

# The Law and Highway Modernization

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TRADITIONALLY, highway legislation in the states has followed a patchwork pattern to eliminate existing deficiencies that could no longer be ignored and to cope with pressing problems, rather than being the outgrowth of realistic and accurate forecasts and appraisals of both present and future highway legislative needs. To a great extent, highway legislation has followed rather than led the highway engineer's efforts to modernize our highway systems.

The failure to enact entirely adequate and comprehensive highway laws has been due in a large measure to failure in past years to fully foresee the great improvements made in automobiles, the highway construction standards that are made possible by new techniques, processes and machines, the tremendous increase in highway travel, and the inevitable resulting changes in the transportation habits of the American people and the overwhelming effect of highways upon the economy of the nation.

Even before World War II, it was apparent that the American economy was dependent upon highway transportation, and the nation was faced with an urgent and critical need both for new highways and for the improvement of existing highways to adequate standards. Highway builders faced these problems with the realization that if the economy of the United States was not to be strangled by inadequate highways, the highway systems must be planned and constructed to standards that would provide for future traffic requirements as well as present-day traffic need. This realization culminated in the enactment of the Federal-Aid Highway Act of 1956, which not only provides for greatly increased federal financial assistance to the states for all federal-aid highways, but also contemplates completion of the Interstate Highway System by 1972 to standards adequate to accommodate the traffic forecast for the year 1975.

Enactment of the 1956 Act, and the standards of construction for the Interstate System adopted pursuant to the Act, revealed legal deficiencies in many state laws. There was an immediate reaction in many of the state legislatures to enact laws necessary for the state highway departments to proceed with the construction contemplated by the federal enactment. Again, however, in many instances, the legislation was on a patchwork basis, designed in the interest of expediency to meet immediate needs only.

## ANALYSIS OF HIGHWAY LAWS

The time for a complete and detailed analysis of existing highway laws and their relationship with other laws is long past due. The designs and standards for highways are evolved after studies, investigations and tests over a period of years, and upon a realistic appraisal of highway needs now and in the future. Highway legislation should not only keep pace with modern highway construction, and its defense, economic and social implications, but it should be sufficiently imaginative and farsighted to anticipate and provide legal authorities and the means of resolving legal problems that will be essential to the future orderly improvement and expansion of the nation's highways. The highway lawyer should visualize the future legal tools that the engineer, planner, economist, and administrator will need. He should advise and counsel to the end that legislation may be enacted and legal theories perfected, and, if need be, constitutional amendments adopted, to blaze the trail and point the way, rather than to await the flood of legal complexities to arise out of actions already taken and then attempt to plug the holes in an inadequate legal structure.

The Highway Laws Committee of the Highway Research Board has taken national leadership in the collection and analysis of all existing constitutional, statutory and case laws relative to highways, and the committee is sifting out from this mass of material the essential elements of present highway laws. This study will provide a wealth of information that will have lasting benefits, but it should not be viewed as the end product. This project now under way is, by its very nature, limited to laws

now in existence, and it should be considered as merely the laying of the foundation of present knowledge upon which to continually build a sound legal structure that will be fully adequate to meet the current highway needs at any time in the future. Highway construction and highway transportation are not static but are growing, vibrant and dynamic, and the laws upon which they are dependent must be ever molded to meet the needs of the time and the anticipated needs of the future to best serve the public interest.

For this national study of highway laws to be fully effective, it must be implemented at the state level, where different governmental organizations, policies, practices and procedures may be taken into consideration. Armed with the Committee's collection and analysis of all highway laws, a state can intelligently evaluate its own highway code in comparison with the laws of other states and determine its own legal deficiencies, if any, and what corrective legislation is necessary. Both in the evaluation of present state laws and in determining the need for and drafting of new laws, attorneys, engineers, administrators, economists, planners and other informed persons should work together closely and with complete cooperation. An attorney who attempts to draft legislation without a complete knowledge of the objectives to be accomplished and the manner of their accomplishment is facing a hopeless task. By the same token, a highway administrator who has detailed knowledge of the objectives desired, but who does not recognize the legal problems involved, cannot hope to draft adequate legislation.

