Highway Classification and Constitutional Provisions

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● THE first thing that becomes apparent in an exhaustive study of state highway laws is the sheer size of the subject matter. It presents the same problem as cooking an elephant. The only way you can tackle it is by cutting it up into manageable chunks. That is what the committee has tried to do. Or, more accurately, it has tried to break it down into its component parts.

The result is the following tentative list, or working outline, of what we might call the main functional divisions of state highway laws: (1) constitutional provisions, (2) declaration of legislative policy, (3) definitions, (4) highway administration (power and duties), (5) highway establishment and abandonment, (6) systems and classification, (7) federal aid, (8) intergovernmental relationships, (9) financing, (10) location and design, (11) programming, (12) land acquisition, roadside regulation and access control, (13) contracts, (14) construction, (15) bridges, (16) maintenance, (17) traffic engineering, (18) toll facilities (roads, bridges, ferries), (19) public utilities, (20) drainage, (21) landscaping, (22) budgeting, accounting, and purchasing, (23) public relations, (24) penalties, (25) air, water, railroad, and highway integration, (26) parking, (27) special legislation, and (28) miscellaneous.

This list probably will be revised as we go along, but in a general way it serves to stake out the major legal areas that must be explored. It may give you an idea of the scope and importance of this undertaking, for it points up the fact that these laws govern virtually every phase of highway work.

This progress report covers two of these functional divisions, in which at least some of the preliminary work has been completed: state constitutional provisions and highway system classification. Both merit high priority from the standpoint of relative importance.

HIGHWAY PROVISIONS OF STATE CONSTITUTIONS

The basic source of authority of the state stems from its organic document, the state constitution. All statutory law must fit within the framework of the state constitution, and no enactment must contravene any provision of that document. If it does, it is unconstitutional, null and void, and of no legal effect. So, as a starting point in our study, we must know what is contained in the state constitutions with respect to highway matters. That is why we are examining these organic documents in detail.

In our analysis thus far, we have found that some of the constitutional provisions affect highway functions specifically, while others impinge upon them only indirectly, or in common with other governmental functions. Generally, the latter type of provision is more prevalent. For example, only four states provide constitutionally for the form of state highway administrative body which must be established. But practically all states have constitutional provisions specifying tax and debt limitations, applicable to highways as well as other governmental operations.

After examination of all existing state constitutional provisions, those which affect highway functions either directly or indirectly were recorded in a set of summary tables. Those which bear on highway matters directly were classified under the following headings: (1) authority and responsibility for highway, 8 states; (2) state highway administrative bodies, 4 states; (3) special or private laws, 32 states; (4) antidiversion amendments, 24 states; (5) federal aid, 6 states; and (6) special road administrative areas, 4 states.

Those provisions that concern highway functions only indirectly are classified as follows: (1) taking of property, 48

TENTATIVE MAIN FUNCTIONAL DIVISIONS

1. Constitutional provisions
2. Declaration of legislative policy
3. Definitions
4. Highway administration — powers and duties
5. Highway establishment and abandonment
6. Systems and classification
7. Federal aid
8. Intergovernmental relationships
9. Financing
10. Location and design
11. Programming
12. Land acquisition, roadside regulation and access control
13. Contracts
14. Construction
15. Bridges
16. Maintenance
17. Traffic engineering
18. Toll facilities — roads, bridges, ferries
19. Public utilities
20. Drainage
21. Landscaping
22. Budgeting, accounting and purchasing
23. Public relations
24. Penalties
25. Air, water and highway integration
26. Parking
27. Special legislation
28. Miscellaneous

states; (2) internal improvements, 12 states; (3) contracts, 4 states; (4) hours of work, 8 states; (5) taxation, 36 states; (6) indebtedness, 42 states; and (7) miscellaneous, 3 states.

Authority and Responsibility for Highways

Logically, we might suppose that all state constitutions would have a direct provision covering highway authority and responsibility, but as we have seen, this is so in only eight states.[1] Six additional states provide indirectly for highway authority and responsibility in connection with indebtedness provisions[2]; while Georgia and Missouri include authority and responsibility provisions in their anti-diversion amendments, and Kansas permits highway construction and maintenance work as an exception to its general constitutional ban on internal improvement work.

Some of the provisions delegating authority and responsibility for highways to the state are mandatory, while others are merely permissive. In Alabama, for example, it is provided that the state shall construct and maintain highways. In California, the "legislature shall have power" to establish a system of highways. In

[1]California, Illinois, Louisiana, Michigan, Minnesota, Texas, West Virginia, and Wyoming

[2]Alabama, Colorado, Maine, New Mexico, Oregon, and Pennsylvania

CONSTITUTIONAL PROVISIONS AFFECTING HIGHWAY FUNCTIONS DIRECTLY

Authority and responsibility for highways	8 states
State highway administrative bodies	4 states
Special or private laws	32 states
Anti-diversion amendments	24 states
Federal aid	6 states
Special road administrative areas	4 states

Illinois, the general assembly may provide for roads and cartways.

Some of the constitutional provisions mention system, and, at least in a general way, classification, although in some cases the intent is not entirely clear. We will go into this phase in somewhat more detail when we discuss classification later in this talk.

State Highway Administrative Bodies

As has been indicated, only four states provide constitutionally for the administrative body which is to exercise authority over state highways. They are Arkansas, Louisiana, Missouri, and New Mexico.

The Missouri Provision dates from 1928 and is general in that, although a highway commission is specified, the number, qualifications, compensation, and terms of members are left to the legislature. The Arkansas, Louisiana, and New Mexico provisions are all recent, having been ratified in 1952, 1952, and 1949, respectively. Each of the three requires a commission and is specific as to the number, appointment, terms, qualifications, removal, and duties of commission members.

