Highway Research Board study does nothing more than focus nationwide attention on highway law, it will have accomplished a great deal. But of course we expect it to do immensely more. It is not intended to be merely a critical analysis to find out what is wrong with the state highway laws. It is an attempt to render positive and constructive service in helping to make them right.

Explicitly, the objectives of our study are twofold: (1) to assemble state constitutions and statutes and analyze them as they relate to all highway functions, such as system classification, highway design, construction, maintenance and so on, and (2) with the background of fact so derived, to isolate important principles so that authorities throughout the country may later, by review and discussion, help to determine which are basic for adequate highway laws.

To understand the problem of highway law, it should be viewed in perspective with the two major cycles of road development in the United States. The first started with the Good Roads Movement in the early decades of this century, culminating in the great road-building era of 1920-30. No one at that time was concerned about legal provisions. The big challenge was to get the motorist out of the mud as fast as possible.

But perhaps it's not quite accurate to say nobody was concerned about the legal question even in that era. For example, a 1917 survey by the Bureau of Municipal Research of New York referred to current laws as "an accumulation of uncorrelated statutes, frequently dating back to the time the state was founded." In other words, the problem was already there, though understandably it was disregarded in the concerted drive to lay down hundreds of thousands of miles of all-weather pavements. Road-building at that time posed few of the complex legal issues that plague the highway official today.

The second major cycle of road development began at the end of World War II. We are in the midst of it now. Perhaps never in our history has public concern about highways been at such a peak. There is deep interest on the part of legislatures and highway departments, but most important, on the part of the great mass of Americans themselves — road user groups, motor clubs, service organizations, business and industry, the public in general.

With this tremendous upsurge of interest in roads, the time is ripe for every state to put its legal house in order. The legal problem has gradually assumed such proportions that it can no longer be shoved into the background. It has emerged as a high priority factor in any sound approach to the overall job of road modernization. Clearly, the time to strike is now while the iron of public interest is red hot.

There is, fortunately, growing recognition that the highway laws problem will not wait; that the debris and chaff must be cleared away; that inconsistencies must be reconciled; that archaic legal obstacles must be removed; that, where necessary, provisions must be revamped to permit modern approaches to present-day needs.

Generally speaking, the highway laws of most of the states are a hodgepodge of statutes enacted as expediency demanded over the years. With the single exception of North Dakota, no real attempt has been made in any state to evaluate the law in

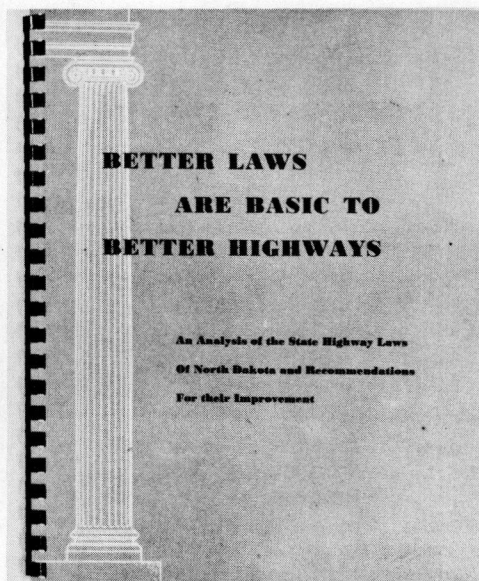


Figure 1.

terms of its overall effectiveness as a legal instrument under which officials at all levels of jurisdiction can carry forward an integrated program to meet present and future requirements.

Postwar, it has become painfully evident that highway laws have not been keeping pace with technical advances and modern concepts of highway engineering and management. In state after state, highway departments have been confronted with legal road-blocks, not only in projecting long-range programs, but in trying to reorganize to perform routine tasks more efficiently.

Former Commissioner MacDonald of the Bureau of Public Roads stated the case precisely when he said: "If we are to give the highway engineers the kind of authority, responsibility and free hand needed to do this highway job, we must have a thorough modernization of the laws."