#### EXISTING LAWS WORTHY OF CONSIDERATION

The highway codes of all states provide general authority to construct, maintain and operate state highway systems. The detailed statutes, however, vary greatly between states and have a substantial impact on the ability of states to efficiently construct highways to modern standards, to control the movement of traffic in keeping with highway design, to protect highways from encroachment and untimely obsolescence, and to keep pace with the National Highway Program.

A few of the statutory provisions that are not common to all states but which have evidenced their merit in application are worthy of comment and consideration for enactment by states that do not have such laws.

#### Immediate Possession of Real Property

Probably one of the most valuable legal tools available to a highway department in undertaking an accelerated highway construction program is the authority to take possession of real property being acquired by condemnation prior to trial and payment of compensation. Such authority permits the orderly and unimpeded construction of highways in the interests of the general public, and at the same time preserves the rights of the property owner to receive just compensation for the property acquired. Such legislation now exists in 30 states<sup>1</sup>; however, before similar laws can be validly

<sup>1</sup> Seven states can take immediate possession of property for highway use by administrative methods:

Connecticut, General Statutes of Connecticut, Revision of 1949, Sec. 2264-2267.

Maine, Revised Statutes of Maine, c.23, Sec. 21-23.

Massachusetts, Annotated Laws of Massachusetts, c. 79, Sec. 3

New York, Consolidated Laws of New York, Annotated Highway Law, Sec. 30, pt. 5.

Ohio Revised Code (Baldwin's 1953), c. 5519, Sec. 5519.01.

Pennsylvania Statutes Annotated, Perm. ed. (Purdon's 1949), tit. 36, Sec. 670-210.

Rhode Island, c.3105, Laws 1953, as amended by c.3515, Laws 1955.

Twenty-four states can take immediate possession of real property by judicial methods:

Arizona Revised Statutes, Annotated, 1956, Sec. 12-1116(c).

Arkansas Statutes, 1947, 1955 Cumulative Supplement, Sec. 76-534 through 76-541.

California, Constitution of 1879, art. 1, Sec. 14 (Mason).

enacted in some states, it may be necessary to amend the state constitutions to remove prohibitions against entering into possession of real property prior to payment of just compensation.<sup>2</sup>

Some states have attempted to overcome their inability to take immediate possession of real property by expediting the trials of condemnation cases. This may be accomplished by authority to condemn many parcels of real property in one proceeding,<sup>3</sup> by

<sup>1</sup>(Continued)

Colorado Revised Statutes 1953, Sec. 50-1-6(3).  
 Delaware Code Annotated 1953, tit. 10, Sec. 6110.  
 Florida Statutes 1943, c. 74, Sec. 74.01 - 74.14.  
 Illinois Annotated Statutes (Smith-Hurd 1957 Supp. ) c. 47, Sec. 2.  
 Louisiana, Revised Statutes of 1950, tit. 48, Sec. 441 - 460.  
 Maryland, Annotated Code of General Public Laws of Maryland (Flack 1951), art. 89B Sec. 9E.  
 Michigan Statutes Annotated (Henderson 1936), Sec. 8.174 - 8.178.  
 Minnesota Statutes Annotated 1946, Sec. 117.20(5).  
 Nevada Revised Statutes, Sec. 37.100.  
 New Jersey Statutes Annotated, Perm. ed., Sec. 27:7-22.  
 New Mexico Statutes 1953 Annotated, Sec. 22-9-18.  
 North Carolina, General Statutes of North Carolina, 1952, Sec. 136-19.  
 North Dakota, Constitution of 1889, art. 1, Sec. 14, as amended by Laws of 1957, c. 397, art. 66.  
 Oregon Revised Statutes, 1953, Sec. 366.390.  
 Pennsylvania Statutes Annotated, tit. 36, Sec. 670-308.  
 Tennessee Code Annotated 1955, Sec. 54.510.  
 Utah Code Annotated 1953, Sec. 78-34-9.  
 Virginia, Code of 1950, Sec. 33-67, 33-70.  
 West Virginia Code of 1955, Sec. 5385.  
 Wisconsin Statutes 1955, Sec. 84.09.  
 Wyoming Compiled Statutes 1945, Sec. 48-105

<sup>2</sup> Yellowstone Pipeline Company v. Drummond, 77 Idaho 26, 287 P. 2d 288 (1955); State ex rel. Eastvold v. Yelle, 46 Wash. 2d 166, 279 P. 2d 645 (1955); Query: Illinois-cf. Department of Public Works and Buildings v. Gorbe, 409 Ill. 211, 98 N. E. 2d 730 (1951) (See Department of Public Works and Buildings v. Butler Company, (Ill. Superior Ct. ) decided November 8, 1957, held unconstitutional, c. 47 of Illinois Statutes Annotated (cited in footnote 1, above).