CONSTITUTIONAL PROVISIONS AFFECTING HIGHWAY FUNCTIONS INDIRECTLY

Taking of property	48 states
Internal improvements	12 states
Contracts	4 states
Hours of work	8 states
Taxation	36 states
Indebtedness	42 states
Miscellaneous	3 states

Special or Private Laws

We have seen that 32 states have constitutional provisions that prohibit the passage of special or private laws concerning highways. Some of these provisions pertain only to vacating roads, others to laying out, opening and vacating; still others mention only chartering and licensing. Quite often ferries and bridges, as well as roads, are included in the prohibition against special or private laws, and in some instances toll facilities are included.

There are some exceptions to the broad prohibitions. Delaware, for example, excepts roads passing through all three counties of the state. Louisiana excepts companies erecting bridges crossing streams which form part of the state boundary, and several other states have similar provisions.[3] New Mexico and some other states except roads extending into more than one county and military roads, and the Texas legislature is permitted to pass local laws for the maintenance of public roads without the local notice customarily required for special or local laws.

Antidiversion Amendments

Half the states now have in their constitutions antidiversion amendments, "good roads" amendments, or amendments dedicating highway-user taxes to road use.

Twenty of these 24 states provide that receipts from highway-user taxes shall be used for the "public highways of this state." In Georgia and Missouri, however, the expressed purpose is "the provision of an adequate system of public roads and bridges," and so indirectly provide constitutional authority and responsibility for the highway function. The Kansas provision is based on the premise that every tax law shall state the purpose thereof, and the Minnesota provision requires only that highway-user taxes shall be paid into already existing highway funds.

Federal Aid

Again, it may come as a surprise that only six states have constitutional provisions which relate directly to federal aid for highways.

Of these, Alabama authorizes the state to appropriate funds or issue bonds to match federal aid for highways, while Maine authorizes the state to issue up to a million dollars per year of bonds to match federal funds for the construction of state highways. In Maryland highways are not mentioned specifically, but the general assembly is given power to receive from the United States any grant or donation for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of said grant.

Missouri provides that money or property may be received from the federal government and be redistributed together with state money for any public purpose designated by the federal government. Nevada provides that, regardless of debt limitations, the state may enter into contracts arising by or through any undertaking or project of the United States and make such appropriations and levy such taxes as may be necessary in connection therewith. The Oklahoma provision refers only to the acceptance by the state of all reservations and lands for public highways made under any grant, agreement, treaty, or act of Congress.

Four states have indirect constitutional provisions relating to federal aid for highways. The New Jersey and New Mexico provisions are a part of overall debt-limitation provisions; in New Jersey such limitations are not applicable in connection with any money that has been or may be deposited with the state by the government of the United States, and in New Mexico bonds for funds to meet and secure allotments of federal funds may be issued without regard to requirements otherwise applicable. Wisconsin and Wyoming have general prohibitions against works of internal improvement, but exceptions are made in the case of highways where grants are involved, and the use of federal funds is thereby implied.

Special Road Administrative Areas

Only the states of Alabama, California, Louisiana, and Texas have constitutional provisions relating to special road administrative areas. Three of these provisions authorize the formation of road

[3] Missouri, New York, Oklahoma, South Dakota, Texas, Washington, and Wisconsin

districts, and one authorizes existing road districts to collect an annual tax. Two of the four provisions are limited to specific counties.

Taking of Property

Now to touch briefly on the indirect constitutional provisions. All state constitutions have something to say about the taking of property for public use. In most states the ancient right of eminent domain is taken for granted, and existing provisions relate only to due process of law and to the compensation that is required in connection with an exercise of the right. Many of these provisions require compensation for either the taking or damaging of private property, but some, as in Connecticut and Florida, mention only the taking.

Constitutional provisions in 22 states specify that compensation must be paid prior to the taking or damaging of private property.

Eleven states authorize excess taking for highway purposes, either specifically or by implication.

Internal Improvements

Twelve states have constitutional provisions relating to works of internal improvement. In nine of the cases, the state and its political subdivisions are prohibited from engaging in such work; while in two (South Dakota and Tennessee), participation is encouraged. In Wyoming, the state cannot engage in any project of this nature unless authorized by a two-thirds vote of the people. Most of the state constitutions having prohibitions against internal improvement work construe such work as not including highways.

Alabama, in spite of a general prohibition against engaging in works of internal improvement, can (when authorized by the legislature) appropriate money to be applied to public roads, highways and bridges in the state.

As already noted, South Dakota and Tennessee encourage rather than prohibit participation. The South Dakota constitution authorizes the state to engage in works of internal improvement, to own and conduct proper business enterprises, and to aid any association or corporation organized for such purposes. The Tennessee provision asserts: "A well-regulated system of internal improvement is calculated to develop the resources of the state and . . . . ought to be encouraged by the general assembly."

Contracts

Constitutional provisions relating to contracts are few, existing, at present, in only four states: Arkansas, Kentucky, Louisiana, and Missouri.

In Arkansas it is provided that all contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor, shall be given to the lowest responsible bidder. Kentucky provides that no county, city, town or other municipality shall ever be authorized to pay any claim created against it under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

Louisiana requires that all contracts for the construction of certain paved state highways and necessary bridges (constructed with the additional 1-cent gasoline tax) shall be subject to the approval of the Board of Liquidation of the State Debt, and shall not become operative until such approval is obtained. In Missouri, the state highway commission may enter into contracts with cities, counties, or other political subdivisions for and concerning the maintenance of, and regulation of traffic on, any state highway within such cities, counties or subdivisions.

Hours of Work

Eight states[4] have constitutional provisions regulating hours of work on public works projects, whether performed by contract or otherwise. In Colorado, a similar provision is applicable only to underground mines and other underground workshops, blast furnaces, smelters, and ore-reduction plants.

