Report of Committee on Land Acquisition and Control of Highway Access and Adjacent Areas

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● DURING 1953, the committee continued its efforts to bring about a better realization of the benefits to be derived from efficient methods of acquiring land for highway purposes, adequate control of the roadside, including methods possible under eminent domain and the general police power, and up-to-date ways of providing effective provision of parking accommodations.

Since 1953 was a year in which most state legislatures held sessions, a number of important statutes were enacted in the fields of the committee's activities, including a comprehensive law passed by the Arkansas legislature revising the state's land-acquisition methods, clarifying and strengthening the authority of the state highway department.

A number of important court decisions were handed down during the year, digests of most of which were included in Highway Research Correlation Service memoranda of the committee.

The 1952 annual report of the committee and special papers were published during the year as *Bulletin 77*, under the title "Right-of-Way Problems."

LAND ACQUISITION

Reservation of Highway Right-of-Way Prior to Asquisition

Analysis of the first two phases of the committee's study of ways and means of reserving land for highway right-of-way prior to acquisition advanced perceptibly during the year.[1] Additionally, the mapped-street technique used by the City of New York was explored at the source, by examination of actual applications of its use.

The official map upon which this device is predicated is, according to New York authorities, a highly fluid document, changing with developing needs and circumstances. Its basic projection revolves around a 6-year program of capital public improvements.

The official map procedure, simplified, involves six steps: (1) A map showing a proposed reservation for highway purposes is submitted to the board of estimate by the borough president concerned. (2) The map is then referred to the city planning commission and the director of the budget. (3) The city planning commission sets a date for a public hearing. (4) After the hearing, the planning commission reports back to the board of estimate. (5) The director of the budget also makes his report to the board. (6) If these reports are favorable, and no opposition develops to the reservation, the board adopts the map which then becomes the official map of the city on that particular matter.

After approval by the Board of Estimate of the City of New York, no building may be constructed within the limits of the mapped street as shown on the official map. City officials indi-

[1] See "Land Acquisition and Control of Adjacent Areas," Highway Research Board Bulletins 38 and 55, and Right-of-Way Problems, Highway Research Board Bulletin 77, for previous reports on this project

cated that compliance with the reservation is automatic or voluntary in 98 percent of the parcels involved in any reservation. Protests in the remaining two per cent are taken to the Board of Standards and Appeals for hearing. In what might be considered a typical year, 1950, a total of 38 appeals were taken. In eight of these, the appeals were withdrawn before hearing, in one the appeal was dismissed, and hearings were held on 29. Examination of the records indicated that most of the appeals heard involved conditional grants, generally permitting the use and construction sought only for the period of time during which the mapped street in question remains untouched as a mapped street. The mapped street device, as used in New York, appears to be a practical and effective means of reserving lands for street purposes in urban areas. Its use in other urban areas might well be explored.

Acquisition of Highway Right-of-Way For Future Use

Reservation techniques are desirable as a means of minimizing increases in right-of-way costs by preventing development of the areas involved between the time plans are completed and the start of construction, particularly where expenditures for land acquisition must be kept to a minimum. Outright acquisition of lands needed for future highway construction is, of course, a more-desirable means of accomplishing this purpose. Not all states have either the funds nor the legal authority to acquire land in advance of construction, however. Courts have sanctioned such advance acquisition under the general authority of the state highway department, even though authority is not specifically mentioned in the statutes. However, it is well to have such authority spelled out in the law. At least two states (Arkansas and Nevada) passed laws during 1953, authorizing their state highway departments to acquire land for future use. A comprehensive land-acquisition statute which became law in Arkansas,[2] provides among other things that the state highway commission may acquire real or personal property, or any interest therein, deemed necessary or desirable for state highway purposes, by gift, devise, purchase, exchange, condemnation, or otherwise, for present and future rights-of-way, including those necessary for urban extensions of state highways within municipalities. A Nevada law[3] authorizes the state highway department to acquire real property and the improvements located thereon considered necessary for rights-of-way for both present and future needs for highways of all types including highways constructed by the state within towns and cities.

Immediate Possession of Highway Right-of-Way

Long, drawn-out condemnation procedures in some states are responsible for delays in construction of badly needed highway improvements. To minimize these delays, a number of state highway departments have been given authority to take possession of needed property before completion of condemnation proceedings. In some of these states very summary methods are authorized: In New York possession may be taken upon the filing of plans showing the proposed improvement with the secretary of state. Others may take possession by filing a "declaration of taking" and the deposit of the amount of estimated compensation at the time condemnation proceedings are filed, or at any time subsequent thereto. Still others may take possession after pay-

[2] Arkansas Laws of 1953, Act 419
[3] Nevada Stat 1953, Ch. 132

ment of the award fixed by court-appointed appraisers. A law passed by Arkansas during 1953 fits into the second category,[4] following rather closely the federal declaration-of-taking statute.

Both Indiana and Texas belong in the third category mentioned above, that is, the award of appraisers appointed by the court must be paid into court before possession may be taken. Controversy arose recently in each of these states as to whether or not the deposit paid into court might be paid to the landowner pending appeal of the appraisers' award. In Indiana, the case of Board of Commissioners of Hamilton County v. Blue Ribbon Ice Cream and Milk Corporation, Inc., (109 N.E. (2d) 89, December 12, 1952) reached the state supreme court when the county commissioners protested the action of the clerk of the circuit court in paying the landowners involved the sum deposited by the county, which represented the award of the appraisers for certain lands taken by the county for highway purposes.

Both the landowners and the county filed exception to the appraisers' award and requested a jury trial. However, the landowners subsequently withdrew their objections, and asked for and received the sum of money deposited by the county. The county appealed from such action, but the court held that payment of the award in the court indicated the county commissioners' intention to take possession of the condemned property, and therefore the clerk was entitled to pay the deposit over to the owners.

In its argument supporting the action of the county clerk in paying the amount of the deposit to the landowners, the court reasoned: The state's right of eminent domain is inherent and does not depend upon a specific grant in the constitution, although such power may be limited by constitutional provision. However, the right to authorize the exercise of the power is legislative. Private property may be taken for public use only pursuant to and in accordance with legislative authority.

The Indiana State Constitution provides that "no man's property shall be taken by law, without just compensation; nor, except in case of the state, without such compensation first assessed and tendered." This provision does not forbid legislation permitting the state to take private property without first tendering compensation, but the provision is not self-executing, and no enabling legislation exists. Only one method of procedure for condemning land had been provided by the legislature, and this was used in the present case. It was available equally and alike to all bodies having the right to exercise the power of eminent domain. Any such body, even though it be the state itself, or one of its authorized agencies, as in the present case, is bound by the provisions of the statute. Accordingly, such state agency, like any other body having the power of eminent domain, must tender payment before taking possession of the condemned property.

The county could have proceeded with the litigation without making the deposit referred to above, but if possession were to be taken, it was required to make the payment. When the money was paid to the clerk, it had to be and was tendered to the appellee unconditionally. The statute does not authorize the condemnor to take possession pending an appeal by him, by depositing money which could be withheld pending such determination if such determination is requested by the landowner.

This, according to the court, was as it should be, for the act of paying the money deprived the landowner of the

[4] Arkansas Laws of 1953, Act No. 115

use of his land. Were it to be held that he could also be deprived of the use of the money pending final judgment, he would suffer an uncompensated loss. After payment of the money to the clerk, the county was entitled to take possession of the property. Payment of the money indicated the county's intention and fixed its right to do so.

In the light of this argument, the court held that the appellant county could not control the disposition of the money in the hands of the clerk, and that said clerk was justified in paying the money to the landowners.[5]

Under somewhat similar circumstances, a Texas Court of Civil Appeals denied the right of a landowner to receive a deposit made by the City of Houston, for land taken for street purposes, pending appeal from the condemnation commissioners' award (Carter *et ux* v. City of Houston, 255 S. W. (2d) 336, February 5, 1953).

In this case, both the city and the landowner filed appeals from the award of the commissioners. Subsequently the city deposited the amount of the award in the registry of the court and took possession of the land involved. At a later date, the Carters filed an application for payment of the award to them. The city asked for a temporary injunction enjoining the Carters from taking possession of the deposit.

The trial court stated that in its opinion the deposit was made by the city solely to serve as security for payment of final judgment and to enable the city to take possession of the premises while the appeal was pending. The money deposited by the city, under the provisions of Article 3268 of Vernon's Annotated Texas Statutes, remained the property of the city, subject to the final outcome of the suit. The Carters were not entitled to have the award paid to them prior to final adjudication.

Article 3268 provides that if the plaintiff in a condemnation proceeding should desire to enter upon and take possession of the property to be condemned, pending litigation, it may do so at any time after the award of the commissioners, subject to conditions set forth in Sections 1 and 2. Section 1 specifies that the plaintiff shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it. Section 2 instructs the plaintiff to deposit in the court the amount of damages awarded by the commissioners, this sum to be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that might be awarded or adjudged against the plaintiff.

The Carters contended that Section 1 constituted a plain and unambiguous mandate that the deposit should be given to the appellants upon their request.

The opinion of the trial court was upheld by the appeals court, which stated that in the instant case it was undisputed that no tender was made of the award to the Carters by the city, that the fund was owned by the city; and that it was deposited in the registry of the court as security to the Carters for payment to them of the adjudicated amount of damages to which they might become entitled. A previous case (City of Rosebud v. Vitek, 210 S.W. 728, 730 (1919)) was cited, in which the city filed its objections to a commissioners' award in a condemnation case and paid into the registry of the court the amount of the award. The owner requested that the award be paid to him, and the

[5] See Memorandum 67, May 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 203

court in its opinion said: "We call attention to the language of Article 6530, Subd. 2, R. S., wherein it is provided that the award and a like amount must be deposited in the court, 'which shall be held, together with the award itself . . . to secure all damages that may be awarded or adjudged against the plaintiff.' Clearly this contemplated that the award shall not be paid to the defendant pending the suit."[6]

The matter of whether or not an appeal could be taken by the condemnor after the amount of the award determined by appraisers had been deposited in court and possession taken of the property involved was the subject of two court decisions in Kansas during 1951.[7] In both cases, the state supreme court denied the state highway commission the right to appeal after it had paid the amount of the appraisement award and had taken possession of the land condemned. To obviate this difficulty the Kansas legislature, in its 1953 session, amended the state statutes[8] by adding the following provision:

If petitioner desires to take immediate possession of the property condemned but desires to appeal from the award of the appraisers, then said petitioner shall file with the clerk of the court a verified declaration of statement of the sum of money estimated by said condemner to be just compensation for the land taken, including damages, and by depositing the amount for which the property taken was appraised with the clerk of the court, to the use of the persons entitled thereto, and said lands shall be deemed to be condemned and taken for the use of petitioner, and title to said lands shall vest in said petitioner and condemner; and said final compensation shall be ascertained, established and awarded by judgment on appeal, which payment as aforesaid by the condemner shall be without prejudice to petitioner's right of appeal. The court may order that the sum of money estimated by the petitioner as shown by the verified declaration or statement hereinbefore provided for be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect to said lands, or any parcel thereof, shall exceed the amount of the money paid in by condemner and so received by any person entitled, the court shall enter judgment against condemner for the amount of the deficiency with interest at the rate of six percent per annum from the date of taking to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. If the compensation finally awarded to any owner or lien holder is less than the amount that has been paid to him, the court shall enter judgment against him and in favor of the condemner for the overpayment. The acceptance by the owner, lien holder, or interested party of the full amount of the award of the commissioners, or the amount paid into the court or any part thereof by the condemner, as set forth in the verified statement or declaration of said condemner as aforesaid, shall be without prejudice to the right of appeal by said land owner, lien holder, or interested party, as provided herein, the issue of compensation to be determined on appeal by jury trial, and final judgment of the court.

Nature of Interest Taken

State statutes generally are rather vague as to the nature of the interest which the state highway departments may acquire for highway purposes. A great deal of confusion has resulted and it has often been left to the courts to determine whether or not the state might in fact acquire a fee simple title. Many states have found that they are paying for a fee simple title, but technically acquiring only an easement. In an effort to clarify the state's authority in this respect, at least three states, Arizona, Arkansas and Nevada, amended their statutes during 1953, to authorize the taking of a fee simple title. All three state statutes[9] authorize the state highway department to acquire real property, either in fee or any lesser estate. On the other hand, one state, North Dakota,[10] passed an act stating

[6] See Memorandum 67, May 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 203

[7] State Highway Commission v. Safeway Stores, Inc., 228 P. (2d) 208, March 6, 1951, and Lowrey et al v State Highway Commission, 228 P. (2d) 210, March 6, 1951

[8] Gen. Stats Kansas, 1949, Cum. Supp 1953, Sec 26-102

[9] Arizona Laws of 1953, Ch. 126, Arkansas Laws of 1953, Act 419, Nevada Laws of 1953, Ch. 132.