<sup>3</sup> Alabama, Code of 1940, tit. 19, Sec. 3. (All land must be in same county. )  
 Arizona Revised Statutes, 1956, Sec. 12-1118. (All land must be in same county and for same use. )  
 California, Code of Civil Procedure, 1953 (Deering), Sec. 1244(5). (All land must be in same county and for same use. )  
 Colorado Revised Statutes, 1953, Sec. 50-1-5. (All land must be located in same county. )  
 Delaware Code Annotated, 1953, tit. 10, Sec. 6104.  
 Florida Statutes Annotated, 1943, Sec. 73.21.  
 Idaho Code Annotated, 1948, Sec. 7-707(5). (All land must be in same county. )  
 Illinois Annotated Statutes (Smith-Hurd 1957 Supp. ), c. 47, Sec. 5. (All land must be in same county. )  
 Indiana Annotated Statutes, 1933, Sec. 3-1702(6). (All land must be in same county and for same use. )  
 Missouri, Revised Statutes of Missouri, 1949, Sec. 523-020. (Owners must be residents of same county. )  
 Montana, Revised Codes of Montana, 1947, Sec. 93-9908(5). (All land must be in same county and for same use. )  
 Nevada, Revised Statutes of Nevada, Sec. 37-070(6). (All land must be in same county and for same use. )

right of advancement of condemnation cases on the courts' trial dockets,<sup>4</sup> and by providing for special juries to hear condemnation cases when the regular juries are overloaded with work.<sup>5</sup> Summary eminent domain proceedings also provide a measure of relief in some states.<sup>6</sup>

### Acquisition of Real Property for Future Use

The greatly enlarged and accelerated national highway construction program now under way emphasizes the need for careful scheduling of engineering, right-of-way acquisition, and construction. Authority to acquire real property for future highway use is essential to provide adequate lead time between right-of-way acquisition and construction. At present, 16 states<sup>7</sup> have express legislative authority to acquire real

<sup>3</sup>(Continued)

New Mexico Statutes 1953 Annotated, Sec. 22-9-1. (Owners must be residents of same county.)

North Dakota, Revised Code of 1943, Sec. 32-1519. (All land must be in same county and for same use.)

Ohio Revised Code Annotated, 1953, Sec. 2709.07.

Virginia, Code of 1950, Annotated, Sec. 25-27, cf. 33-60. (All land must be in same county.)

Washington, Revised Code of Washington, 1951, Sec. 8.04.097 - 8.04.100.

Wyoming Compiled Statutes 1945, Sec. 3-6105. (All land must be in same county.)

<sup>4</sup> Arizona Revised Statutes Annotated, 1956, Sec. 18-155(b).

Arkansas Statutes, 1947, Sec. 76-542.

California, Code of Civil Procedure (Deering), Sec. 1264.

Florida Statutes Annotated 1943, Sec. 73-10.

Indiana, Laws of 1957, c. 148, Sec. 13.

Maryland, Annotated Code of Maryland, art. 33A, Sec. 22.

Massachusetts, Annotated Laws of Massachusetts, 1953, c. 79, Sec. 34.

Mississippi, Code of 1942, Sec. 8023.

South Carolina, Code of 1952, Sec. 33-139.

<sup>5</sup> Washington, Revised Code of Washington, 1951, Sec. 8.04.099.

<sup>6</sup> Connecticut, General Statutes of Connecticut, Revision of 1949, Sec. 2264 - 2267.

Maine, Revised Statutes of Maine, c. 23, Sec. 21 - 23.

Massachusetts, Annotated Laws of Massachusetts, c. 79, Sec. 3.

New York, Consolidated Laws of New York, Annotated, Highway Law, Sec. 30, pt. 5.