Generally, the work-hour provisions are limited to laborers and employees paid by the day. The California provision specifically mentions "laborers or workmen or mechanics," and the New Mexico provision, by opinion of the attorney general, applies only to persons employed and

[4]California, Idaho, Montana, New Mexico, New York, Ohio, Oklahoma, and Utah

paid by the day. The New York provision applies only to laborers, workmen, or mechanics in the employ of a contractor engaged on a public work, and the Ohio provision uses the specific term "workmen."

Taxation

The constitutional provisions relating to taxation in the 36 states having them are quite voluminous, and we need not go into them here.

Most of the provisions are general, in that they are applicable to all functions of government, including highways. There are, however, a number which refer specifically to highway taxation. The general provisions usually impose limits on the amount of taxes that can be levied, while the special ones, in some cases, permit special imposts beyond the limits set for general taxes. In the latter category are special county-road taxes, special taxes on vehicles or fuel, and in-lieu-of property taxes.

Arkansas, Missouri, and Texas authorize special county-road taxes, which are in addition to the regular amount of county tax permitted to be levied. In each case a limit is put on the special road tax authorized.

Indebtedness

Of the six states which do not have constitutional provisions relating to indebtedness, five are in New England.

In the 42 states where such provisions exist, they generally prescribe an overall debt limit which, as a rule, may not be exceeded. Many require that the proceeds of borrowings shall be used only for the purpose obtained. A few states, such as Colorado and Oregon, authorize highway debt beyond the amount of the overall limitation, while in other states debt is permitted only for specified purposes, including highways.

Altogether, seven states[5] are permitted by specific authorization to float bond issues for highway purposes. Some of these are permitted as exceptions to a general state debt limit; others are allowed without any reference to other indebteness provisions.

[5]Alabama, Colorado, Maine, Michigan, Minnesota, New York, and West Virginia

Miscellaneous

Under the heading of miscellaneous constitutional provisions, there are three that we might mention.

Massachusetts provides that advertising on public ways, in public places, and on private property within public view may be regulated and restricted by law.

In Alabama, Marshall County is authorized to levy and collect a county privilege license tax on the sale or storing for sale of motor fuel. The tax must be authorized by a majority of the qualified electors of the county voting in a referendum, and the proceeds must be used exclusively for construction and maintenance of hard-surface farm-to-market roads in the county.

New York provides that the lands of the state constituting the forest preserve as fixed by law shall be forever kept as wild forest lands but that the state is not thereby prevented from constructing, completing, and maintaining any highway previously specifically authorized by constitutional amendment.

HIGHWAY SYSTEM CLASSIFICATION

Probably no functional aspect of state highway laws is commanding more widespread attention right now than system classification, and until now little factual legal material on it had ever been assembled.

The dictionary defines a system as an arrangement of elements, into a whole, according to some principle. A system by definition, then, is not a hit-or-miss aggregation of items; rather, it is a combination of parts classified on some logical basis.

The nation's highway plant is made up of a number of functional systems: primary state highway, secondary, county road, urban street, and others. On portions of these networks are superimposed the federal-aid highway system, the National System of Interstate Highways, and others.

Let us consider the magnitude of some of these systems. Nearly 90 percent of the total road and street mileage of the United States is in rural areas. Also, approximately 18 percent of the rural road mileage is under state control. About 70

percent of local roads in rural areas are under local control.[6]

Ten percent of the total highway mileage of the nation is in urban areas. Approximately 1 percent is under state control, and 9 percent under local control.

So when we speak of classification, we're talking about the jurisdictional components or systems of this vast 3,326,000-mile highway net of the United States. I think most of us realize that proper classification is a vital first step toward developing realistic road improvement programs. Moreover, we know that most states right now are faced with the problem of revamping their highway systems in keeping with modern conditions and traffic needs. Certainly in this endeavor they should have the benefit of the best possible laws on the subject.

Now, investigation of the legal side of highway classification involves a three-pronged analysis: (1) constitutional provisions, (2) state statutes, and (3) judicial decisions.

The constitutional provisions are controlling, and everything else is subject to them. State statutes spell out the details of state and local authority. And court decisions, where the matter has been litigated, clarify and crystallize the meaning of the statutes, frequently imposing restrictions or permissions not expressly spelled out in the statutes.

Constitutional Provisions

The concept of a system of highways as such, or the matter of classification generally is mentioned in only a handful of state constitutions. For example, the Alabama constitution authorizes "highways" and "state trunk roads." California provides for a "system of state highways," and aid for "any county highway." Kansas provides only for a "state system of highways," but this has been construed to be broad enough to authorize the classification by the state of all highways in the state and to provide for their construction and maintenance either by the state or by any of its political subdivisions, or by any combination of them, as the state may deem proper.[7]

[6]Existing Rural and Urban Mileage in the United States, Table M-2, Issued October 1952, Bureau of Public Roads, U S Department of Commerce

[7]State ex rel Arn., Att. Gen. v. State Commission of Revenue and Taxation, et al. 181 Pac. (2d) 532 (1947).

Louisiana, somewhat like Kansas, provides for a "general system of state highways," but other provisions distinguish between a "state system" and local systems. The Michigan provision is broader than most by its mention of the state, counties, townships, and road districts as possible highway-administrative agencies.

The Minnesota constitution creates a "trunk highway system," to be constructed and forever maintained by the state. Texas provides that "county" roads shall be provided for by general laws. However, it has been held that public roads within the borders of a county are not its property, but belong to the state, although title is taken in the name of the county which is charged with its construction and maintenance.

The West Virginia constitution authorizes the establishment of both county roads and "a system of state roads," the latter to connect county seats. Wyoming does not mention systems at all, but provides that "the legislature shall have the power to provide for the construction and improvement of public roads and highways in whole or in part by the state, either directly or by extending aid to counties."

State Statutes

Committee staff carefully analyzed the statutes of all the states, isolated every provision bearing on highway system classification and summarized them in tabular form. The following paragraphs will give you an idea of how thoroughly this job is being done.