[10] North Dakota Laws of 1953, Senate Bill No. 194

as a matter of legislative intent that the pertinent section of the state statutes limited the estate that might be taken by the state or its political subdivisions for highway purposes to that of an easement.

Relocation of Highways

Most state highway departments have authority to relocate state highways when such highways are no longer adequate to meet increased demands, particularly when excessive roadside development makes it a matter of economy to relocate the highway rather than to increase the width of the existing facility.

The state's authority to relocate a highway under certain conditions can hardly be disputed. However, a number of cases have reached the courts, usually on the grounds that the state's action was unreasonable or capricious. Recently, the authority of the Minnesota State Highway Commissioner to relocate a portion of State Trunk Highway 23, in the City of St. Cloud, was contested by a group of citizens who contended that the proposed relocation was not required in the interest of public safety and convenient travel as required by state statutes. The absence of arbitrariness, capriciousness, and unreasonableness, these citizens asserted, was immaterial, because the highway commissioner had no power to relocate and no authority to choose the relocation route unless and until he proved the existence of the statutory standards. The supreme court of the state upheld the highway department's authority in a decision handed down in September, 1952, (Karl P. Koch v. M. J. Hoffman, Commissioner of Highways, State of Minnesota, District Court, Second Judicial District, Memorandum No. 275606).

The pertinent provision of Section 161.03(4) of Minnesota Statutes Annotated reads as follows:

> The Commissioner of Highways shall by order or orders designate such temporary trunk highway or highways, and when the definite location of any trunk highway or portion thereof has been determined, he shall designate the same by order or orders. The Commissioner of Highways may change the location of any trunk highway between the fixed termini, as fixed by law, when the interest of public safety and convenient public travel so require, and said changes shall be designated by order or orders. When the county board or any county interested asks for a public hearing with reference to the definite location of any trunk highway or any change in such definite location, a hearing shall be held by the Commissioner within the section, county or counties interested before making any change in such definite location or any such change therein.

In the opinion of the court, under the provisions of this statute, whenever the commission was of the opinion that the interest of public safety and convenient public travel required a change in the location of a highway, he might make it. If, as in the present case, it appeared that the proposed relocation was based on evidence reasonably tending to show that the interest of public safety and convenient public travel required a relocation, it was not subject to judicial control. It was a matter of discretion with the commissioner to determine whether, when and where the relocation should be made. The exercise of such discretion was subject to control only if it was exercised arbitrarily, capriciously, unreasonably, or in a manner violating some statutory command, inhibition, or regulation.

The court could not enjoin the relocation of a highway unless the plaintiffs established that there was no substantial evidence tending to support a finding that relocation was required, or that the commissioner, in exercising his discretionary power, had acted arbitrarily, capriciously, or unreasonably. The burden of proof on such an issue rested upon the plaintiffs.

The court believed that the state had demonstrated that there was a substantial body of evidence reasonably tending to support the finding of the commissioner that the interests of public safety and convenient public travel required a relocation of Highway 23.

According to the court, it seemed axiomatic that diverting some traffic from an over-crowded highway would diminish the hazards to public safety and increase convenient public travel. The highway to which such traffic was diverted would inescapably suffer some increased hazard to public safety and some inconvenience to public travel. That such relocation along the new route had this effect was not evidence of an abuse of discretion in choosing the new route. If it were, said the court, no new route could ever be chosen, because it could always be shown that the pedestrians and the vehicles using the new route would be subject necessarily to increased hazards and increased inconvenience.

As the court viewed the record, the defendant had the benefit of a presumption that he exercised his discretionary powers in relocating the highway in a lawful and reasonable manner. In addition, he had made a *prima facie* case of evidence, reasonably tending to support the exercise of his discretion in a reasonable and lawful manner. If there was any burden of proof on the commissioner as to these points, he had sustained it by the preponderance of the evidence.[11]

Severance Damages

An interesting decision, relating to the matter of whether or not two pieces of property owned by one individual but separated by an existing highway are to be considered as one unit in determining value of a portion of the parcel on one side of the highway taken in eminent domain proceedings and assessing severance damages, was handed down by a California Court of Appeals on September 10, 1953. (People by and through Department of Public Works v. Thompson et al., 260 P. (2d) 658.)

The California Department of Public Works sought to acquire land on one side of a portion of US 101, north of Leucadia in San Diego County, for the purpose of converting it into an expressway. Property owners involved owned land on both sides of the highway. The westerly land was beach property, over which an easement for highway purposes extended from the westerly edge of the highway to the Pacific Ocean. On the easterly side of the highway, the land involved consisted of 35 acres being dry farmed and 35 acres of slough or sump land. The beach property was not being used for any particular purpose at the time of valuation of the property.

The state sought to condemn approximately 12.73 acres lying along the east side of the existing highway and to extinguish all abutters' rights of access appurtenant to the landward property, except that the northerly 361.33 feet was to abut upon and have access to a newly created frontage road. Additionally, the parcel to be taken included in its description the underlying fee to all existing highway easements.

As a part of the construction of the expressway, a new two-lane road was to be constructed easterly of the existing highway. This would carry northbound traffic and the existing highway would then carry southbound traffic only. The area between the two traveled ways was, in effect, a dividing strip. A cross-over was to be provided near the southern boundary of the property and an underpass was to be constructed near

[11] See Memorandum 63, January 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 186

the north property line. The frontage road at the northerly end, through a system of interchanges, would provide access to the expressway in both a northerly and southerly direction.

The trial court ruled that the beach property was a part of the larger parcel for the purpose of determining the value of the land taken and constituted a part of the remainder for the purpose of assessing severance damages. Damages were awarded in the sum of $12,000 for the land taken and $17,500 for severance. An appeal was taken by the state and the district court of appeal held that the beach property, separated from the parcel taken by an existing state highway, was erroneously held to be a part of the larger parcel.

Under California law, damages must be assessed for the value of the property taken, and if the parcel is a part of a larger parcel, for severance damages sustained by the remaining land. But the remaining property must be physically contiguous to the parcel condemned. The property owners in this case conceded this principle, but argued that the state had obtained only an easement for highway purposes for existing Highway 101; that the underlying fee was owned by them. Thus they contended that the beach and landward property were contiguous. The court, upon examination of the grant deed, concluded that the underlying fee was conveyed to the state thereby. Although the deed referred to the "granting of said right-of-way," the court stated that the term "right-of-way" might reasonably be interpreted as describing not only the easement but also the land occupied by its use. Moreover, the court continued, a deed was to be interpreted as a whole for the purpose of ascertaining the true intention of the parties. The court concluded that this deed, considered as a whole, contemplated the granting of the fee and the quoted phrase was used for the purpose of describing the property rather than to divide or limit the estate or interest granted.

Another factor to be considered in determining whether the beach property and the landward property constituted one or two parcels, continued the court, was the use to which the land was put. While unity of use was not the controlling factor, it should be considered in determining whether the properties were contiguous. In the instant case, the landward property was used for farming purposes, and the beach property was not devoted to any existing use as of the date of valuation. The court asserted that the mere fact that the two properties were susceptible to a common use would not justify the allowance of severance damages.

The landowners also argued that their right to cross and recross the highway was limited by establishment of the expressway. In answer to this, the court stated that even if they owned the underlying fee they would have no greater rights to encroach upon the highway right-of-way than strangers to the title. The construction of a dividing strip, continued the court, was an exercise of the police power and not compensable. Moreover, said the court, no abutters' rights of access were taken in the present proceedings as to the beach property and the owners' access to the highway from that property was not impaired.[12]

Financing Right-of-Way

Although a number of states are authorized to acquire land for future highway improvements, few state highway departments have sufficient funds at their disposal to acquire more than a

[12] See Memorandum 72, October 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 223.

bare minimum for present needs. California has attempted to solve this problem by setting up a revolving fund to be expended by its public works department for the advance acquisition of properties for state highway purposes. A $10 million revolving fund was created for this purpose by the 1952 Legislature (Ch. 20, 1952 Second Extraordinary Session) and increased to an ultimate $30 million by the 1953 Legislature (Ch. 1714, Laws of 1953).

The act as amended provides that such funds may be used for the advance acquisition of right-of-way for state highway purposes only when the state highway commission declares that (1) the property should be acquired on a designated state highway route or designated portion because of the probability of private development of properties which will be needed for highway purposes and (2) prompt acquisition is required to prevent such development and consequent higher acquisition and construction costs when the highway or a portion thereof is to be improved.

The 1952 act established a Highway Right-of-Way Acquisition Fund, for which the original $10 million was appropriated from the Motor Vehicle Fuel Funds. The 1953 act provides that on demand of the California Department of Public Works from time to time, the amounts demanded, not exceeding $20 million in the aggregate, shall be transferred to the right-of-way acquisition fund from so-called available money in the motor-vehicle funds, the motor-vehicle transportation-tax fund, and the motor-vehicle uncleared-collections account. Of the $20 million, however $10 million is not to be transferred to the right-of-way acquisition fund until July 1, 1954, and no transfer may be made which would reduce the aggregate amount of available money to less than $10 million.

Revenues received from rentals of property acquired from funds appropriated or transferred by the act or from the disposition of any improvements or the proceeds of the sale of any excess parcels of property so acquired are to be deposited in the state highway fund.

When the department proceeds with the construction of a highway requiring the use of any of the property so acquired, the cost of such properties are to be deposited in the highway right-of-way acquisition fund from other funds available to the public works department. By July 1, 1962, all funds used from the highway right-of-way acquisition fund must be repaid to it, and on that date, the California Department of Public Works must repay to the funds from which the appropriation and transfers were made, the entire amount of such appropriation and transfers.[13]

Condemnation Procedures

Methods used by the several states to condemn land for highway improvements usually fall into stereotyped procedures which are acceptable to the state courts. Occasionally however, variations of these methods are authorized by the state legislatures, which when exercised by the acquiring agency, may be found unacceptable by the judiciary, for reasons sometimes unrelated to the nature of the proceedings authorized. Two such laws were declared unconstitutional by state courts of Georgia and Tennessee during the year.

Georgia. The Georgia case resulted from the efforts of the City of Atlanta to condemn land for public purposes, using a method authorized by a 1952 law, applicable only to cities and counties with a population of over 250,000. The landowner obtained an injunction

[13] See Memorandum 69, July 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 213.

from the Superior Court of Fulton County and the state's objection thereto was turned down by the state supreme court. (City of Atlanta v. Wilson, 74 S. E. (2d) 455, February 9, 1953).

Section 2 of the 1952 Act (Georgia Laws 1952, p. 29) provided in part as follows: "The terms and provisions of this act shall be applicable to all municipalities and/or counties in the state having a population of more than 250,000 according to the last or any future federal decennial census." Section 3 provided that, "Whenever the governing authorities of any such municipality or county . . . is (are) authorized . . . to condemn property for any public purpose" it might file proceedings as provided in the Georgia code, requesting the court to follow the procedure outlined in the 1952 act.

The above references, according to the supreme court, unmistakably showed that the procedure was available only to those cities and counties which had the population therein prescribed, and that such cities and counties were authorized to employ that procedure wherever and whenever they sought to condemn private property for public purposes, irrespective of whether such property was located within or without the limits of such city or county. The 1952 law, said the court, was plainly a legislative attempt to give a limited number of municipalities and counties the benefit of the procedure, while denying that procedure to all other cities and counties. The sole basis for the attempted classification was population.

Citing a previous case to the effect that the basis for classification must relate to the object of the legislature (Geele v. State, 43 S. E. (2d) 254, 1947), the court declared that the 1952 law offended Article 1, Sec. 1, Paragraph 2 of the state's constitution, which forbad discrimination and required equal protection. It also offended Article 1, Section 4, Paragraph 1 of the constitution, which required uniformity and forbad a special law where there was a general law. The 1952 law was discriminatory and lacking in uniformity.

The 1952 law was thus declared unconstitutional in that it constituted a violation of the uniformity required by the constitution and offended the equal-protection clause thereof.[14]

Tennessee. The act in question outlined a certain procedure which might be followed by the various counties of the state in the exercise of the right of eminent domain in acquiring land for highway rights-of-way and other rights for highway purposes. The pertinent section of the act reads as follows:

> Be it further enacted, that if the defendant or defendants are not satisfied with the amount assessed by the condemnor, they shall, on or before the second day of the regular term of the court, next after the service of said notice, appear, except to the amount assessed by the condemnor, and thereupon a trial may be had, and the proceedings shall be conducted in the same manner as in civil actions, but no trial shall be had until twelve months have expired after the completion of said road, highway, freeway and/or parkway. (Public Acts of 1951, Chapter 178, Section 7.)