Ohio Revised Code (Baldwin's 1953), c. 5519, Sec. 5519.01.

Pennsylvania Statutes Annotated, tit. 36, Sec. 670-210.

Rhode Island, c. 3105, Laws 1953, as amended by c. 3515, Laws 1955.

<sup>7</sup> Arkansas Statutes, 1947, Sec. 76-532.

California, Streets and Highways Code (Deering), Sec. 104.6.

Colorado Revised Statutes 1953, Sec. 120-3-10.

Florida Statutes Annotated 1943, Sec. 337.27.

Idaho Code 1948, Sec. 40-120(9).

Indiana, Laws 1957, c. 148, Sec. 4.

Louisiana Revised Statutes 1950, tit. 48, Sec. 220.

Maryland, Annotated Code of Maryland, art. 89B, Sec. 8.

Michigan, Acts of 1957, Act 262, Sec. 247.663a, Sec. 13a.

Nebraska, Laws of 1955, c. 148, Sec. 20.

Nevada Revised Statutes, Sec. 402.860(2)(a).

North Dakota, Revised Code of 1943, Sec. 24-0117.

Oklahoma Statutes Annotated, tit. 69, Sec. 46(2).

Texas, Laws of 1957, c. 300, Sec. 4(1)(b).

Virginia, Code of 1950, Sec. 33-57.

Wisconsin Statutes, 1955, Sec. 80.64; Laws of 1955, c. 575, Sec. 4.

Cf. Special Report 27, Highway Research Board.

property for future use, and at least 8 states<sup>8</sup> have judicial decisions supporting such authority without express statutory provisions. Inasmuch as most right-of-way is acquired for future use, with the time element being merely one of degree, other states may find adequate authority in their general land acquisition statutes.

Probably of more practical importance are statutory provisions for financing the acquisition of real property for future highway use, which has been specifically provided by 9 states.<sup>9</sup>

Another legal device that is used by 5 states to assist in the acquisition of right-of-way is the authority to reserve real property on proposed highway locations for specified periods, during which time the state may acquire the right-of-way in an orderly fashion without threat of its improvement.<sup>10</sup> At least one state<sup>11</sup> has authority to freeze the market value of right-of-way for a period not in excess of one year, thereby eliminating increases in value during the period of negotiation.

### Acquisition of Excess Real Property

Savings can often be realized in the acquisition of real property by acquiring entire tracts, when only a part thereof is necessary for highway purposes, and then disposing of the excess, rather than acquiring only the real property needed and paying for severance damages to the remainder. At least 11 states<sup>12</sup> have enacted such legislation. Caution should be exercised in proposing similar legislation, however, for statutory authority to acquire real property in excess of that actually needed for highway use may be held unconstitutional. Some states limit exercise of the power of eminent

<sup>8</sup> *Wollard v. State Highway Commission*, 220 Ark. 731, 249 S. W. 2d 564 (1952); *State Highway Commission v. Ford*, 142 Kan. 383, 46 P. 2d 849 (1935); *State v. State Highway Commission*, 163 Kan. 187, 182 P. 2d 127 (1947); *Dept. of Public Works and Bldgs. v. McCaughy*, 332 Ill. 416, 163 N. E. 795 (1928); *Porter v. Iowa State Highway Commission*, 241 Iowa 1208, 44 N. W. 2d 682 (1950); *Edwin v. Mississippi State Highway Commission*, 213 Miss. 885, 58 So. 2d 52 (1952); *State v. Curtis*, 359 Mo. 402, 222 S. W. 2d 64 (1949); *State v. Superior Court for Cowlitz County*, 33 Wash. 2d 638, 266 P. 2d 1028 (1949); Cf. Special Report 27, Highway Research Board, p. 16; See *State v. Pacific Shore Land Co., et al.*, 201 Ore. 142, 153, 269 P. 2d 512, 518 (1954).

<sup>9</sup> California, Laws of 1952, c. 20 (2d Ex. Sess.), Laws of 1953, c. 1714.

Indiana, Laws of 1957, c. 92.

Maryland, Laws of 1957, c. 542.

New Mexico, Laws of 1955, c. 269.

New York, Laws of 1956, c. 60, pp. 527, 543.

Ohio, Constitution art. VIII, Sec. 2c, Laws of 1955, vol. 126, pp. 642, 871.