Power to Designate. Study of these laws reveals that a number of essential elements or characteristics are common to many of them. For example, one essential concerns the agency responsible for the designation of the state primary system. We found, as shown on the map (see Fig. 4) that in 24 states, the legislatures have designated such systems. In 23 states it is the highway department that has the authority to determine the system. And in one state the designation is made in the state constitution.

Sometimes, restrictions are imposed on the highway department's authority to designate. Typical instances are found in Texas, Virginia, and Wisconsin, where the original systems were selected by the

highway departments and validated by the legislatures.

The question may well be asked: Who should have the power to designate a primary highway system in the state, the legislature or the highway department? Doubtless both arrangements have advantages and shortcomings.

Some may hold that the legislature should designate the basic system, leaving future changes to the highway department. Others may feel that the task is a technical engineering job and should be left to technicians in the field. Still others might be for a compromise, under which the legislature would set up classification criteria for the guidance and direction of the highway department, leaving the actual

HIGHWAY SYSTEMS OF THE UNITED STATES

RURAL MILEAGE

	Miles	Percent
Under State Control:		
State primary systems	367,000	11.0
State secondary systems	92,000	2.8
County roads under State control	125,000	3.8
State parks, forests, reservations, etc.	8,000	.2
Total	592,000	17.8
Under Local Control:		
County roads	1,713,000	51.5
Town and township roads	564,000	17.0
Other local roads	44,000	1.3
Total	2,321,000	69.8
Under Federal Control:		
National parks, forests, reservations, etc.	74,000	2.2
Total rural mileage	2,987,000	89.8

URBAN MILEAGE

	Miles	Percent
Under State Control:		
Urban extensions of state highway system	37,000	1.1
Under Local Control:		
City streets	302,000	9.1
Total urban mileage	339,000	10.2
TOTAL RURAL AND URBAN MILEAGE	**3,326,000**	**100.0**

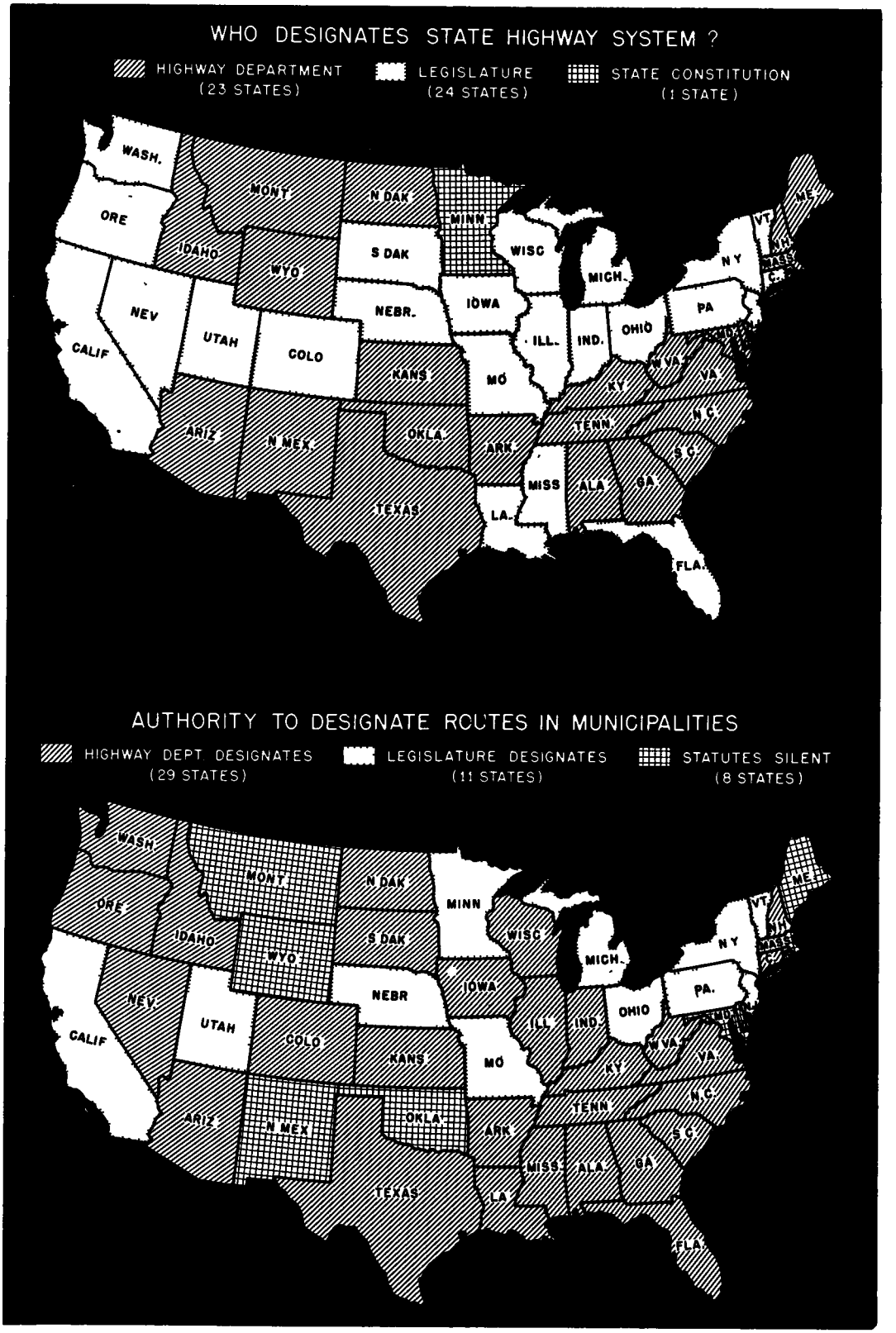
WHO DESIGNATES STATE HIGHWAY SYSTEM ?
HIGHWAY DEPARTMENT (23 STATES)
LEGISLATURE (24 STATES)
STATE CONSTITUTION (1 STATE)
WASH.
ORE
CALIF
NEV
IDAHO
MONT.
WYO
UTAH
ARIZ
N MEX.
COLO
N DAK
S DAK
NEBR.
KANS
OKLA.
TEXAS
MINN.
IOWA
MÓ
ARK.
LA.
WISC
ILL.
MICH.
IND.
OHIO
KY
TENN
MISS
ALA.
GA.
FLA.
S.C.
N.C.
VA.
W.VA.
PA
N.Y.
VT.
N.H.
MASS.
CT.
R.I.
N.J.
MD.
DEL.
AUTHORITY TO DESIGNATE ROUTES IN MUNICIPALITIES
HIGHWAY DEPT. DESIGNATES (29 STATES)
LEGISLATURE DESIGNATES (11 STATES)
STATUTES SILENT (8 STATES)