The circuit court of Maury County held that the denial of payment or trial to a defendant taking exception to the award until 12 months after completion of the highway improvement, deprived the condemnee of his property without due process of law in violation of the state and federal constitutions, 12 months being an unreasonable, uncertain and interminable time.

The state supreme court in affirming the judgment of the lower court, (Maury County et al. v. Porter et ux, 257 S. W. (2d) 16, March 6, 1953), stated that the 12-month period which

[14] See Memorandum 70, August 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 216.

must elapse before a landowner might have his rights determined by the courts made the rights of the condemnee so vague, indefinite, and undeterminable, that he might never be compensated for the loss of his land. This section of the law was definitely in violation of the state constitution which provided that "every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay" (Section 17, Constitution of the State of Tennessee).[15]

Compensation for Damages Resulting from Highway Improvements

Differences of opinion as to the value of land taken for highway purposes not infrequently necessitate adjudication by the courts. Awards predicated upon unsubstantiated testimony as to the value of the property taken will occasionally slip by the lower courts, but upon appeal, the higher courts will usually reverse any decision upholding an award not substantiated by the evidence. One such case reached the Supreme Court of Arkansas during 1953.

A jury awarded the owners of two pieces of land taken by the Arkansas State Highway Commission for highway purposes in Crawford County, $25,000 and $21,500, respectively, which the state found excessive. Upon appeal, the state supreme court reversed the judgment of the Circuit Court of Crawford County for lack of substantial evidence to support the verdicts (State Highway Commission et al v. Byars et al. 256 S.W. (2d) 738, March 30, 1953).

Two families owned the land here being taken for a relocation of US 64 in Crawford County; 9.405 acres were taken from the Byars for which an award of $25,000 was made, and a little over 10 acres were taken from the Christellos, who were awarded $21,500.

The Christellos owned a 400-acre farm, purchased in 1946, which actually cost $9,700, or about $25 per acre. They also owned the Monte Vista Subdivision consisting of 198 lots, for which they paid $5,000 in 1949. Of the 400 acres, 80 acres, unattached to any of the rest of the property were located north of old US 64; about 180 acres were south of old Route 64 and were connected with 140 acres north of the old route by a culvert used as an underpass. All improvements were located on the 140 acres north of old Route 64. The new location of US 64 would sever the 140-acre tract, leaving some 55 acres north thereof, and approximately 80 acres, on which the improvements are located, south of the new highway. Since the old route would not be vacated or abandoned, the Christellos' land would be damaged only to the extent of the loss of the slightly more than 9 acres taken by the state, plus the severance from the 55 acres.

The state agreed to move buildings located on the new right-of-way, to replace a well, construct new fences bordering the right-of-way, and build an underpass so that livestock could be moved from the severed 55 acres to the acreage south of new US 64 containing the improvements. The farm was used for grazing from 50 to 100 head of livestock and for raising hay. In addition to the farmland, a portion of 10 lots in the Monte Vista Subdivision bordering on the right-of-way were to be taken by the state.

The Byars owned some 438 acres of farmland on which they raised livestock. All of the 438 acres were located north of old US 64, but construction of the new route would result in severing some 16 acres on which the improve-

[15] See Memorandum 71, September 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 219.

ments were located. Commencing in 1948, the Byars had purchased some 487 acres of land at various times. A portion of this acreage was subsequently sold leaving the Byars with some 438 acres. About 156 acres were bought two months before the trial for a little over $17 per acre.

The state agreed to build new fences bordering the right-of-way, build an underpass suitable for moving livestock from the property on which the improvements were located to the other portion, and to move whatever buildings it might be necessary to move. The Byars were damaged by the loss of the nine and a fraction acres, plus severance of the 16 acres on which were located the improvements from the remaining 422 acres.

One witness for the state testified that the value of the farms had been enhanced by reason of the location of the new road. Another state witness estimated the Christellos' damages to be from $275 to $2,218 and damages to the Byars' property from $846.27 to $4,499.25.

No evidence was introduced, according to the supreme court, to prove the damages awarded by the jury except the opinions of witnesses as to the value of the land taken and the market value of the properties before and after the taking. Numerous witnesses testified for the property owners, as to the before and after value of the two properties, ranging from a before value of $75,000 for the Byars' property to an after value of $35,000 and a before value of $65,000 for the Christello property to an after value of $30,000.

The court found no evidence that any of the land involved was suitable for any purpose except the production of livestock and hay, but remarked that not a single witness, including the owners themselves, gave any testimony as to the number of livestock the land would support or the amount of feed that could be grown thereon. Such material facts, the court said, could not be ignored, if an intelligent opinion were to be arrived at.

If the supreme court were to affirm the judgment of the lower court, there must be substantial evidence to support the verdict. Because a witness testified as to a conclusion on his part did not necessarily mean that the evidence given by him was substantial, if he did not give a satisfactory explanation of how he arrived at the conclusion. Since there was no showing that any of the landowners' witnesses took into consideration the potentialities of the land involved for raising livestock and feed, they had given no sound basis for their opinions as to the value of the farm and damages thereto, according to the court.

The decision of the lower court was reversed and the case remanded for a new trial.

A dissenting opinion was handed down by one judge in this case, who took issue with the majority of the court who had, he stated, "acted as a jury in testing the credibility of the witnesses and the weight to be given to their testimony." According to this dissenting judge, this was not a function of the supreme court. The credibility of witnesses and the weight to be given their testimony was a matter to be decided by the trial court.

A rehearing of the case was denied by the court on May 4, 1953.[16]

Right-of-Way Costs and Land Value

A decline in farmland values of about 6 percent took place in the period between March 1, 1953, and March 1, 1954, as indicated by Figure 1. According to the March 1954 issue of "Current

[16] See Memorandum 69, July 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 213.

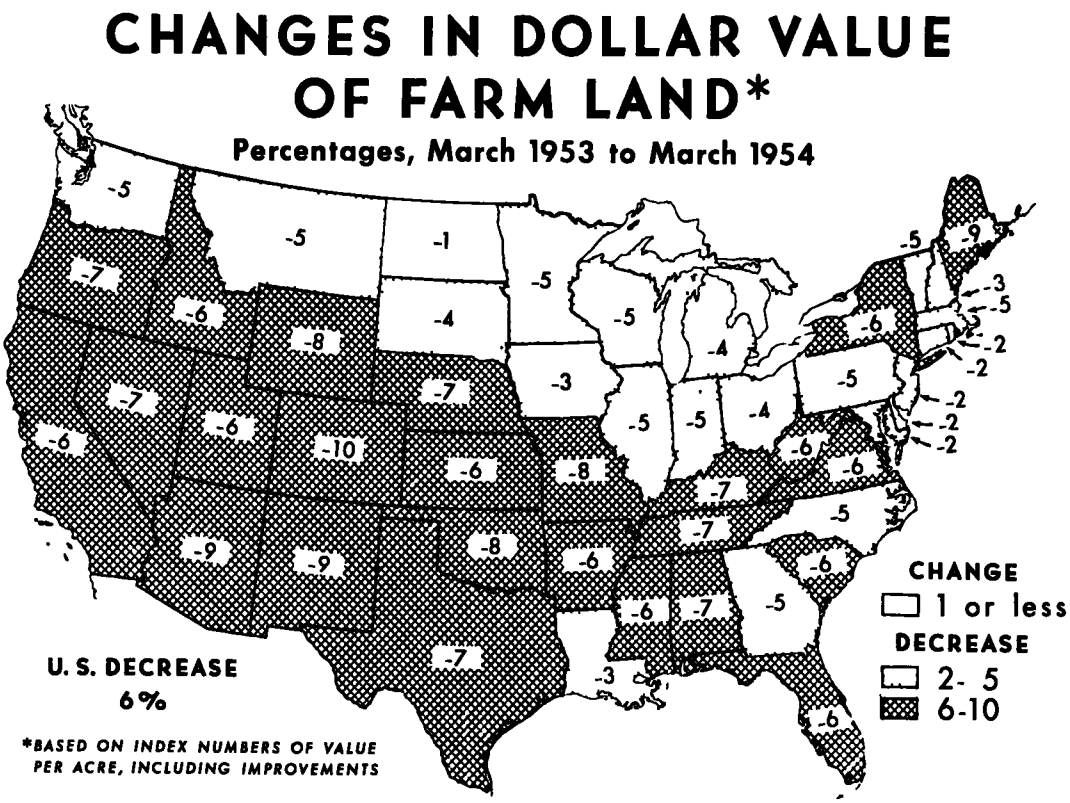

Figure 1

Developments in the Farm Real Estate Market," a publication of the Bureau of Agricultural Economics of the United States Department of Agriculture, the farmland-value index has dropped to 120 (1947–49=100).

Values as of March 1, 1954, were lower in every state than they were as of March 1, 1953, with states in which farm income was affected by drought and lower cattle prices in 1953 showing somewhat larger declines. The rate of decline was slowed in the period between November 1, 1953, and March 1, 1954, apparently due to a strengthening in prices of farm commodities during that period. According to the report of the Bureau of Agricultural Economics, about a third of the farm-real-estate reporters expected lower prices for farmland during the 6-month period following the March 1, 1954, report. This was the same percentage as reported in the March 1, 1953, report, but significantly, in October of 1953, 40 percent of the reporters expressed this opinion. The percentage expecting an increase in farmland values was the same in October and in March—6 percent.

Farmland values have a definite effect on prices paid for highway right-of-way. Although the rate of decline in prices of farm real estate has decreased during the past several months, no reversal of the downward trend is expected in the near future.

CONTROL OF HIGHWAY ACCESS

Authority to Establish Controlled-Access Highways

The provision of expressway facilities is authorized by statute in 35

states,[17] by constitutional provision in one state, Missouri, and by judicial decision in one state, Minnesota. Additionally, one or two states are apparently building expressways under the highway department's existing authority, without specific legislative sanction. A number of states are currently considering enabling expressway legislation.

During the year, the constitutionality of at least one state's expressway law was challenged. On January 22, 1953, the Illinois Supreme Court reversed a decision of the Montgomery County Court, dismissing a petition of the Department of Public Works and Buildings to acquire by eminent domain, certain parcels of land and easements of ingress, egress, crossing, light, air and view to and from other parcels of land. Defendants making the motion challenged the jurisdiction of the county court, attacked the constitutionality of the Freeways Act of 1943, and questioned the legal sufficiency of the petition to condemn. (Department of Public Works and Buildings v. Lanter et al., 110 N. E. (2d) 179).

Of particular interest was the court's answer to the attack on the constitutionality of the act, (Illinois Rev. Stat. 1951, Ch. 121, pars. 334-343.) Defendants contend that the provisions of the act were incomplete, vague, and indefinite, and constituted an unlawful delegation of arbitrary powers to the department.

The court considered the delegation of authority here involved no broader than that sustained in two previous decisions. In Mitchell v. Lowden, 123 N. E. 566 (1919), involving the 1917 Hard Road Bond Issue Act, providing for a state-wide system of hard roads, which specified only the points of termini, and left all other matters to the department, the court stated:

> There is no delegation of either legislative or judicial power to the department of public works and building. It is true that many questions—the material to be used, the width of the roadways, the character of the construction and the plans and specifications therefor, the terms and conditions of contracts, the acceptance or rejection of work done, and the numberless details in carrying out the provisions of the act—are left to the determination of the department of public works and buildings, which is authorized and required to make all final decisions. The decision of such questions is ministerial.

In People *ex rel.* Curren v. Schommer, (63 N.E. (2d) 744 (1945)), involving the validity of the Illinois Superhighway Act, which contemplated a system of toll roads, to be planned, built, operated, and maintained by a commission empowered to acquire and convey personal and real property, including rights-of-way, franchises and easements, and to issue and sell bonds for the purpose of financing the planning and construction of the superhighway system, the court had this to say:

> It is an accepted constitutional doctrine that the General Assembly may not delegate legislative functions to a commission and invest an administrative agency with arbitrary powers, but it has long been accepted that the Legislature may delegate that reasonable measure of authority which is necessary to accomplish the constitutional purpose desired. We hardly see how, in this age of modern development of highway and other transportation systems, in order to serve the public's ever increasing demand for safer and more rapid transportation, it can be said that the Legislature, which is the voice of the people, has no freedom of action in determining the best methods of giving to the public that service for which it is willing and able to pay. It is the best judge of what is necessary to meet the needs of the public and in what manner the service shall be directed. It is true the General Assembly may not delegate its general legislative authority, but it may, however, confer upon a municipal body, which by reason of its position, may have more knowledge of the subject or which may do things more expeditiously than the legislature, such powers as is not violative of the constitution.