Washington, Laws of 1955, c. 383.

West Virginia, Laws of 1957, c. 143.

Wisconsin, Laws of 1955, c. 574.

<sup>10</sup> California, Streets and Highways Code (Deering), Sec. 104.3, Sec. 740 - 742.

Indiana, Laws of 1957, c. 148, Sec. 12.

Pennsylvania Statutes Annotated, tit. 36, 670-208, 670-219.

Texas, Laws of 1957, c. 300, Sec. 4(1)(b).

Washington, Laws of 1955, c. 161.

<sup>11</sup> Maryland, Annotated Code of Maryland (1957 Cum. Supp.), art. 89B, Sec. 91.

<sup>12</sup> Arkansas, Laws of 1953, Act 419, Sec. 4.

California, Streets and Highways Code (Deering), Sec. 104.1.

Colorado Revised Statutes 1953, Sec. 120-3-10.

Illinois Revised Statutes, c. 24, Sec. 185(a) (City of Chicago only).

Indiana, Annotated Statutes, Sec. 48-2107 (cities).

Maryland, Annotated Code of Maryland, art. 89B, Sec. 8.

Nebraska, Laws of 1955, c. 148, Sec. 21 (by any lawful means except condemnation or eminent domain).

domain to the acquisition of property required for "public use"<sup>13</sup>; whereas, other states extend eminent domain authority to the taking of property for "public benefit."<sup>14</sup> Thus, in some states, a constitutional amendment may have to precede such legislation.<sup>15</sup>

<sup>12</sup>(Continued)

Nevada Revised Statutes 1957, Sec. 402.860(2)(b).

Oregon Revised Statutes 1953, Sec. 374.040.

Virginia, Code of 1950, Sec. 15.771 (any city or town).

Washington, Laws of 1953, c. 131.

Cf. Special Report 27, Highway Research Board.

<sup>13</sup>Peavey-Wilson Lumber Co. v. Brevard County (Florida), 31 So. 2d 483 (1947); Riden v. Philadelphia, B. and W. R. Co., 182 Md 336, 35 A. 2d 99 (1943); Crommut v. City of Portland, 50 Me. 217, 197 A. 2d 841 (1954). "Public benefit" has been held not sufficient to support the taking of property by the public. "Public use" in these jurisdictions is defined as "use by the public." Riden and Crommut cases, supra.

<sup>14</sup>Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A. 2d 365 (1954); Leary v. City of Manchester, 91 N. H. 442, 21 A. 2d 156 (1941). "Public use" defined as "public necessity, convenience and welfare." Leary case, supra.

<sup>15</sup>Regardless of whether "public use" or "public benefit" is used in the state constitution, identical results can be reached, depending upon the view of the court. The cases cited in footnotes 13 and 14 contain statements to the effect that it is for the court to decide whether or not a particular use constitutes a "public use." See Cincinnati v. Vester, 33 F. 2d 242 (1929), aff'd, 281 U. S. 439.

The constitutions of eleven states provide for excess taking:

California, Constitution of 1879 (Mason), art. 1, Sec. 14<sup>1</sup>/<sub>2</sub>, vol. 1, p. 199. (The State or any of its cities may condemn or acquire land for streets, reservations, etc., along such streets, reservations, etc., restricted to parcels within 150 ft of boundary of improvements, or 200 ft, in case of parcels only partly within 150 ft limit, lands not needed for the improvement may be conveyed.)

Massachusetts, Constitution, art. X, Annotated Laws of Massachusetts (Michie 1951) vol. 10, p. 12. (Authorized legislation for taking more land than needed for actual construction, restricted to quantity that would be sufficient for suitable building lots on both sides of highway or street.)

Michigan, Constitution of 1908, art. XIII, Sec. 5, Michigan Statutes Annotated (Henderson 1936), vol. 1, p. 459. (Authorizes in exercise of power of eminent domain taking of land adjacent to proposed improvement as may be appropriate to secure greatest degree of public advantage from such improvement.)

Missouri, Constitution of 1945, art. 1, Sec. 27, Missouri Revised Statutes, 1949, p. 44. (Authorizes enactment of statutes for the taking of property in excess of that actually to be occupied as may be reasonably necessary to effectuate the purpose intended.)