Figure 4.

job of classifying to the department.

A great many challenging questions like this, on fundamental issues, come into focus when highway statutes are impartially examined from the perspective of the whole body of highway law in the 48 states, as is now being done for the first time.

System Flexibility. Another important statutory element concerns the power to add to or modify the established state primary system, or to delete sections of it. Changes in land-use patterns, traffic volumes, governmental activities and other developments, including acts of God, may make some flexibility in the system highly desirable.

In five states[8] broad legislative authority is given the state highway agencies to add to, modify or delete portions of the system as the need arises; 25 states permit additions, subject to designated restrictions. In Michigan and Nebraska, for example, the state highway department is authorized to add mileage specified by the legislature.

In Georgia, additional main traffic facilities to complete an interconnecting system may be designated where unusual topographic conditions exist, or where county-seat-to-county-seat routes involve substantially greater distances; also in order to serve important market points. In Georgia, the highway commission may revise the state highway system and make additions to afford access in cities, towns, and state parks, to shorten direct lines of travel, or to effect connections with interstate routes at the state lines.

Modification of the primary system, once designated, is provided for in the statutes of 21 states. And subject to certain restrictions, portions of the existing system may be deleted in 17 states. A statutory provision in Pennsylvania, for example, authorizes the highway department to interchange highways between the state and county systems.

In some instances the legislature reserves to itself the power to make additions or deletions on the system. This is true in 13 states as regards additions, and in four states with respect to deletions.

As already pointed out, changing conditions in the states are putting this matter of system flexibility in a new light. Cities are decentralizing, spilling over onto their rural fringes. New industries are springing up, business is spreading out, agriculture is expanding — all generating more and more traffic. Yet it is still difficult, if not impossible, to provide required facilities for the growing volume of motor travel in some states, because the necessary legal authority is ambiguous or lacking altogether.

Assuming that statutory authority is desirable where it is absent today, what should be the character of such authority? Who should possess the responsibility — the legislature or the state highway department? Or should both have a say, the legislature laying down yardsticks and the highway department applying them? Are mileage limitations desirable in this field of system classification? Can statutory procedures for abandonments be simplified? Should the vacating of highways to lower units of government be distinguished, legally, from abandonment, where a highway ceases to be used as such?

Designation of Routes in Municipalities. Urban extensions of the state primary system constitute vital links in a state system of highways. Here, too, we find that legislative authority to designate the routes varies substantially from state to state (see Fig. 4). In 11 states the legislature has reserved to itself the authority to designate the urban links of the primary state system. In 29 other states, the highway department has been granted authority to do so; but in at least 11 of these jurisdictions, the legislature qualifies the authority in some respect. For example, in Arizona the state highway department can act, but the designation is subject to agreement between the state and the governing body of the affected incorporated city or town. In Connecticut, one qualification specifies that there shall be one through route extending approximately north and south, and one extending east and west. In New Hampshire the state highway department can take no action in cities and towns of 2,500 inhabitants or over.

In the remaining eight states, the statutes are silent altogether about the authority of state highway departments to designate systems or routes in urban areas.

As a rule, statutory provisions concerning the authority of the state highway department to act in cities are vague and

[8] Arizona, Colorado, Kansas, Louisiana, and Maine.

STATE LAWS WITH MILEAGE LIMITATIONS

Illinois	9,000 miles minimum; 11,000 maximum
Kansas	10,000 miles maximum
Mississippi	8,600 miles maximum
North Dakota	7,700 miles maximum
Ohio	No more than 200 miles may be added in any year
South Carolina	10,000 miles maximum for primary system

indefinite, and often are completely lacking. There are some who believe that the highway department ought to possess the same authority with respect to the urban links of the primary state system as it does on the rural portions. Such proponents may find the present statutes relating to this matter far from adequate. Others may be of the opinion that highway-department operations in urban areas should be strictly limited, regardless of system.

Which of these views ought to prevail provides issues for lively debate. Perhaps neither of the extremes indicated is really the right answer anyway. It is questions like this we want to throw open for complete ventilation.

Mileage Limitations. A number of state laws place on their primary systems a maximum or minimum mileage limit — both in the case of Illinois. The maximum for the six states shown in the box ranges between 7,700 and 11,000 miles. In Ohio, the statute stipulates that no more than 200 miles may be added in any one year. The 10,000-mile ceiling in Kansas has a rather curious proviso: The total mileage of each county is not to be less than the sum of the north-to-south and

STATE STATUTES REQUIRING HIGHWAY DEPARTMENT TO SHOW PRIMARY SYSTEM ON MAPS

Arizona	Illinois	North Dakota
Arkansas	Maine	Ohio
California	Maryland	South Dakota
Connecticut	Massachusetts	Vermont
Georgia	Montana	Virginia
Idaho	North Carolina	Wisconsin

east-to-west diameters of the county. Michigan also has a statutory limitation, but it is tied in with the allocation of funds by special formula.