[17] Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

Defendants in the present case insisted that excessive and unlawful authority was granted to the department as to the diminution, extinction, extension and creation of rights of access to the freeway. The provisions of the Freeways Act, authorizing the department to designate by agreement or stipulation the points at which access would be permitted from abutting lands to the expressway, and to specify the terms and conditions upon which such access would be allowed, had the effect, according to defendants, of giving the department power to zone without any limitation all lands abutting upon any road. They argued that the department might select any road for designation as a freeway, and then might, at its own discretion, depending upon whim or fancy, allow or deny access to the expressway.

The court stated, however, that to require the general assembly to determine itself precisely what rights of access should be extinguished and what retained would completely frustrate the legislative purpose. Standards prescribed in the present statute to govern the department in the designation of expressways and the regulation of access rights were expressed in general terms: "when the safety and convenience of highway traffic will be promoted and the public interest subserved thereby." However, varied and unforeseeable conditions which might exist or arise along the state's thousands of miles of through traffic highways made greater particularity impossible. Almost from the outset, it had been said that the legislature might authorize others to do things which it might properly, but could not understandingly or advantageously, do itself. The court cited several previous decisions in support of this point, and concluded that defendants' contention that the act was unconstitutional could not be sustained.

In contending that the petition to condemn was legally insufficient upon its face, defendants advanced several arguments, all of which were disapproved by the court. One argument was that the attempt to establish a portion of federal-aid Route 5, in this case as an expressway, was without legislative sanction. The statute required that all, rather than a portion, of a route be designated as such. This contention, said the court, was not sound. The statute did not concern itself with routes. And, in any event, the fact that corporate authorities of cities, villages and incorporated towns were authorized to establish expressways flatly negatived the contention that all of a route must be so designated. The highway here involved was specifically identified on the plats attached to the petition, and that was sufficient.

Another argument advanced by the defendants was to the effect that the department was without authority to condemn "rights of access, crossing, light, air or view, to, from or over" the expressway, in connection with several tracts where no land was being taken. This argument was based on a decision rendered in a previous case (Horn v. City of Chicago, 87 N.E. (2d) 642, 647 (1949)) in which the court held that an abutting property owner was not entitled to have condemnation proceedings instituted to determine damages to his property occasioned by a public improvement where no part of his property was physically taken.

This statement, the court held, did not support defendants' contention in the present case. The damage here did not flow incidentally from a "public improvement" in the physical sense in which that term was used in the Horn case. The present statute authorized the department to acquire access rights

where no physical change was to be made in an existing highway. Section 3 of the act specifically authorized the department "to extinguish by purchase or condemnation any existing rights or easements of access, crossing, light, air or view to, from or over said freeway vested in abutting land."

The supreme court remanded the case to the lower court for rehearing. In so doing, it made note of the fact that, although the matter of the necessity of taking property and easements to the extent sought by the petition had not been at issue in this court, it had been raised in the lower court. The supreme court stated that evidence should be heard upon such questions raised by the defendants when the case was retried. However, in determining the quantity of property and property rights to be taken in a condemnation proceeding, the petitioner was permitted great discretion, and in the absence of a clear abuse of its power, the petitioner's decision was conclusive. Where the petitioner's determination was challenged, the burden of proof would lie with the challenger, except in the rare, perhaps entirely hypothetical, case in which the petition itself showed that the amount of land sought was not necessary.[18]

Access Rights on New Highways

When an existing highway is converted into an expressway, courts have been unanimous in declaring that an owner whose property abuts on the highway is entitled to compensation if his right of access is taken or impaired, even when no other property is taken from him. If, on the other hand, an expressway is established on new location, the courts of at least three states (California, Illinois, Oregon) have held that the person who becomes an abutter by reason of the establishment of an expressway at a location where no street or highway previously existed, having lost nothing which he theretofore had, is entitled to no compensation if not given access to the new highway. In this connection, the latest California case involving this principle is of interest.

The case of People v. Thomas (239 P. (2d) 914 (1952)) involved primarily the construction upon entirely new alignment of a limited-access freeway. There were a number of points raised on the appeal, including the contention of the property owners that the state was acquiring more property than was needed for the highway. The court held that the California statute providing, in effect, that the resolution of the California Highway Commission authorizing condemnation was conclusive evidence of public necessity, was valid in the absence of clear allegations and proof of fraud, bad faith, of an abuse of discretion. Some of the so-called unnecessary property acquired consisted of small parcels, irregular in shape, which would have been inaccessible after the new highway was built. The court cited with apparent favor Section 104.1 of the streets and highways code, authorizing the state highway commission to acquire an entire parcel where failure to do so would give rise to claims or litigation concerning severance damages.

The case was extremely interesting and pertinent. The state had requested the court to instruct the jury to the effect that the remaining portions of the defendant's property were not to be considered as having had a right of direct access to the new highway at any time and, therefore, that the jury must not include in its verdict any sums by reason of the fact that the property

[18] See Memorandum 65, March 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 194.

would not have access to the new highway.

Here again, in this case the court referred to the resolution of the California Highway Commission designating the highway as a freeway. The court said: "The resolution passed by the highway commission did not create in appellant's property a new right of access to a freeway to be constructed where no highway, conventional or otherwise, existed before." The court then quoted with approval the language in the Geiger case (City of Los Angeles v. Geiger, 210 P. (2d) 717 (1949)), in which property was separated from the existing highway by a railroad right-of-way. The owners contended that following the construction of the improvement of the highway, it would cost them much more to construct facilities enabling them to reach the new highway than it would have cost them to reach the old one. In each instance, they were basing their claim upon the assumption that they could obtain permission to cross the railroad right-of-way therefor.

The language quoted from the Geiger case by the court in the Thomas case reads, in part, as follows:[19]

> There can be no detriment to a right which never existed and no compensation for a loss not sustained. The construction of the freeway improvement did not cause defendants to lose an easement for access to Cahuenga Boulevard since it had never been acquired. Manifestly plaintiff cannot be required to pay damages for injury to a nonexistent right or for a mere hope, surmise or expectancy that a right might possibly be obtained in the future.

Access Rights on Existing Highways

As stated above, courts of the various states have held that an owner whose property abuts on an existing highway is entitled to compensation for the loss of access if the highway is converted into an expressway. A decision handed down during the year by the Illinois Supreme Court substantiates this doctrine.

An existing highway, federal-aid Route 172, in Peoria County was declared an expressway by the Illinois Department of Public Works and Buildings, under statutory authority (Illinois Rev. Stat. 1951, Chap. 121, par. 336). In October 1951, the department filed a petition to extinguish or limit by condemnation the rights of access, ingress, egress and crossing by vehicular traffic of abutting property owners onto the existing right-of-way. The Circuit Court of Peoria County entered judgment awarding the property owners no damages and the property owners appealed.

During the course of the trial, appraisers for the state testified that they had examined the properties involved and had found "Freeway" signs erected along the edge of the right-of-way of each. They also testified that they had been advised that the state had declared this right-of-way to be a freeway in August 1949, and that, in their appraisal they assumed in October 1951, the date of filing the petition to condemn, that the right-of-way of Route 172 was a freeway; based on this assumption and comparing the value of the properties on the date of the filing of the petition with the probable value of same on completion of the highway, they concluded there could be no change in the value of the properties.

After review of the proceedings, the high court found it evident that the jury had based its verdict upon the belief that the highway had been a freeway from the date of erection of the freeway signs, as urged by the state's appraisers. The jury was also taken to view the premises, and they too observed the freeway signs.

The supreme court stated that it had

[19] See Memorandum 63, January 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 186.

previously determined that the taking or damaging of land by eminent domain was not accomplished by passing ordinances or resolutions, or by serving notice on the owner that the land might be required for public purposes (Eckhoff v. Forest Preserve Dist., 36 N.E. (2d) 245 (1941)). The declaration of the right-of-way as a freeway in August 1949 and the erection of freeway signs adjacent to the properties involved in the present case could not have the effect of extinguishing or limiting the access rights of the property owners or of damaging said property. Such a result ensued only from the actual condemnation. The state's appraisers were incorrect in considering the effect of such facts and were thus incorrect in their assumptions and, as a consequence, in their conclusions.

The rights of access, ingress, and egress condemned by this petition, said the court, were valuable property rights and could not be taken away or materially impaired without just compensation. This rule applied not only in Illinois but was generally recognized to be the law throughout the United States. Moreover, the Illinois Freeway Act specifically recognized these rights as property rights which might be extinguished only by purchase or condemnation.

The court stated that there might be circumstances which would justify a jury in finding that particular easements were without value, but such a verdict must be based upon admissible evidence and proper instructions.

The judgment of the lower court was reversed and the case remanded for a new trial to determine the damages (Department of Public Works and Buildings v. Wolf et al., 111 N.E. (2d) 322, March 23, 1953).[20]

[20] See Memorandum 67, May 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 203.

Value of Access Rights

Ever since the first controlled-access highway was built, the problem of how to determine the value of access rights has been a vexing one. Figures as to how much these access rights have cost in dollars and cents are not available, for the reason that in many cases, costs of access rights as such have not been segregated. The before-and-after method of appraisal can be, and as a matter of fact is, used extensively when access rights are taken from the property owner. Two interesting court decisions touching on this matter of evaluating access rights have recently been handed down by the courts of Colorado and Washington.

Colorado. In the case of Boxberger v. State Highway Department (250 P. (2d) 1007, November 17, 1952), the right of Boxberger to sue the state highway department was involved. Boxberger, in June 1947, executed and delivered to the state highway department his deed to access rights to and from a portion of his farm which bordered on State Highway 185. No consideration was involved. The landowner claimed (1) he was advised by the highway department that the balance of his access rights would not be taken and (2) he would have the right to construct a filling station with access to and from the highway at any other adjacent point on his farm to the highway. This, he claimed, had proven false. His request for rescission and cancellation of the deed was dismissed by the District Court of Larimer County, on the ground that no authority existed in Colorado for such a suit against the state in its sovereign capacity.

The supreme court reversed the decision of the lower court, stating that although the state highway department was a body corporate and a division of the executive department of the state,

this fact did not change its status from that of an agency of the government with liability to any citizen who might be deprived of his property without due process of law or without just compensation. The judicial branch of the government was intended to act as a haven for the protection of any citizens whose rights were invaded, whether it be by an individual or by the branches of the government. Otherwise, the individual would be left no remedy except to appeal to the legislature, maybe to no avail. The lower court erred, therefore, in sustaining the motion to dismiss the complaint.

A second case (Boxberger v. State Highway Commission, 251 P. (2) 920, December 8, 1952) involved an action by the state highway commission to condemn the remainder of Boxberger's right of egress from his land to Route 185, which had been designated as an expressway. Prior to jury trial, the state was permitted to amend its petition by excepting access by way of a 12-foot gate located 17 feet south of the north property line. Trial in the lower court resulted in a verdict of no damages.

The case was appealed to the state's supreme court by Boxberger who claimed, among other things, that he was deprived of his property without compensation, that inadequate and wrong instructions were given on damages, and that his motion to require the highway department to make its petition more definite and certain as to the exact nature and extent of the rights sought to be condemned should have been approved.

In regard to the first point, the high court stated that it found no evidence that the access rights taken had no value. Qualified witnesses gave testimony to the general effect that Boxberger's farm, as such, suffered loss of value in the sum of $3,500 as a result of denial of access; further, the loss of right to sell commercial sites along the road was fixed at between $10,000 and $20,000 by these witnesses. On the other hand, neither of the two witnesses for the highway department gave any evidence indicating any benefit from the improvement. One, in fact, stated that he thought it was a disadvantage to be on a freeway. The court definitely considered from the evidence that the jury verdict deprived the landowner of access rights without any compensation, which it believed resulted, at least in part, from the manner of the giving and refusing of instructions.

The court stated that in its opinion the value of access rights must be determined by comparing the value of the land and its use for any and all kinds of purposes before the disturbance or destruction of such rights and the value of the land minus any access or disturned or inconvenient access to the highway. The lower court had erred in refusing to give the jury Boxberger's tendered instructions, which was as follows:

> You are instructed that the benefits, if any, derived by reason of increased traffic, resulting from the construction of State Highway 185 adjoining respondents' properties are not special benefits to the lands of respondents, and must not be considered by you in determining what, if any, special benefits to the residue of respondents' property resulted from the improvement of said highway adjoining respondents' properties.