New York, Constitution of 1954, art. 1, Sec. 7(e), Consolidated Laws of New York (McKinney), bk. 2, pt. 1, Constitution, p. 57. (Authorizes the legislature to empower cities and counties to take more land than actually needed for construction, but not more than sufficient to form suitable building sites abutting on highway or street.)

New Jersey, Constitution of 1947, art. IV, Sec. 6, par. 3. New Jersey Statutes Annotated (West 1954), p. 274. (Authorizes enactment of statutes providing for the taking of easements upon, or the benefit of restriction upon, abutting property to preserve and protect the highway or parkway.)

Ohio, Constitution of 1851, art. XVIII, Sec. 10, Baldwin's Ohio Revised Code, 1953, p. 71. (Authorizes municipalities to acquire property in excess of that actually to be occupied by an improvement.)

Pennsylvania, Constitution of 1874, Purdon's Pennsylvania Statutes Annotated (1956 Cumulative Annual Pocket Part), p. 216. (Authorizes the General Assembly to authorize cities to take more land than needed in laying out or widening streets or highways connecting with Interstate bridges, not to be more than sufficient to form suitable

### Control of Access and Closure of Intersecting Roads

The geometric and construction standards for the Interstate System prohibit access between the highway and abutting real property, except at authorized public road connections. Express authority to acquire rights of access by eminent domain has been established by statutes or judicial decisions in all states except Arizona. However, the laws of all these states may not be entirely adequate to meet every situation that may arise, and each state should carefully examine its authority to assure that all the necessary elements of an adequate law are present. Furthermore, additional legal explorations in exercise of the state's police power may produce new applications to access control that can be effected without the payment of compensation.

Closely related to the authority to acquire and control private rights of access, and equally essential, is the authority to close public roads at or near their point of intersection with the right-of-way of an access controlled highway, or to relocate such public roads, or to carry the same over or under the access controlled highway by grade separation structures. The uninhibited connection at grade of city streets, county roads or other public ways with a controlled access highway can defeat the purposes for which the highway is designed and constructed. At present, 39 states<sup>16</sup> have en-

<sup>15</sup>(Continued)

building sites on such streets or highways, and not to extend more than three miles from bridge approaches.)

Rhode Island, Constitution of 1842, art. XVII of amendments, Sec. 1, General Laws of Rhode Island, 1956 (Bobbs-Merrill), vol. 1, p. 232. (Authorizes the general assembly to authorize the taking of more land than is needed for actual construction but not more in extent than would be sufficient to form suitable building sites abutting such highway or street.)

Utah, Constitution of 1895, art. XI, Sec. 5(c), Utah Code Annotated, 1953, vol. 1, p. 255. (Authorizes adoption of municipal charters empowering cities to acquire an excess of property over that needed for making local, public improvements.)

Wisconsin, Constitution of Wisconsin, art. XI, Sec. 3a, Wisconsin Statutes, 1955, p. 48. (Authorizes the State or any of its cities to acquire or condemn lands for streets, parkways, boulevards, and reservations in and about and along and leading to same; and authorizes conveyance of real estate thus acquired not necessary for such improvements, with reservations concerning future use, so as to protect such works, and their environs, and to preserve the view, appearance, light, air and usefulness of such public works.)

<sup>16</sup>Alabama, Laws of 1956, Act 104, Sec. 6.

Arkansas Statutes Annotated, 1947, Sec. 76-2007.

California, Streets and Highways Code (Deering), Sec. 100. 2.

Colorado Revised Statutes, 1953, Sec. 120-6-3.

Connecticut, General Statutes of Connecticut, Sec. 2257(c).

Delaware, Laws of 1956, c. 603, Sec. 176.

Florida, Laws of 1955, c. 29965, Sec. 112.

Georgia, Laws of 1955, Act 333, Sec. 6.

Illinois, Laws of 1955, Sec. 7(a), p. 1813.

Indiana, Laws of 1955, c. 197.

Iowa, Laws of 1956, c. 148, Sec. 6.

Kansas, General Statutes of Kansas, 1949 (Gen. Supp. 1955), Sec. 68-1904.

Kentucky Revised Statutes, 1956, Sec. 177. 270.