Doubtless there are authorities who believe that mileage limitation by statute is the appropriate means of preventing dispersion of limited road funds. Perhaps it is the most-practical means of control. Others may feel that some other type of restrictive formula might provide greater flexibility in system designation. Certainly these are matters worth serious thought.

Official Maps. Eighteen states require, by law, that their highway department maintain a public record of the routes of the primary highway systems on official maps.

Now we are all aware that such official maps are usually prepared and published as a matter of routine by all state highway departments. Is there, then, some special advantage in writing the requirement into the statutes? Or is this just another example of superfluous law? Is a statutory requirement for maps essential as a means whereby the highway department gives a periodic accounting of the mileage and locations of the highway system to the people?

Criteria for System Selection. The statutes of some 20 states contain criteria which must be followed in the desig-

CRITERIA FOR SYSTEM SELECTION

Alabama statutes require primary system routes to:

(1) connect county seats

(2) be the most direct

(3) be permanent

(4) provide suitable connection with public routes in adjoining states

(5) be chosen with due regard to the public welfare

Idaho statutes require primary system routes to:

(1) include a road to every county seat

(2) be selected with due consideration of the relative importance of each highway to:

existing business

industry

agriculture

development of natural resources

present and projected traffic volumes

the common welfare

capacity of the people to finance improvements

nation of the highway system. Sometimes more than one specification is found in a single law. Alabama is a good illustration. The routes selected for the primary system must: (1) connect county seats, (2) be the most-direct one possible, (3) be permanent, (4) be chosen with due regard for the public welfare, and (5) provide suitable con-

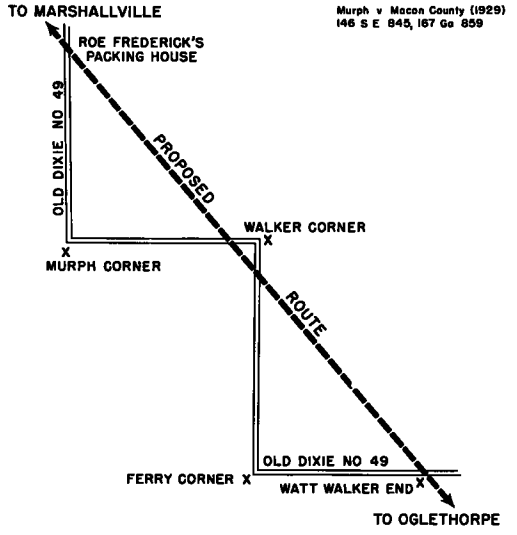

Figure 5.

nection with public roads in adjoining states.

The Idaho specifications require the primary system routes to: (1) include a road to every county seat and (2) be selected with due consideration of the relative importance of each highway to existing business, industry, agriculture, the development of natural resources, present and future traffic volume, the common welfare, and the capacity of the people of the state to finance improvements.

Some specifications are quite precise, the Indiana statute being a case in point. Highways added to the Indiana state system must have an average daily traffic of at least 200 vehicles, unless the highway connects two existing state roads. Emphasis in Maryland seems to be on financial capacity. The statute requires that the state system consist of improved roads through all the counties of the state to an extent that can reasonably be expected to be constructed with available funds.

Less than half the states have yardsticks for system designation in their statutes. Are such provisions unnecessary, or do they provide useful guidance for the highway department?

If criteria for designating systems are desirable, what should they be? If we tried to extract the substantive elements from the provisions of some 20 states where they now exist, we probably could assemble a list of at least 15 or 20 specifications. Maybe all of the items should be in the provision, instead of only one or two, as in the case of some states. Isn't this another matter that deserves some mature thought?

Judicial Decisions

We have now briefly touched upon highway-system classification with respect to both constitutional and statutory provisions. The pattern that emerges is not complete, however, without a corresponding analysis of the court cases which bear on issues related to system classification. Sometimes the letter of the law is construed by the courts to be other than what seems apparent. Sometimes the strictness of a statutory provision is tempered by a milder interpretation by the judiciary, or vice versa.

Designation of Highway System

We have seen that a detailed description of the highway system is incorporated into the statutes in some states, while in others only a broad indication is given, usually by defining the general direction of the route through designation of its termini.

The system having been designated, whether precisely or broadly, does it remain inflexible? One point of view on this appears in a 1929 case in Arizona, where the state's supreme court held that once a legislative location of a highway is made, such location is binding on all departments of state government, and no one has the right to change the route or select a different one because it would be better or cheaper. But the court added: [9]

> It is obvious the legislature intended to commit to the highway commission the power and duty to locate the main arteries of the state, and to that end endowed them with the power to abandon, change or add to any of the highways theretofore existing. That these highways might be wisely and skillfully located, so as to tap the different communities of the state and afford

[9] Rowland v. McBride (1929) 281 Pac 207, 35 Ariz. 511

facilities for the greatest number of our citizens, and also that such roads might be upon the most available routes for permanence and ease of travel, the commission was furnished with ample means and skilled engineers of their own choice. In other words, the object was to commit the selection of routes and the building of roads to engineering skill, supervised by an impartial commission, rather than the haphazard policy pursued theretofore through promiscuous legislation.

A 1941 decision in Mississippi held that where the legislature designates a route by establishing the termini, the state highway commission has the power to locate a state route between such points, including power to eliminate curves, shorten distances, and otherwise improve the location. This could even include establishing a new route by departing from the old route by as much as 8 to 12 miles for any good reason in the interest of through traffic.[10]

Criteria for System Location

There are a number of significant ground rules which the courts have recognized in legal contests concerning system and route locations. As early as 1927, the Georgia supreme court recognized that the system must serve as large a territory as possible, and it must become the main trunk line routes through the state. As between two alternative routes that would serve both these objectives equally well, the route presenting the fewer topographic and construction difficulties should be the route to be selected, the court said.[11]

About the same time, the Illinois court declared that safety, economy and convenience are factors to be considered in the selection of routes on the state system.[12] Other elements that are entitled to some consideration are: (1) that the selected route should serve the state at large, and not a particular locality, (2) that the cost to the traveling public be less, and (3) that the route be safe for travel.[13]

A few years later, the judiciary of the same state recognized other factors in system designation: the relationship of the road in question to other roads on the state-wide system[14]; the expense of future maintenance; future traffic; and the convenience of local residents as well as transient traffic.[15] There are decisions in several other states to the same effect.