The lower court further erred in advising the jury that any special benefits found by it to exist would be deducted by the court from the damages, if any, to respondents' property. This was in direct conflict with state statutes which specifically provided that no deduction from the value of the property taken should be allowed from the benefit to the residue thereof.

The decision of the lower court was

reversed and the case remanded for a new trial.[21]

Washington. In this case, the right-of-way necessary for a controlled-access highway proposed for construction by the Washington Department of Highways bisected a stock and dairy farm, and the owner appealed from a decision of a trial court awarding damages in the amount of $14,000. The supreme court of the state upheld the decision of the lower court (State v. Ward et ux., 252 P. (2d) 279, January 9, 1953).

The land in question was located on a primary state highway, Route 1, near Centralia. Construction of the proposed road would leave all of the owner's farm buildings on a small tract of 5.1 acres on the easterly side of the highway, while 39.5 acres would lie to the west. Land west of the highway was unsuitable for building sites, being so-called bottom land, at times overflowed by the high water of the Chehalis River, which bounded the property on the west.

The state proposed to construct a service road along the westerly edge of the right-of-way. The property to the east would be served by an existing highway (Airport Road). In order to operate the farm as a unit, it would be necessary to drive stock northerly to Centralia, via Airport Road, through the city, and then southerly via the service road to be provided to the westerly half of the property, a distance in all of 7,120 feet.

Competent expert testimony, according to the supreme court, was introduced in the lower court by the state as to the value of the farm before and after the proposed construction, resulting in a jury verdict of $14,000, as stated above. The landowners objected to the verdict, contending that the trial court erred in admitting evidence of the plan of the service road to be built on the west edge of the proposed highway, stating that they should be paid damages in money as if there were not going to be a service road. Such evidence, according to the property owners, invited the jury to substitute the service road in place of a money payment for the severance damages to the farm resulting from cutting it into two unconnected parcels.

In the opinion of the court, the resulting loss of access had a bearing upon the extent of the damage done to the remainder of the land in this case, as well as upon the diminution of special benefits which ordinarily accrued to abutting land from the right to use the highway. The controlled-access feature of the highway must, therefore, be presented to the jury, together with all other features of the proposed construction, such as service roads, to enable it to properly assess all elements of damage and special benefit that would result therefrom.

The supreme court found no question of substitution involved here. Access to the westerly tract was not over a highway or road. The road which served the entire farm (Airport Road) did not lead from the buildings to the land in question. Nor did the state contend that the service road would give access between the two parcels. Without the service road, however, the land in question would be landlocked and practically valueless. The service road, according to the court, avoided the damage which a lack of access would cause. This, said the court, was mitigation, not substitution. The amount of damage which the entire project would do to appellants' land on the west side of the highway depended upon whether or not there would be a service road. The court found the plan for this service road admissible evidence.

[21] See Memorandum 66, April 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 200.

The supreme court also rejected the landowners' contention that instructions regarding an underpass to connect the remaining parcels should have been given the jury. The court stated that it was the exclusive prerogative of the state to determine details of the plan for the highway. Damages suffered and to be paid for were those occasioned by the particular plan adopted. It would have been error to have instructed the jury with regard to such hypothetical situations as existed only in the landowners' minds.[22]

Authority to Barricade Streets

In connection with the construction of controlled-access facilities, it is often necessary to dead-end local roads or streets intersecting the expressway facility. The laws of a number of states specifically authorize the closing off of such intersecting roads and streets at the right-of-way boundary of the expressway facility. The question of the state's authority in this respect arose a year or so ago in Washington, where such specific authority was not included in the law. The state highway department requested the opinion of the attorney general as to whether or not county consent to the closing off of a county road was necessary. His opinion was to the effect that the county's consent was not necessary in a case of this kind (Opinion No. 51-53-409 (1952)).

State enabling legislation, said the attorney general, authorized the highway authorities of the state, counties and incorporated cities and towns, to provide controlled-access facilities wherever such authorities were of the opinion that traffic conditions justified such special facilities, "provided, that within incorporated cities and towns, and upon county roads within counties, such authority or authorities shall be subject to the consent of the governing body." (Remington's Revised Stats., Sec. 47.52.020.)

The attorney general believed the phrase "upon county roads" meant "upon" in the sense of "along" a county road which had been selected for inclusion as a part of the controlled-access highway, and not wherever a county road intersected or crossed a controlled-access facility.

Section 47.52.070 of the state statutes provides, in part, that "no city or town street, county road, or state highway, or any other public or private way, shall be opened into or connect with any such limited-access facility without the consent and previous approval of the highway authority of the state, county, incorporated city or town having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby."

This section requires no consent from the highway or street authority whose road is so closed off. Furthermore, it is expressly stated that no highway or street which is not a part of the controlled-access facility shall intersect the same at grade. It follows, said the attorney general, that the consent contemplated in Section 47.52.020 must have reference to county roads which are a part of the controlled-access facility.

The act (Sec. 47.52.001) declared: "Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed. It is the declared policy of this state to limit access to the high-

[22] See Memorandum 65, March 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 194.

way facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities."

In view of this declaration of policy, the attorney general considered that it would divest the statutes of their efficacy and defeat the express intent of the legislature if any intersecting or crossing of a controlled-access facility at grade by any road or street not a part of such facility were allowed.[23]

However, in order to clarify this point, the 1953 session of the Washington State Legislature amended Section 47.52.020 of the controlled-access law, referred to above. The law, as it now reads, provides for local consent to the establishment of controlled-access facilities, "except that where a state limited-access facility crosses a county road the state highway commission may, without the consent of the board of county commissioners, close off such county road so that it will not intersect such limited-access highway."

Land Acquisition for Expressways

In order to successfully carry out a long-range expressway program, the states (or other agencies authorized to provide controlled-access facilities) must be prepared to defend every action taken in connection therewith. The concept is so new and so little understood in some areas that many more points of contention are apt to arise than is the case with highways of conventional design.

Some interesting issues were brought out in a decision handed down by the Maryland Court of Appeals during the year, having to do with the authority of the state roads commission to condemn land for an expressway in Baltimore County (State Roads Commission v. Franklin et ux., 95 A (2d) 99, March 11, 1953).

The case reached the high court as the result of an appeal by the roads commission from a directed verdict of the Circuit Court for Baltimore County in favor of the landowners, who contended that the commission had no power to condemn for the contemplated Baltimore-to-Harrisburg expressway.

The Maryland law (Section 154 of Article 89B) provides that "any project involving construction of one or more sections of expressway, or one or more sections of controlled-access arterial highway, shall be continuous and shall have each of its termini (a) at or within the limits of a city or town of the state, which city or town is recognized by the commission as a principal traffic generating center, or (b) at a connection in this state or at the state boundary with a route recognized by the commission as a principal traffic distribution, collection or dispersal artery."

Certain landowners contended that these requirements had not been met. The proposed expressway was to extend from the circumferential beltway in Baltimore County to a point where the expressway to be built south from Harrisburg by the State of Pennsylvania reached the Maryland State line in the vicinity of US 111. At the time of hearing before the trial judge, the exact location of the beltway had not been decided upon, but prior to the judge's decision this location had been decided upon and published in the public press. Little had been done by Pennsylvania, but if the landowners' argument were sound, it would be necessary for Maryland to wait until the Pennsylvania end of the expressway was completed before starting the Maryland expressway. The enabling legislation quoted above did not specify that the termini be actually

[23] See Memorandum 64, February 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 190.

located at the time the expressway was begun.

Section 154 also specified that no expressway was to be constructed to serve a traffic volume of less than an average of 5,000 vehicles per day. The landowners contended that this requirement had not been met in connection with the proposed expressway. The court, however, did not think the language of the expressway law meant that the traffic volume should be that great at the time the expressway was begun. Testimony given at the trial as to surveys and analyses conducted in connection with this project showed that the commission estimated the volume of traffic upon completion of the expressway would be "in the vicinity of 7,000 vehicles per day." The court found nothing to show that this study and estimate were erroneous.

The landowners also put forth the argument that the commission had no right, under the guise of condemning for an expressway, to condemn the access rights sought to be condemned in this case. Specifically, they contended that as only one lane was being built at present, the commission could not condemn at this time the land later intended for the median divider separating the lanes of traffic, the land contemplated for the other lane of traffic and that necessary for grading the other lane of traffic. The court pointed out that the commission was authorized to acquire real property or any interest in such property for highway construction purposes, and real property along any state highway, parkway, or freeway, or any interest in such property, in order to protect the same. The commission might acquire such property by condemnation, only if it determined, by resolution, that it was necessary for immediate or proposed construction (Article 89B, Sec. 8(a), Flack's Ann. Code of Maryland, 1951).

The court found that the commission had fulfilled the requirements of this section. In building the one "lane," the commission was constructing cross-drainage structures across both lanes of the highway and grading was being done for the contemplated "dual-lane" highway. The commission by resolution had declared that the location and general design of the Baltimore-Harrisburg expressway project in Baltimore County had been approved, and that the land being condemned was necessary for that project. There was nothing to indicate that the commission's decision to build the expressway was oppressive, arbitrary, or unreasonable, nor that it had not acted in good faith.

Another point raised by the landowners was to the effect that the roads commission had no authority to deprive them of all access to public roads, including the so-called Baltimore-Harrisburg expressway. Fifty acres of their land would be deprived of all access to the public roads. But the court called attention to Section 7 of Article 89B of the code which authorized the commission to condemn rights or interests, franchises, privileges, or easements that might be desirable or necessary to complete the state system of roads. The court found this sufficient authority to enable the commission to condemn whatever property rights were needed for expressways, not, however, without due compensation.

Also questioned by the landowners in this case was the state's authority to take immediate possession of the land needed for the expressway. The roads commission is authorized to condemn property needed for highway purposes after construction has been commenced, as well as prior thereto, by Section 9 of Article 89B of the code, enacted by the

state legislature pursuant to Section 40B of Article III of the state constitution authorizing such procedure where property in the judgment of the state roads commission is needed by the state for highway purposes. The commission, by resolution, had declared that an emergency existed with respect to construction of the proposed Baltimore-Harrisburg expressway so that immediate entry was necessary. The court found nothing to indicate that the commission's decision to enter upon the property was not justified.

The suit was originally filed on April 4, 1952, and almost a year had expired before the case was submitted to the jury. The court stated that it would be difficult to build roads under any systematic program if each owner could delay construction until he had exhausted his legal remedy as to the amount of damages due him by the condemnation of his property.

In conclusion, the court stated that it might well be that the construction of this expressway to be completed in the distant future would inflict hardships upon many individuals. But that was a legislative, not a judicial problem. When the legislature had conferred such powers on the commission, the question before the courts was limited to whether there was any necessity whatever to justify the taking, or whether the commission's decision was so oppressive, arbitrary, or unreasonable as to suggest bad faith. The court was unable to find bad faith on the part of the commission in the exercise of the powers delegated to it by the legislature in this case.

Finally, the court was of the opinion that the directed verdict should not have been granted but that the case should have been submitted to the jury. The case was remanded for further proceedings.[24]

Use of Access Openings

The committee has recently interested itself in a new phase of the matter of control of highway access. Control of access is one of the newest and perhaps among the most-effective devices that has been added to highway design in recent years. A further projection of the concept of access control can now be made in terms of controlling the *use* of access openings, i.e., those that are permitted on expressways or those on arterials of a lesser design.

Oregon has been a pioneer in this new area, and a special study of the legality of controlling the use of access openings has been undertaken at the suggestion of the committee by C. W. Enfield of the Oregon State Highway Commission. He reported on his findings at the open meeting of the committee at the annual meeting of the Highway Research Board in January 1954, in a paper entitled "Controlling the Use of Access." His paper is reproduced in full in this bulletin (see page 70).

Economic Impact of Expressways

Although 37 states have legal authority to provide controlled-access facilities and legislation is under consideration in others, there still remain doubts in the minds of the public, particularly in some areas, as to the economic effects of expressways. Studies made in California and in Texas have indicated that these highways actually increase land values and are generally beneficial.

More documented studies are needed, however, to firmly establish this finding. Landowners and others affected in a particular state are not always convinced by studies made in a state at the

[24] See Memorandum 70, August 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 216.

other end of the nation. During the year, plans were initiated for an investigation of the economic impact of expressways on urban and rural communities in Virginia. This state has completed several expressways and has plans for a number of others. The state highway department feels that its expressway program will be more acceptable to the public if it can be shown that expressways already completed have actually had a beneficial economic impact on rural and urban communities.