Louisiana Revised Statutes, 1950, tit. 48, Sec. 304.

Maine, Revised Statutes of Maine, c. 23, Sec. 101.

Maryland, Annotated Code of Maryland, art. 89B, Sec. 164(d)(1), 168(a).

Michigan Statutes Annotated, Sec. 9.1094(5).

Minnesota. Laws of 1957, c. 864, subd. 5.

Mississippi, Code of 1942, Annotated, Sec. 8039-07.

Montana, Revised Codes of Montana, 1947, Sec. 32-2007.

acted statutes authorizing the elimination or prohibition of such intersections at grade with access controlled highways. Some of these statutes require the consent or approval of the local governmental body that has jurisdiction over the intersecting road or street. To this extent the local officials have effective veto power, if they wish to exercise it, over highway locations and designs proposed by the state highway departments, which may cause serious problems in construction of the Interstate System and may increase the cost of the system because of the possible insistence of local officials for additional grade separation structures and interchanges.

### Control of Traffic

Authority to control, regulate and channelize the movement of vehicular and pedestrian traffic is necessary to give effect to highway design. Because of the many varying conditions and circumstances which exist with respect to highways and traffic movement, it is essential that this authority be quite broad and flexible. The state highway departments are qualified to exercise such authority, although the enforcement of traffic laws, rules and regulations might well be made the function of a different governmental agency.

### LEGAL FRONTIERS

Although the federal highway construction program launched by the Federal-Aid Highway Act of 1956 has been undertaken with diligence, and while anticipation of the benefits to be enjoyed from the completed Interstate System has shown foresight, there is a question as to whether the full legal implications of this tremendous public endeavor have been realistically appraised. More than 70 percent of the world's passenger cars and approximately one-half of the world's trucks travel upon the highways of the United States. Highway transportation is so interwoven in our national economy and the American way of life that the construction of an adequate highway system cannot be considered as a separate and isolated undertaking. Present and future highway construction programs will have a great impact upon the nation far beyond mere highway considerations, and will create both opportunities and problems of legal import that merit recognition and challenge implementation and solution.

Exploration of some of the opportunities and problems that now exist or may arise in the future may prove profitable.

### Cooperation Between Governmental Agencies

Highway construction frequently occurs in areas included in active or planned

<sup>16</sup>(Continued)

Nebraska, Revised Statutes of Nebraska, 1943 (Cum. Supp. 1955), Sec. 39-1327.

New Hampshire Revised Statutes Annotated, 1955, c. 236, Sec. 236. 4.

New Mexico, Laws of 1957, c. 234, Sec. 7.

New York, McKinney's Consolidated Laws, Highways, Sec. 346.

North Carolina, Laws of 1957, H. B. 123, Sec. 6.

North Dakota Revised Code of 1943 (1953 Supp. ), Sec. 24-0133.

Oklahoma Statutes Annotated, tit. 69, Sec. 11. 4.

Oregon Revised Statutes, Secs. 373.050, 373.060, 374.060, 374.065, 374.070.

Pennsylvania Statutes Annotated, tit. 36, Sec. 2391. 4.

South Carolina, Code of 1952, Secs. 33-352.1(4).

South Dakota, Laws of 1953, c. 155, Sec. 7.

Tennessee Code Annotated, 1955, Sec. 54-2005.

Texas, Revised Civil Statutes of Texas, art. 1085(a), Sec. 4.

Utah Code Annotated, 1953, Sec. 27-9-5.

Vermont, Laws of 1955, c. 270, Sec. 9.

Washington, Revised Code of Washington, Sec. 47. 52. 070.

West Virginia, Code of 1955, Sec. 1474(5).

Wisconsin Statutes, 1955, Sec. 84. 25(3), 84. 29(5).

Wyoming Compiled Statutes, 1945, Sec. 48-351.

projects for reclamation, conservation, drainage, irrigation, urban redevelopment and other public improvements. Such projects and highway construction should be planned and consummated with due regard for the requirements and objectives of the other. Cooperation between governmental agencies responsible for highway and non-highway projects within the same area is essential to insure coordination of design and construction, prevention of unnecessary delays, elimination of duplication of work and facilities, minimization of costs, and production of the maximum public benefits. Such cooperation is similar to the coordination of urban planning with highway planning in urban areas. It can, however, go beyond mere planning and, in appropriate instances, the joint accomplishment of various types of public improvement projects may be desirable.