The question arises: When the law as written permits the reasonable use of discretion in matters of system location, how far actually can the highway department go in exercising it?

The citizens of Macon County, Georgia, voted a bond issue for the express purpose of improving the old Dixie Highway No. 49, which was designated as a state-aid route. Subsequently the route was resurveyed and relocated by the county commissioners with the approval of the state highway department. The object, as illustrated in Figure 5, was to eliminate three dangerous, right-angle curves. But the citizens of the county objected, asserting that the bond issue funds could not be used on a relocated route.

The supreme court upheld the action of the department and its authority to resurvey and relocate, provided that there was no material change in the general direction and location other than those dictated by the public interest in establishing a route for use as the state highway system and taking into consideration the distance, cost of construction, topographic and construction difficulties, and expense of maintenance.

The court held also that since the voters were presumed to have had knowledge of the department's authority to resurvey and relocate the route, the requirement that the bond funds be used for Dixie Highway No. 49 alone applied equally to the changed route.[16]

In an Illinois case[17], the state legislature, through a road bond issue act, designated a route by establishing its termini — between the communities of Christopher on the south and Sesser on the north, as shown in Figure 6. It was specified that the road

[10]Wilkinson County v State Highway Commission (1941) 4 So. (2d) 298, 191 Miss. 750

[11]Jackson v. State Highway Dept. (1927) 138 S.E 847, 164 Ga. 434

[12]Hitt v. Dept. of Public Works & Bldgs. (1929) 168 N E. 337, 336 Ill 306.

[13]Wiley v. Dept. of Public Works & Bldgs. (1928) 161 N.E. 763, 330 Ill. 312.

[14]N.S & M.R. Co. v. Ill. Commerce Commission (1933) 188 N.E. 177, 354 Ill. 58

[15]Dept. of Public Works & Bldg. v. Pittman (1934) 189 N E 491, 355 Ill. 482.

[16]Murph v. Macon County (1929), 146 S E. 845, 167 Ga. 859.

[17]Flatt v. Dept of Public Works and Buildings (1929), 167 N.E. 772, 335, Ill. 558.

FACTORS BEARING ON CLASSIFICATION AS DEVELOPED IN MAINE STUDY

1. Traffic considerations
2. Economic value
3. Geographic service
4. Integration and circulation
5. Topography
6. Service to national defense
7. Present classification and improvement status

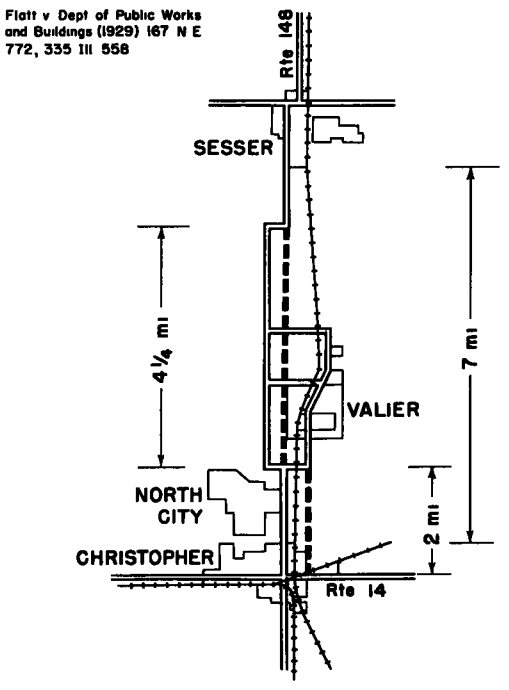

Figure 6.

should afford reasonable connections with intermediate towns.

The highway department proposed to link Christopher and Sesser with a direct route through new construction between Points B and C. As you will observe, this route would traverse the western border of the town of Valier. However, the citizens of that community sought to enjoin the proposal, claiming that the route would not give them reasonable connection. They asked that the new route be located so as to link with the existing road through Valier, with new construction instead between Points M and N.

It was established that while the route urged by Valier would involve two railroad crossings, that proposed by the highway department would be free of them. The court held that though the department may not act arbitrarily in deviating from existing highways, it may do so in order to eliminate dangerous conditions and to provide for safe operation of traffic. The route proposed by the highway department can be construed as fulfilling the requirement of reasonable connection and justified in the interests of public safety.

While the courts, in general, have been liberal in their interpretation of the highway official's problem in locating highways, they have been most strict on occasion. For example, where a proposed state highway was to run just inside the corporate limits of a county seat and not through the town as formerly, a North Carolina court held this to be no connection with the town as required by law, and stated that the commission was without authority to adopt

such route[18]; and in a later case in Illinois, it was held that in selecting a route for a highway, the fact that one proposed route has been the principal and accepted means of travel between two points for 45 years raised the presumption that it was a most-direct and most-feasible route.[19]

Mileage Limitations

As mentioned earlier, eight states have statutory mileage limitations on their highway systems. An example of adjudication in this area is a 1928 case in Georgia, where the legislative limitation on the state-aid system was a maximum of 6,300 miles. The state highway department had, at one time, resurveyed and relocated a portion of this system. A complainant contended in a court action for injunction that the statutory limit had been exceeded. The court granted the injunction, since the actual mileage of the state-aid system already exceeded 6,300 miles.[20]

Abandonment

Sometimes the state highway department does not have statutory power to abandon a section of road under some circumstances. This is illustrated by an Oklahoma decision.[21] A portion of a route, formerly a county road, was improved by the state highway department to eliminate a curve. Part of the curve abutted defendant's premises, and the state highway department, in reconstructing the section of road, had declared by resolution that the whole curve abandoned as a state highway and specifically surrendered and released that portion abutting defendant's land.