The fact is, however, that there are no recognized yardsticks available to the states for evaluating their statutes. Nor are there accepted principles to aid lawyers and law-makers in translating modern engineering thinking into sound legislation. It was to fill these glaring gaps that the Highway Research Board study was conceived and undertaken.

When the Executive Committee of the American Association of State Highway Officials, by a resolution passed in 1951,

asked the Board to sponsor the study, no immediate action was taken. The Board felt that a project of this size and scope required thorough examination. Shortly thereafter, it came to the Board's attention that the North Dakota Legislative Research Committee was conducting a complete review of the state highway laws in connection with concurrent engineering and fiscal studies. The board decided to await the outcome of this pioneering effort before deciding upon the course to take.

The responsible officials of North Dakota had grasped that their highway troubles went far beyond the physical deficiencies — that many of their difficulties stemmed from the underlying laws. They realized that an overhaul of the highway code was essential, particularly with respect to fixing of authority and defining of responsibilities.

For instance, the highway department was doubtful that, under existing provisions, it had authority to send a man down to consult with a local road agency on a common problem, or even to send so much as a truck down to lend a helping hand. Department officials were not even sure they had the power to stop a farmer from planting on a state highway right-of-way, or to enjoin the use of highway-drainage facilities by adjoining property owners.

These are only minor examples. Similar legal ambiguities and deficiencies existed with respect to major issues too, including system classification, land acquisition, control of access, joint financing and intergovernmental relations in general.

So for many months detailed review of the entire highway code went on. In addition to the North Dakota statutes, the study included the state constitution, court decisions, attorney - general's opinions, the statutes of other states — everything. The legal staff held frequent consultations with Commissioner Thompson and members of the highway department, including district engineers and other specialists. The highway department accepted the findings and recommendations, as did the Legislative Research Committee (see Fig. 2).

The recommendations were then translated into bills, which were subsequently approved almost in their entirety by the legislature of the state. The result was a complete modernization of North Dakota's state highway laws, in keeping with its needs.

Following this dramatic demonstration



Figure 2. North Dakota Legislative Research Committee.

of popular interest in highway laws, the Highway Research Board decided at its executive committee meeting last winter that the time was opportune, for an intensive study of the road statutes of all the states.

For the preliminary stages of the work, the Highway Research Board felt that a small working committee would suffice to guide the staff and advise them on appropriate procedures. This Committee on Highway Laws was organized under the Board's Department of Economics, Finance and Administration.

Even though, as yet, we have covered only a relatively small segment of the total subject, I believe that it will be abundantly clear to you that present state highway laws leave much to be desired from the standpoint of consistency, effectiveness, and completeness. You will note sharp variances without rhyme or reason. On some of the provisions you will almost visualize the cobwebs that have been accumulating since long before the advent of the automobile.

Even at this early stage, the great potential value of our study to highway officials and others is becoming apparent. For example, New Mexico recently established a state highway commission by constitutional amendment. Serious questions arose as to the powers of the commission, due to ambiguity of language. The officials there were anxious to know what other states have highway departments created by constitutional provision; and if similar language was used in any of these cases, whether it has

even been interpreted by the courts.

Because the committee staff had just completed analysis of all state constitutions, we were able to provide the necessary facts promptly. Actually, it was the first time such comprehensive information was ever available. You get an inkling of what a boon it will be to the states when eventually the research in all functional phases of highway law is completed, if only as basic reference sources.

Had such factual legal data been available to the North Dakota Legislative Research Committee, the year and a half of hard work it took to complete the study could have been cut to a fraction.