CONTROL OF THE ROADSIDE

A number of techniques for controlling the roadside have been proposed and, in some instances, put into effect in various parts of the United States. Some of these controls have encountered opposition from certain segments of the public. Lack of understanding of the nature and purpose of these controls accounts in large part for this opposition. If the benefits ensuing from a well-regulated roadside could be made clear to the general public in terms of safety, economy, time savings, and general appearance, perhaps less attention would be paid to the so-called right of the abutting owner to use his property in any way he sees fit and more to the public good. In other words, the overall picture needs to be stressed in order to bring about a more-effective use of these roadside control techniques. Effective use of two of these techniques, zoning and subdivision control, was a subject of discussion at the open meeting of the Committee on Land Acquisition and Control of Highway Access and Adjacent Areas during the annual meeting of the Highway Research Board in January 1954.

Subdivision Control

From time to time, the committee has called attention to the effective application of the subdivision control device in protecting highways against roadside encroachments and early functional obsolescence. The University of Wisconsin Law School has fostered some research in this general field, and Jacob Beuscher gave a report on the project in a paper entitled "Protection of Highways and Feeder Streets Through Subdivision Controls" (see page 52). Of particular interest is a proposal under discussion in Wisconsin as a means of coordinating control of buildings on property adjoining state highways. Under this proposal, standards for setback and other highway protection devices for state highways would be set up by the state highway commission. Acceptance of such standards by the county in the form of zoning ordinances, including building-permit features, would entitle the county to a grant-in-aid to help finance administration of this program.

Zoning

The zoning device has become acceptable to the general public through the years, and although not originally conceived as a means of protecting the roadside as such, it can be used effectively for this purpose. An excellent discussion of how zoning can be made to fit into the highway protection picture is included in a paper prepared by Hugh R. Pomeroy, director of the Westchester County Department of Planning. This paper, entitled "Bringing Zoning up to the Automobile Era," is also included in this report (see page 40).

Highway Setbacks

Another technique widely used to protect the roadside is the highway setback (sometimes a part of zoning ordinances and in other instances accomplished by means of other local ordinances) requiring that all buildings along certain

streets be set back a specified distance from the right-of-way line.

In a decision handed down by the Supreme Court of Wayne County, New York, on April 4, 1953, an ordinance enacted by the Town of Ontario requiring a 40-foot setback from the highway line was declared reasonable and justifiable under the police power of the state (Stevens et ux. v. Conner et al., 120 N.Y.S. (2d) 345).

This case reached the state supreme court on an appeal from a determination made by the town board of appeals, denying a variance which would permit the landowners to erect a dwelling house less than the required 40 feet from the highway line, in a district zoned "Residential District A." The petitioners had constructed a foundation wall at a point less than the 40 feet required subsequent to enactment of the ordinance.

Under the provisions of the zoning ordinance, the board of appeals had authority to approve a variance where practical difficulties or unnecessary hardships might be involved in carrying out the strict letter of the provisions. However, in affirming the determination of the board, the supreme court brought out the point that the burden of showing that the applicable provisions of the ordinance were not reasonable and justifiable under the police power rested with the landowner. He must prove that: (1) the land in question could not yield a reasonable return if used only for a purpose allowed in that zone; (2) the plight of the owner was due to unique circumstances and not to the general conditions of the neighborhood which might reflect the unreasonableness of the zoning ordinance itself; and (3) the use to be authorized by the variance would not alter the essential character of the locality.

The hardship claimed by the landowners in the present case was self-created, said the court, and the ordinance was reasonable and justifiable under the police power of the state.[25]

Right-of-Way Encroachments

Section 1.17(b) of "Regulations Under the Federal-aid Road Act of July 11, 1916, as Amended and Supplemented" specifies "the right-of-way provided for federal-aid highway projects shall be held inviolate for public highway purposes and no signs (other than traffic signs and signals) posters, billboards, roadside stands or other private installations shall be permitted within the right-of-way limits." Some of the states, however, have difficulty keeping state highway rights-of-way free from outdoor advertising devices and other encroachments. This particular problem led to inclusion of an effective provision in a law passed by the 1953 Arkansas State Legislature.

This provision is broad enough to prevent not only outdoor advertising devices, but all encroachments in the highway right-of-way:[26]

> The rights of way provided for all state highways shall be held inviolate for state highway purposes, except as hereinafter provided, and no physical or functional encroachments, installations, signs (other than traffic signs or signals), posters, billboards, roadside stands, gasoline pumps, or other structures or uses shall be permitted within the right-of-way limits of state highways except that political sub-divisions, rural electric cooperatives, rural telephone cooperatives, and public utilities of the state may use any right-of-way or land, property or interest therein, the property of the State Highway Commission, for the purpose of laying or erecting pipe lines, sewers, wires, poles, ditches, railways, or any other purpose, under existing agreements or permits or such agreements or permits hereinafter made by the State Highway Commission or under existing laws, provided such use does not interefere with the public use of such property for highway purpose.

[25] See Memorandum 68, June 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 207.

[26] Arkansas Laws of 1953, Act 419, Sec 5

Zoning Ordinances Prohibiting Billboards

Reversing the judgment of a lower court in the case of United Advertising Corporation v. Borough of Raritan (93 A. (2d) 362, December 22, 1952), the New Jersey Supreme Court held that it was within the power of the borough to enact a zoning ordinance prohibiting outdoor advertising signs in any of the nine zones established by the ordinance and to draw a distinction in this connection between signs which advertise business conducted on the property and outdoor advertising. The court held, however, that the retroactive provisions in the act were invalid.

Plaintiff, the United Advertising Corporation, obtained a summary judgment from the lower court to the effect that the provisions of the zoning ordinance prohibiting the erection of billboards, were invalid upon the ground that the provisions of the Billboard Act of 1930, (Revised Statutes of New Jersey Ann., Sec. 54:40-1 et seq.) prohibiting the issuance of a permit to erect or maintain billboards or other structures in a place where the same were prohibited by a municipal ordinance were omitted from the act as amended in 1942 (Sec. 54:40-20 et seq.). The lower court held that the repealing statute (of 1942) abolished the right of a municipality to legislate on the subject of billboards.

This provision, the state supreme court held, had been inserted in the 1930 act merely as a precautionary measure, to insure that the municipal power to control the location of billboards as structures by zoning ordinance (Sec. 40:55-30 et seq. of the statutes) was not to be considered withdrawn or in anywise curtailed. Without the clause, the 1930 act could not be construed as having the effect of superseding municipal power in the field. The 1942 act was substantially the same as the 1930 act, except that it included additional restrictions as to the type and locations of billboards. There was no express statement in the 1942 law that the municipal zoning power was to be abrogated as to billboards. An intent that the law be given that effect was not evident. In fact, the contrary implication was more reasonable. Thus, the court stated that the omission was no support for the conclusion reached by the trial judge.

Plaintiff complained that the ordinance was invalid inasmuch as it permitted signs directing attention to businesses on the premises, while excluding advertising signs in all districts, and thus constituted unlawful discrimination. This contention had no merit according to the supreme court. The business sign was in actuality a part of the business itself, just as the structure housing the business was a part of it. The authority to conduct the business in a district carried with it the right to maintain a business sign on the premises subject to reasonable regulations in that regard, as in the ordinance under consideration. Plaintiff's placement of its advertising signs, on the other hand, were made pursuant to the conduct of the business of outdoor advertising itself. The ordinance provided, in effect, that this business should not to that extent be allowed in the borough.

The court cited an impressive list of court decisions in which it had been held that the unique nature of outdoor advertising and the nuisance fostered by billboards and similar outdoor structures located by persons in the business of outdoor advertising justified the separate classification of such structures for the purposes of governmental regulation and restriction. Such separate classification offended no constitutional provision, according to the court. No

invidious discrimination existed in the provisions of the ordinance barring plaintiff's signs in the business and industrial zones, while allowing manufacturing plants, junk yards, coal and coke yards, and other uses suggested by plaintiff as also having undesirable attributes. It was enough, said the court, that outdoor advertising had characteristic features which had long been deemed sufficient to sustain regulations or prohibitions peculiarly applicable to it.

Plaintiff's contention that the distinction in the ordinance was designed to protect local business and to put plaintiff out of business was also without merit, in the opinion of the court. The ordinance regulated all signs to confine their use to the reasonable requirements of signs incident to and part of businesses authorized on the premises. It forbad any sign whatever with an area in excess of 3 square feet, except as a zoning permit was obtained for its use. No sign of any sort might be placed, inscribed, or supported upon the roof or upon any structure which extended above the roof of any building. Many similar restrictions were included. The court found it plain that the municipal purpose was directed toward minimizing the abuses and hazards incident to the use of signs and to confine their use within the reasonable requirements of businesses permitted at certain locations.

Additionally, the court could not agree that an unconstitutional abridgment of the guaranties of freedom of speech and freedom of the press was involved in this distinction. These guaranties imposed no such restraint upon governmental regulation of purely commercial advertising.

However, the court did find the section of the ordinance requiring removal of nonconforming signs within 2 years of the effective date of the ordinance, unless permission to continue individual signs for further periods was first obtained from the local board of adjustment, to be contrary to the express provision of the zoning statute (Sec. 40: 55-48 of the state statutes). This section provided that "any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the building so occupied and any such structure may be restored or repaired in the event of partial destruction thereof."

It was beyond the power of a municipality to limit by zoning ordinance the right expressly given the owner by statute to continue a nonconforming use. Invalidity of this section, according to the court, did not affect the other provisions of the ordinance.[27]

Billboard Control for Aesthetic Purposes

Usually the courts will not uphold the regulation of outdoor advertising purposes for aesthetic reasons alone, although in some cases the courts have said that aesthetics have some bearing in a consideration of the legal merits of billboard controls. In a recent Florida decision, the state's supreme court upheld a regulation limiting the size of commercial signs purely on aesthetic grounds.

The court held, in a decision handed down on June 2, 1953, that a regulation adopted by the Dade County Commissioners, limiting the size of commercial signs to be erected in limited and special business zones to 40 square feet, was a valid exercise of the police power to promote the general welfare of the public and was not unconstitutional as being arbitrary or unreasonable (Merritt v. Peters et al., 65 So. (2d) 861).

[27] See Memorandum 64, February 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 190.

The regulation in question was adopted by the county pursuant to Chapter 17833, Laws of Florida, Acts of 1937. Nevertheless, the owner of certain property situated in a "limited and special business zone" proceeded to erect a sign more than four times the maximum size specified, insisting that the regulation was an arbitrary and unreasonable exercise of police power, because there was no relationship between the object of the rule and the health, safety, morals or general welfare of the public. The Circuit Court for Dade County refused to enjoin enforcement of the regulation.

The court agreed that the factors of health, safety, and morals were not involved but disagreed with the landowner in his contention that the restriction could not be sustained on aesthetic grounds alone. The court called attention to a previous decision (City of Miami Beach v. Ocean and Inland Co., 3 So. (2d) 364 (1941)) wherein it was held that the attractiveness of a community like Miami Beach was of prime concern to the whole people and, therefore, affected the welfare of all. The court considered this principle equally applicable to the territory involved in the instant case.

The supreme court upheld the ruling of the lower court in refusing to restrain enforcement of the regulation on the ground that it was a violation of the property owner's constitutional rights.[28]

PARKING

Provision of Off-Street Parking Facilities as Public Purpose

At least two state courts handed down decisions as to the authority of municipalities to provide off-street-parking facilities. In Connecticut, the court held that the acquisition and operation of parking facilities by a municipal parking authority was a public purpose. On the other hand, a New York court held that although the provision of off-street-parking facilities was in the public interest, such action was not necessarily a governmental operation.

Connecticut. A special act of the Connecticut legislature, No. 473, enacted in 1951, and approved by referendum the same year, provides for the appointment of a parking authority of five members by the City of New Haven. The authority has power to acquire, create and establish, as well as operate, parking facilities and to collect reasonable fees for their use. These facilities may include "lots, garages, parking terminals, or other structures and accommodations for the parking of motor vehicles off the street or highway and open to public use with or without charge." The exercise of the power of eminent domain is authorized for purpose of the act.

Under the act, the city is given broad latitude in financing the undertaking. It provides for: (1) the issuance of bonds, subject to specific authorization by the board of aldermen, such bonds to constitute a general obligation of the city or to be payable only out of parking revenues; (2) the appropriation of funds raised by taxation; and (3) the assessment of benefits against owners of property specifically benefited by any parking facility. Operation of the parking facilities might be by the parking authority itself, or by private parties under lease.

The present case involves a taxpayer's request for a declaratory judgment to determine the legality of the act, brought in the Superior Court of New Haven County, and referred by that court to the Connecticut State Supreme Court of Errors for advice (Barnes v.

[28] See Memorandum 71, September 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 219.

City of New Haven, 98 A. (2d) 523, June 2, 1953).