Defendant then proceeded to plow up the old road abutting his premises; and plaintiffs, who were served by this road, along with others, sought an injunction against such action by defendant. The defense was based upon the theory that other routes were available to the plaintiffs for access; that the action of the highway commission in constructing the new road, in close proximity to the old one and serving the same points, constituted an abandonment of the old; and that this was also evident from the resolution adopted by the department.

The Oklahoma supreme court granted the injunction, in the following language:[22]

> The statutes do not specifically authorize the state highway commission to vacate public roads. That power is vested exclusively in the county commissioners. The statutes pertaining to the establishment and maintenance of highways reveal no legislative disposition to deprive the county at once and for all time of its interest in a road when it is taken over by the state. It is true, when the road is taken over by the state, said road no longer remains a county highway. But that does not mean that abandonment by the state would vacate, ipso facto, a highway formerly dedicated as a public road. In such cases the road resumes its status as a county road, and final abandonment lies wholly with the local authorities. And final abandonment is accomplished only by vacating as provided by law.

When the city council of Cottage Grove, Oregon, objected to the previous council's agreement with the state to barricade street intersections in order to create a controlled-access highway through the city, the court held that the city had no authority to enter into such an agreement in the first instance. It was pointed out that the power granted to a municipality under its charter to "vacate" streets did not include the power to barricade a street and close it to public travel. Similarly, the jurisdiction of the state highway commission over city streets which were a part of the state highway system did not include the authority to construct barricades at intersections to prevent traffic from crossing the highway.[23]

Intergovernmental Relationships

Litigation sometimes results when several governmental agencies are involved in the construction and maintenance of a highway and their respective duties and responsibilities are not clearly set forth in the statutes. Illegal action may be taken under the mistaken belief that the authority is implied. A case in point occurred in Maine, where the highway commission authorized the construction of a state-aid highway on its own motion.[24]

[18] Town of Newton v. State Highway Commission of North Carolina (1926), 133 S E. 522, 192 N C 1

[19] Weber v Dept. of Public Works & Bldgs. (1935), 195 N.E 427, 360 Ill. 11.

[20] State Highway Department v Marks (1928) 145 S E 866 167 Ga. 397

[21] Hillsdale County v. Zorn (1939) 100 P. (2d) 436, 187 Okl 38.

[22] Hillsdale Co. et al v Zorn (1939), 100 P. (2d) 436, 187 Okl. 38.

[23] Cabell v. City of Cottage Grove (1943), 130 P. (2d) 1013, 170 Ore. 256

[24] Rangeley Land Co. v. Farnsworth (1934), 174 A 43, 133 Me. 70.

The court declared the action unauthorized, pointing out that under the law the initiative action must come from interested counties and municipalities; also, that it was their responsibility to seek such aid and submit such requests to the commission for its approval.

In another case, in which it was claimed that the State of Maine and the City of Ellsworth were partners in the construction of a highway, the court pointed out that, since no statute expressly provided for such partnership, it would require legislation in clear terms to authorize such an unusual relationship.[25]

According to a decision in a Mississippi case[26], a state highway department has no authority to enter into an agreement with a county to maintain existing highways indefinitely, even where the statute gives the commission complete jurisdiction over such roads and includes payment of all costs of maintenance. The courts generally hold that if it were otherwise, there would be inconsistency with the commission's power to relocate and abandon highways, since such action would result in the reversion of abandoned lands to the counties, thus terminating all jurisdiction, control, and obligations of the commission with respect to such roads.

[25]Grindell's Case (1927), 138 A 66, 126 Me. 287

[26]Wheeler v State Highway Commission (1951), 55 So. (2d) 225, 212 Miss 606.

Conclusion

This presentation does not exhaust the subject of system classification from a legal point of view by any means. Actually, we have been talking only about classification of the state primary system. Further research will seek to develop similar factual data on the underlying law bearing on the selection of the other important systems—secondary, county, urban, and so forth.

System classification is bound to command more and more attention throughout the country in the days ahead. It is being increasingly recognized that present highway systems are often unrealistic, cumbersome, and difficult to manage on an efficient, businesslike basis. Modern traffic requirements demand truly functional systems. This means the development of sound principles for selection.

A few progressive states and a number of cities have already taken a long, hard look at their basic policies on classification. A broad-gauge study completed in Maine last year listed the following as the key factors in classification analysis, in other words, criteria that should be taken into account for every location: (1) traffic considerations, (2) economic value, (3) geographic service, (4) integration and circulation, (5) topography, (6) service to the national defense, and (7) present classification and improvement status.

This reflects the views of a single state.

OBJECTIVES OF COMMITTEE ON HIGHWAY LAWS

(1) To assemble state constitutions and statutes, and analyze them as they relate to all highway functions, such as system classification, highway design, construction, land acquisition, maintenance, and others.

(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.

Eventually the Highway Research Board's study will evolve a cross-section of the views of all the states — the fundamental principles as embraced in existing laws, together with suggested refinements and remedial improvements resulting from general review by leaders in many fields from coast to coast. And the reservoir of factual legal information we hope to develop will include not only system classification but all the other vital phases of highway law.

Thus, there will be available for the first time reliable tools for measuring the adequacy of highway laws. By the same token, highway officials, legislators, bill drafters and others will have ready at hand all the basic principles which experience and the best thinking of the nation have recognized as essential for sound highway law in all its phases.

The way will then be paved for attaining adequate laws for the development and operation of highways in every state, county, and city. The ultimate result will be that court action on highway matters will finally be reduced to a minimum and that, at long last, the highway official can really get on with the job of building the better highway plant that everybody wants.

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