With the initial spadework on our project well under way, it is expected that the committee will soon be broadened considerably for the vast job that still remains. We hope to have representation from all the states and from many fields. We hope to bring in state, county, and municipal engineers; administrators; law officers and judges; legislators; city and county officials; planners; economists; authorities on intergovernmental relations; leaders of business and industry. We want the best minds in the country in on this thing to participate and advise and to contribute their thinking to the final product. When the staff has completed the monumental task of collecting, analyzing and recording all the facts about state highway laws, the next step will be to sift the accumulated data. The factual material will be aired,

reviewed and discussed on the widest possible scale.

We hope that with the aid of the enlarged committee, regional forums will be set up to facilitate and extend discussion and debate. No effort will be spared to have the findings thoroughly ventilated. Everyone who is interested is going to have a chance to put in his oar.

From this unlimited review, there should finally emerge a cross-section of the best thinking and experience as to what constitutes the basic elements in every functional phase of highway law. For the first time there will have been developed a set of rock-bottom principles which, by common consent, are deemed essential for adequate laws. With such practical yardsticks, every state will readily be able to evaluate its body of highway law in the light of present and future needs.

Now we don't expect that every state will hasten to scrap all its existing laws and rewrite them. We do feel confident, however, that with the availability of a simple and comprehensive body of first principles, many states will want to take

a look at their legislative provisions so as to determine their adequacy. For every state wants laws capable of practical administration, which as we all know offers the best assurance of real public acceptance and support.

It may well be, as we project this study further, the committee will be asked to reduce to their lowest common denominators the basic principles evolved through the broad cooperative effort. Maybe, in the final analysis, they can be crystallized into as few as three fundamental tests of adequacy: (1) Are the provisions too restrictive? In other words, do they fail to give the highway department enough discretionary power to carry out its functions of planning, building, maintaining and operating the highway systems under its jurisdictions? (2) Is there unlawful delegation of authority? (3) Are the provisions in the public interest?

At any rate, such fundamental tests of adequacy are worth keeping in mind as we now proceed to the second part of this presentation, a report on some of the interesting findings in our research to date.

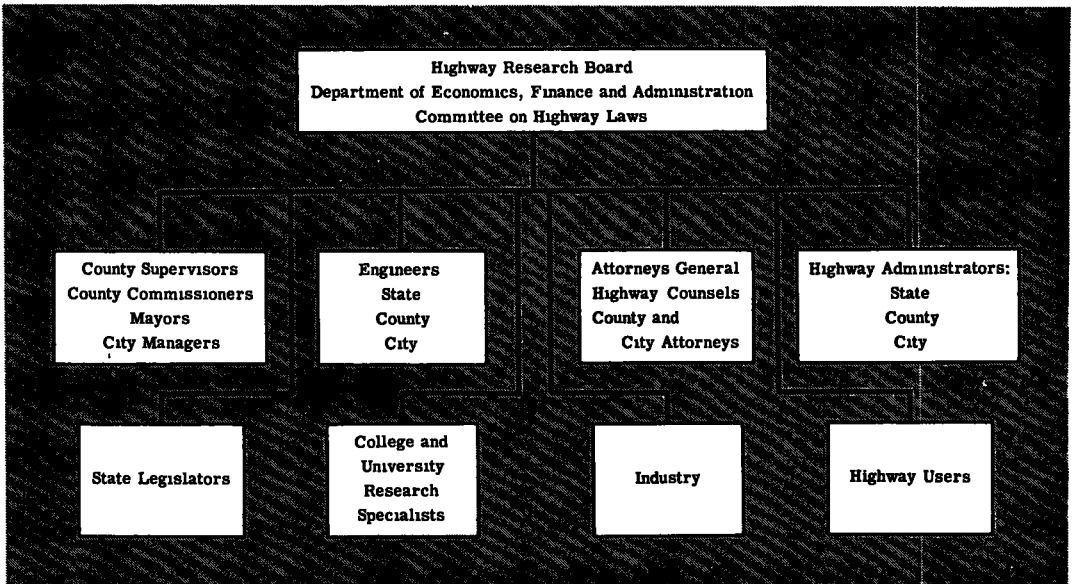


Figure 3.