The supreme court called attention to the fact that the streets of New Haven, a city first settled in 1638, were inadequate for the safe, convenient, and expeditious handling of modern motor traffic. Modern traffic required parking facilities beyond the capacity of these streets and present private parking facilities. Establishment of additional parking facilities would relieve traffic congestion and reduce traffic hazards.

The fundamental question here involved, according to the court, was whether the parking project provided a legitimate public purpose. Section 1, Article 1, of the state constitution provides that "no man, or set of men are entitled to exclusive public emoluments or privileges from the community," a provision similar in meaning to that included in other state constitutions prohibiting the state from denying to any person the equal protection of the laws contained in the Fourteenth Amendment of the United States Constitution. In a previous decision (Lyman v. Adorno, 52 A. (2d) 702 (1947)), the court held that "if the expenditure of public funds will promote the welfare of the community, it is for a public purpose." Noting the modern trend of authority to expand and liberally construe the meaning of "public purpose," the court stated that the test of public use was not how the use was furnished but rather the right of the public to receive and enjoy its benefit. What constituted a public purpose, said the court, was primarily a question for the legislature, and its determination should not be reversed by the court unless it was manifestly and palpably incorrect.

While the act contained no express legislative finding of any public need or public purpose as reason for its adoption, this did not mean that for lack of such finding it must be held that no such purpose was involved. The provision of the first section of the act, stating that all parking facilities of the authority were to be "open to public use," and the stipulated facts establishing that parking facilities "beyond the capacity of the public streets and present private parking facilities are essential, sufficed to show that a public need and purpose was involved which called for enactment of the law. That the authority's operation of its parking facilities might involve some incidental loss to private competitors," continued the court, "constituted no reason for holding that the act did not meet a legitimate public purpose. Furthermore, the possibility that the act might prove of greater benefit to store owners in the shopping district than to some other residents of the city did not render it invalid as discriminatory, any more than would the outlay of public funds to pave a particular section of street, with its greater benefit to the immediate abutters than to others."

The court called attention to recent decisions in other states in which the use in question had been held to be a public one, concluding that "on the basis of logic and common sense, fortified by these authorities," the parking project here in question was a legitimate public purpose.[29]

New York. In this case, Town of Eastchester v. Koch (118 N.Y.S. (2), 576 (December 3, 1952)), the Supreme Court of Westchester County, New York, held that the proposed establishment of a public automobile-parking lot by the town constituted a proprietary rather than a governmental function and that the town could not enjoin an adjoining landowner from enforcing a

[29] See Memorandum 71, September 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 219.

covenant against a business use of the property on which the town desired to establish a parking lot.

In upholding an abutting owner's attempt to enforce the provisions of the restrictive covenant, the court stated that although off-street parking no doubt promoted the flow of traffic and was in the public interest, this, in and of itself, did not make the establishment of a municipal parking place a governmental operation, even though such a facility might be subject to regulation under the police power.

When a municipality supplied water to its citizens and inhabitants, said the court, it performed a laudable function but operated in a proprietary capacity. Likewise when a town collected and disposed of garbage, it took steps to safeguard public health but, nevertheless, operated in a corporate capacity.

By statute, the town was authorized to establish such a parking place. However, the court was unable to find a legislative mandate relating to the duty to establish municipal parking lots. Without such mandate, there was no governmental function. The court concluded that in establishing a public parking place, the town was performing a corporate function. While it had the power to perform this proprietary function, it did so as a body corporate, subject to the same restrictions as any other person, firm, or corporation.[30]

Financing of Municipal Parking Facilities

Although the courts have generally upheld the authority of municipalities to finance the provision of public parking facilities where proper enabling legislation exists, methods of so-doing will be carefully scrutinized by the courts when brought to their attention.

[30] See Memorandum 67, May 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 203.

The State Supreme Court of Michigan recently reversed a decision of the Circuit Court of Jackson County that refused to enjoin officials of the City of Jackson from using public funds to pay for land for off-street parking lots (McVeigh v. City of Jackson et al., 56 N.W. (2) 231, January 5, 1953).

Jackson, a home-rule city, adopted an ordinance in 1951 creating an automobile-parking-system board to prepare plans for both on- and off-street-parking lots and facilities. Revenue-bond provisions of the ordinance were submitted to a referendum vote but were turned down by the electorate and, subsequently, eliminated from the ordinance. Under the remaining provisions of the ordinance, the city established an automobile-parking system and authorized acquisition of on-street and off-street facilities, combining the derived revenue in a single automobile-parking system.

Section 2 of the ordinance declared that the revenues derived from on-street parking through meters "shall be considered a portion of the revenues of the system, subject to the pledge and allocation as hereinafter provided, from and after July 1, 1951." The "pledge and allocation" referred to is found in Section 13 of the ordinance, and limits the use of the revenues of the system to the expenses of operation and maintenance of the system, for bond and interest redemption, and for replacement and improvements. A balance of about $35,000 remained in revenues derived from parking meters. But the ordinance did not authorize use of these funds to acquire lots for off-street parking.

The city's budget for the fiscal years 1951 and 1952, adopted prior to adoption of the ordinance, contained no appropriation for off-street lots or development of parking areas. The city

claimed that a separate item "reserve for bond issue" ($60,000) could be considered as appropriation to pay for parking lots. The supreme court held that upon elimination of provisions authorizing the bond issue from the ordinance, this so-called reserve became ineffective.

The city sought to transfer an unappropriated and unexpended sum of about $40,000, the residue from a veterans-housing fund, to the general fund and use this money to pay for parking lots. This they sought to do under a provision of the city charter, authorizing transfer of certain funds. However, under the provision in question, the city commission might transfer only an unencumbered balance of any appropriation "to a purpose for which the appropriation for the current year has proven insufficient or may authorize a transfer to be made between items appropriated to the same fund," according to the court. Since there was no appropriation, insufficient or otherwise, to a fund to pay for off-street facilities in the budget, such a transfer could not be made.

The city contended, and the trial court agreed, that no budgetary appropriation was necessary, since the enabling statute (Michigan Statutes Annotated, 1949 Rev. Sec. 5.2426(1)) authorized a city to acquire and operate parking facilities. However, the city charter contained provisions for adopting an annual budget and making appropriations. But the court was of the opinion that to state (as the city did in effect) that an appropriation was unnecessary because the purpose was lawful would deny the necessity for complying with such city-charter provisions. If carried to its logical conclusion, according to the court, the city commission could do anything that was within its powers without having included an appropriation therefor in its budget, or making an appropriation therefor in accordance with charter requirements. This would deny the public any opportunity to hear or object to such use of public moneys. Hearings on the budget were mandatory under the charter.

The court concluded that the city commission did not comply with the provisions of the city charter in appropriating the veterans-housing fund, or funds received for on-street parking, to pay for off-street facilities.[31]

Leasing Space in Parking Facilities for Nonparking Use

A great deal of controversy has taken place on the subject of whether a municipality may legitimately lease space for commercial purposes in parking facilities constructed and operated with public funds. During the year, the Supreme Court of Pennsylvania handed down two decisions to the effect that the Public Parking Authority of Pittsburgh could not lease space for the sale of gasoline, automobile accessories, automobile repair and service, or any other garage service. These decisions revolve about specific prohibitions against the designated commercial uses, so the principal issue is really not involved (Midtown Motors, Inc., et al. v. Public Parking Authority of Pittsburgh, 94 A. (2d) 572, and Clark v. Public Parking Authority of Pittsburgh et al., 94 A. (2d) 576, both February 9, 1953).

In the first case the injunction sought pertained to a condition contained in a lease entered into between the authority and the parking service corporation, for the purpose of providing off-street-parking facilities. The condition to which objection was made provided that

[31] See Memorandum 65, March 1953, Committtee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 194.

the parking service corporation would maintain adequate facilities for the supply of gas and oil and the performance of other garage services.

The enabling act under which the authority was established (Public Authority Law of June 5, 1947, P.L. 458, as amended, 53 P.S., Sec. 10271, et. seq.) specifically prohibited the authority from engaging in the sale of gasoline, automobile accessories, repair and service, or any other garage service, or any commodity of trade or commerce. The authority and the parking-service corporation contended that while the authority itself did not possess the right to engage in these activities, its lessee did. The supreme court pointed out, however, that the provision prohibiting the sale of gasoline and other products was included in the enabling act for the express purpose of ameliorating the impact of the provision of parking facilities by the authority on private enterprise. The effect of the statute upon private enterprise would be precisely the same whether the prohibited sales and service were made by the authority or by the lessee. Furthermore, under the terms of the lease, the authority was entitled to 60 percent of the revenue from the sale of gas, oil, services, etc., and to that extent, at least, it was apparent that the authority sought to engage in the prohibited business.

The court also rejected the argument that the premises of the authority were not bound by the prohibition. The authority was prohibited from these activities, hence neither anyone on the premises nor the lessee might do what the authority itself was forbidden to do. It was plain from the clear and unquivocal words of the prohibition, said the court, that it was the legislature's intent to prevent the authority, or those privy to it, from entering into competition with merchants dealing in goods of trade and commerce.

However, the court approved the ruling of the court below to the effect that in cases of actual emergency the authority, or its lessee, was not prohibited from supplying the necessary means of moving automobiles in order to prevent obstruction in the operation of the premises.

In discussing the enabling statute, the court called attention to a clause authorizing public parking authorities to lease portions of the first floor of such facilities for commercial use where, in the opinion of the authority, such leasing was desirable and feasible in order to assist in defraying the expenses of the authority. Because of the general prohibition against the sale of any commodity of trade or commerce, the court considered that it might be doubtful whether or not the term "commercial use" contemplated the sale of goods, wares, and merchandise. Such commercial use might be restricted to banks, railroad and airline ticket offices, barber shops and the like, were no goods and merchandise were bought and sold. Such space was apparently available in this case. But because no attempt had been made thus far to carry out the provisions of the first-floor clause and because this question was not before the court, judgment was withheld.

The findings in this case were held to be applicable in the second case (Clark v. Public Parking Authority of Pittsburgh), where it was contended that a sublease between the authority and the Mellon Square Garage, Inc., was void because it was effected by private negotiation without competitive bidding. This, it was asserted, was in violation of a provision of the enabling statute, which provided that all construction, reconstruction, repairs or work of any nature made by any authority, where

the entire cost, value or amount of such construction, reconstruction, repairs or work including labor and materials exceeded $500, must be done only under contracts entered into by the authority with the lowest bidder.

The court answered this argument by observing that this prohibition applied only to "construction, reconstruction, repairs, or work." Nowhere was it stated that there must be bidding for the privilege of becoming a subtenant. In the absence of such a provision, said the court, the authority's right to privately negotiate would be unquestioned; indeed, such practice would appear to be essential. The authority had a fundamental interest in the integrity and ability of its subtenant. The possibility of enhanced financial return from a subtenant engaged in such a purely nonprofit public enterprise, because of a higher bid, would appear to be relatively inconsequential, according to the court.[32]

Other Parking Ordinances

The courts of at least three states ruled on the validity of other parking ordinances during the year. Various points of contention were involved in the cases brought before the courts. In Florida, the supreme court held that an ordinance regulating construction of parking garages was invalid because no standards for administration were included. The New Jersey Supreme Court upheld the validity of two municipal parking ordinances authorizing the acquisition of land for municipal parking facilities. In Vermont, the state supreme court held that a parking-meter ordinance enacted by the City of Burlington was not a revenue measure and was not unconstitutional.

Florida. The ordinance here in question was enacted by the City of Miami Beach, for the purpose of regulating the construction of multiple-level automobile-parking garages. The controversial portion of the ordinance provided that in a designated area no multiple-level garage might be built except upon "approval and permit by the city council . . . after a public hearing at which due consideration shall be given to the effect upon traffic of the proposed use . . ."

An application to construct such a parking garage at a particular location was twice refused by the city council and a subsequent attack on the ordinance by the applicant was dismissed by the Circuit Court of Dade County. Upon appeal, the state supreme court held the ordinance invalid for failure to provide definite rules for the guidance of the authorities in the execution of their discretionary power (Drexel et al. v. City of Miami Beach, 64 So. (2d) 317, February 24, 1953).

Records of the hearings held by the city council indicated that no discussion of the traffic problem took place nor did testimony given the chancellor in the lower court indicate that any consideration had been given by the council to the effect upon traffic of the proposed use. However, the supreme court stated that its decision was based not on what had actually happened in this case but on the provisions of the ordinance itself.

This ordinance, said the court, could easily become an instrument of discrimination by a majority of the councilmen giving what each might think "due consideration" to traffic problems and thereafter denying a permit in one instance while granting a permit in a less meritorious case, though acting conscientiously in both. This was possible because no uniform rules or regulations were defined to prevent the influences of whim or caprice. The or-

[32] See Memorandum 66, April 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 200

dinance contained no guide whatever to aid the councilmen in deciding whether or not a permit should be granted. Each councilman could decide for himself whether he had duly considered the traffic problem, and when a majority of the council members concluded that such consideration had been duly given and that the proposed building would complicate traffic conditions, the composite thought could develop into power to take away property.

The court could find no pattern or uniformity of plan in the ordinance to save the property owner from arbitrary discrimination or capricious action or even one that would protect the councilman from the charge that he was acting in such fashion.

Thus the supreme court held the part of the ordinance under attack invalid.[33]

New Jersey. The ordinance in question was adopted in 1952 for the purpose of enabling the City of Trenton to acquire lands by purchase or condemnation for the purpose of making the same available for public parking. The cost of the land was to be raised by the issuance of bonds in the manner provided by law. In the event that negotiations with landowners failed, the city was authorized to institute condemnation proceedings. This procedure was authorized by Section 40:60-25.1 of New Jersey Statutes Annotated (Chapter 138, Laws of 1942) which permits municipalities to provide, by ordinance, for the acquisition of lands for public parking purposes and to pay for the land with funds raised by general taxation or by the issuance of bonds.

Another section of the statutes, Section 40:56-1.1, New Jersey Statutes Annotated (Chapter 261, Laws of 1949), authorized municipalities to provide facilities for parking purposes by the acquisition and improvement of real property and by the construction of buildings and structures.

The owners of certain lots included in the ordinance asked the court for a judgment declaring the ordinance invalid and in violation of their personal, legal, and constitutional rights (Lenzner v. City of Trenton, 91 A. (2d) 896, October 8, 1952).

The property owners contended that Trenton, in creating a parking authority by a 1948 ordinance, under the provisions of Section 40:11A-1 *et seq.* of the statutes (Chapter 198, Laws of 1948), had divested itself of the authority which it might otherwise have had in the rights and powers now vested by law in the said parking authority. The city was without power or legal authority to enact the 1950 ordinance, which stated specifically that it was based on Section 40:60-25.1 of the statutes.

The Superior Court of New Jersey stated that it considered it entirely reasonable and conceivable that the municipality would employ each of the three methods provided for by the statutes over a period of time. This would seem to be legislative intent, inasmuch as the three statutes differed substantially, although all provided for parking facilities to be operated by a municipality or a corporation created by it. All of the enactments were apparently in full force and effect, and the choice of which act to proceed under was up to the governing body of the municipality. The court found the present ordinance a valid exercise of the legislative rights delegated to municipalities by the state.

The property owners also averred that it was the intention of the city, by means of this ordinance, to acquire their property without making just compensation therefor and, further,

[33] See Memorandum 69, July 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 213.

that the ordinance would permit the taking of their property for a private use and for the benefit of a limited group of private interests.

To this the court replied that the right of individuals in the ownership of property must, of necessity, bend to the requirements of public use through the exercise of the right of eminent domain. The court must take judicial notice that (1) the constantly increasing use of motor vehicles by the public had caused and would in the future cause serious traffic congestion and (2) parking of motor vehicles on the streets greatly contributed to this congestion and to the resultant effects thereof which of necessity endangered the health, safety, and welfare of the general public. In looking at the objects, purposes and results contemplated by the ordinance, the court stated that it must deem the proposed taking for a public use necessary and proper, legal, and constitutional.

The court felt that it must interpret the ordinance as indicating that it was the intention of the governing body, if negotiations for purchase failed, to follow the principles of eminent domain and to have in mind that when the land was taken the owners were entitled to recover for all damages, present and prospective, which might be known or reasonably be expected to result from the improvement.

The court concluded that the ordinance was not in contravention and violation of the personal, legal, and constitutional rights of the plaintiffs.[34]

In a decision handed down on July 1, 1953, (Walsh et al. v. City of Asbury Park, 98 A. (2d) 113) the Superior Court of New Jersey held that a city ordinance authorizing the acquisition of certain realty to provide parking facilities could not be declared invalid because of the possibility that the cost of acquiring all realty needed for the project might be more than estimated and that the project might be abandoned.

The ordinance in question, enacted by the City of Asbury Park on January 2, 1951, authorized the acquisition, as a local improvement, of certain lands to provide parking facilities, pursuant to statutory authority contained in New Jersey Stats. Ann., Sec. 40:56-1.1, 1.2, and 1.3. The ordinance estimated the maximum amount to be raised from all sources at $246,500 and provided for issuance of bonds in the amount of $234,500, the difference having been provided for in the city's budget. The bonds had been issued and sold, a substantial part of the real property described acquired and improved, and as of the date of institution of present proceedings, property so acquired was in use as a public parking area.

Walsh and others, the property owners attacking the validity of the ordinance, owned land authorized to be acquired for this project. The present complaint was filed shortly after they were notified that testimony would be taken for the purpose of making an award for real estate owned by them.

The property owners alleged that the city (1) had not and would not acquire certain other lands embraced in the ordinance; (2) was abandoning a portion of the improvement without repealing the ordinance; (3) violated the ordinance by proceeding against their property and by abandoning its proceeding against the remaining property; and (4) had no power nor legal authority to condemn a part of the property described in the ordinance without condemning property therein described in its entirety.

The property owners insisted that the

[34] See Memorandum 63, January 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 186.

funds raised would be insufficient for completion of the project and that the city, although it disavowed any intention of abandoning the project, must necessarily do so as to some of the lands described in the ordinance for want of funds.

The court observed that the present attack rested upon the asserted premise that a public improvement program, valid in its inception, became fatally defective if the estimated cost should prove less than that ultimately needed for the completion of the project and that a property owner, although funds were available for purchase of his land, might prevent the taking of his property because of an anticipated shortage thereafter. The court found it apparent that, if this view were adopted, public improvements would be perilous adventures and huge losses would be sustained by the collapse of partially completed projects. The property owners suggested that this difficulty would be obviated if all property acquisitions were simultaneous and the total costs thus ascertained at a given moment, but they did not indicate how this could be done. The court found nothing in the circumstances supposed by the property owners to prevent enforcement of the ordinance as far as their property was concerned.

The landowners referred to Section 40:56-9 of New Jersey Stats. Ann., which authorized abandonment of an improvement where the aggregate awards for damages were so large as to make the improvement unwise in the judgment of the governing body at any time before confirmation of any award for real estate to be taken thereunder. Although this section permitted abandonment in the circumstances described, the court stated this neither required simultaneous proceedings where more than one parcel was involved nor prohibited amendments to meet changing conditions or errors in forecast.

In this case the landowners relied upon the decision in the case of Gehin v. Board of Com'rs. of City of Newark (182 A. 869, (1936)): The Statutory mandate that an ordinance authorizing a bond issue contain "a statement of the maximum amount of money to be raised for the purpose" requires a statement of the "sum of money known to be necessary to complete." It is not satisfied by a statement of a sum known to be less than that required, which required sum, in that case, would have exceeded the debt limit. The present court did not consider that case authority for the proposition that invalidity would set in when subsequent events revealed the forecast to have been imperfect.

Judgment of the trial court, holding the ordinance in question valid, was affirmed.[35]

Vermont. This is a case in which a car was parked overtime in a metered zone in the City of Burlington. The driver protested his conviction on the grounds that the ordinance went beyond the powers granted to the city in its charter and was unconstitutional because its purpose was to raise revenue under guise of police regulation. The state supreme court, upon appeal, held that the ordinance was not a revenue measure, was authorized by charter, and was not *ulta vires* or unconstitutional as claimed by the accused driver (State v. Douglas, 94 A. (2d) 403, January 13, 1953).

Section 12 of the ordinance in question provides: "The fees required by this ordinance are hereby levied as a police regulation and inspection fee to cover the cost of providing parking

[35] See Memorandum 72, October 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 223.

meters and maintaining the same, allotting and marking parking spaces, providing regulations and control of traffic moving in and out of, and parking in, said parking spaces and the zones herein created, sweeping and cleaning the streets in said zones and clearing the same of snow, marking said streets and maintaining directional and other signs therein, and any and all other expense pertaining to policing, regulating, and controlling traffic in and adjacent to said areas."

After the meters installed by the city were paid for, three fourths of the revenue was allocated to the police department, and one fourth to the street department, in accordance with a decision of the city council. Funds thus transferred to the street and police departments were not segregated.

The faults of which the accused complained were not, according to the court, in the ordinance but in the disposition of the parking-meter revenue by the city council and in its use by the police and street departments. The constitutionality of the ordinance, however, was to be tested not by what had been done under it, but by what might rightfully be done. Applying that test, the court found the ordinance in question neither exceeding the authority of the city nor unauthorized. Every presumption must be made in favor of the constitutionality of a statute, according to accepted doctrine. It should not be declared unconstitutional without clear and undeniable evidence that it infringed the paramount law. The ordinance stated that parking fees were levied as a police regulation to cover the cost of regulating the parking of vehicles. The city authorized such an ordinance, and the court could not go beyond the declaration of purpose expressed, in the abscence of evidence tending to show that the declaration was a sham.

The court called attention to the fact that power to regulate the use of streets and highways by restrictions on the parking of vehicles was universally recognized. Its reasonable exercise had been consistently upheld. The fact that revenues realized from coin-operated parking meters might be incidentally in excess of the costs of installation, operation, repair and supervision did not make the law unconstitutional.

The Burlington City Council had undertaken to correct the serious situation brought about by the parking of automobiles on its streets. It could not be expected to foresee the amount of revenue resulting. It had and must have some right of experimentation. In a broad sense every ordinance which required payment of money was revenue producing, but this did not invalidate the ordinance as a regulating one, if it clearly appeared that the city was seeking to compel the persons who caused the expense to pay for it.

The facts indicated, according to the court, that a large part of the revenue obtained from the parking meters had been used for repair of meters, painting of parking spaces, traffic signs, snow removal, etc., as well as $5,000 for off-street parking. Parking-meter revenues had greatly increased since installation of the meters, but it could not be said that it was comtemplated that excessive revenue would result when the ordinance was adopted. The court was satisfied that the ordinance was not a revenue measure.[38]

Parking Facilities Through Zoning

Within the past year, Chicago enacted one of the most-comprehensive zoning amendments relating to the provision of parking facilities for new or substantially altered structures. The city's ap-

[38] See Memorandum 68, June 1953, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Correlation Service, Circular 207.

proach to the problem was most scientific. Standards included were developed only after painstaking field research on the matter. A report on this experience was made at the open meeting of the committee during the 1954 Annual Meeting of the Highway Research Board by Robert J. Kelly, parking superintendent of Chicago. Kelly's paper, "The Zoning Approach to the Chicago Parking Problem," is reproduced in full in this report (see page 61).

Pomeroy's paper, "Bringing Zoning Up to the Automobile Era," mentioned earlier in this report, also includes some interesting data on the provision of parking facilities through zoning.

INFORMATION INTERCHANGE

During the year 1953, ten monthly memoranda were issued by the committee through the Highway Research Correlation Service. These memoranda contain digests of new laws, court decisions, administrative practices, and other items of interest. Memoranda numbers and the month of release are as indicated below:

Committee Memorandum No.	HRCS Circular No.	Month
63	186	January
64	190	February
65	194	March
66	200	April
67	203	May
68	207	June
69	213	July
70	216	August
71	219	September
72	223	October

Analysis of Parking Requirements in Zoning Ordinances·

The report "Parking Space Through Zoning," was published in 1950 as *Bulletin 24* of the Highway Research Board. It reported that as of that date, there were 155 local zoning ordinances which had requirements for the provision of designated amounts of parking space in connection with varying property uses. The study contained an analysis of each of these ordinances, together with considerable supplementary materials. Included also were suggested standards, based upon the needs, involving the amount of space required for various uses.

In response to the need, many additional municipalities have enacted zoning ordinances containing parking requirements, since 1950. The committee therefore thought it appropriate to bring some of the factual material in *Bulletin 24* up to date. This new material was published by the Highway Research Board in its *Bulletin 99*, "Parking Requirements in Zoning Ordinances."

As of August 1954, the committee had isolated a total of 311 municipalities with ordinance provisions relating to the provision of parking space through the zoning mechanism. Although the requirements of all of the ordinances are summarized in the tables in *Bulletin 99*, this material does not, of course, supercede *Bulletin 24*, but should be looked upon merely as a supplement to it. The committee hopes that *Bulletin 24*, together with *Bulletin 99*, will continue to be useful to the many municipalities which, in increasing numbers, find themselves concerned with this problem.