Highway construction may induce and, in some instances, may be dependent upon projects for improvement of adjacent areas, one thereby complementing the other. For example, highway construction through swamps, marshes, and other poorly drained land may not be feasible because of the prohibitive cost of providing drainage or adequate foundations. Frequently such lands can become valuable and productive if adequately drained. It may be that the costs of either the highway project or the drainage project alone would not be justified under the circumstances; however, the two projects together, each sharing its appropriate burden of the total costs, may be economically feasible and highly beneficial in making possible the construction of a highway upon a desired location and providing for fuller utilization of other property in the vicinity.

There is frequently a community of interest between highway construction and wayside beautification, on one hand, and urban redevelopment, conservation, erosion control or reforestation of adjacent areas, on the other. The promotion of these mutual interests for the benefit of both can be a logical outgrowth of highway construction. To be fully realized the highway planner must have imagination and a keen sense of appreciation of the blending of a highway into its surroundings so as to make travel pleasing and promote the appearance, improvement and enjoyment of adjacent areas.

There have been many instances of coordination and cooperative effort between the state highway departments and other governmental bodies. It may be possible under the laws of some states for governmental agencies to cooperate and "pool" their efforts in carrying out highway and nonhighway projects, even to the extent of combining the two, where appropriate, in one contract to be jointly financed. However, a careful study of the kind and extent of cooperation that is desired, along with an evaluation of existing laws, may disclose the need for additional legal authority. If the highway departments do not exercise leadership in this field, other agencies or interested persons may secure the enactment of laws in a form that will impede or frustrate the construction of adequate highways. For example, the federal government has encouraged, and many states have adopted, the principle of devoting highway revenues exclusively to highway purposes. This principle can be weakened or abandoned through the enactment of laws providing for such cooperation, if they are not carefully drafted to preserve the integrity of highway funds.

### Relieving Urban Traffic Congestion

Completion of the Interstate System and the improvement of other highways to provide for the fast and safe flow of large volumes of traffic will bring municipalities closer to vastly larger surrounding areas in terms of time. It is reasonable to assume that this will substantially increase the volume of traffic in many cities. Coupled with anticipated population growth and the ever-increasing motor vehicle registration, the already critical traffic congestion problems in many urban areas may be expected to become more acute. The problem takes on even greater importance when the situation is viewed in terms of civil defense requirements for evacuation, maintenance of essential services, and emergency medical care.

Highway engineers and city planners cannot act effectively to meet this problem without adequate legal authority. Attorneys must anticipate the legal requirements of public officials and draft legislation that will accomplish the desired results and protect private right.

There have been proposals to limit the use of designated streets or traffic lanes to mass transportation vehicles only, or to permit only necessary commercial and essential service vehicles to use certain streets during specified hours. Carrying this thought further, the prohibition of all vehicles, with minor exceptions, within entire central business districts of municipalities has been suggested, along with authority to establish and operate parking areas, on the periphery of the business district, that are readily accessible to mass transit facilities serving the business district.

The view has also been expressed that the time may come when private ownership of motor vehicles, in high population areas, will be controlled by the state legislatures to limit the number of vehicles, and thereby attempt to maintain a balance between the traffic capacity and economy of a community.

The use of these examples is not intended to indicate that they are either desirable or necessary, but rather to stimulate creative legal thinking to assist in overcoming growing traffic problems.

### State Zoning of Property Adjacent to the Interstate System

Construction of the Interstate System, 75 percent of which will be upon new locations, will, in many instances, induce changes in the use made of land in areas through which the highways pass. These fast traffic arteries will attract industrial and commercial utilization of adjacent areas, which over a period of time could result in continuous ribbon developments along substantial mileage of the system.

Now is the time, before the highways are built, to consider the need for zoning, at the states' level, of areas in the vicinity of the Interstate System. Such zoning action should be based upon a comprehensive state-wide master plan, which could be made by an appropriate state agency in cooperation with local officials and planners. The master plan and resulting zoning should be designed to serve the best interests of the public by maintaining a proper balance between attractive and interesting countryside surrounding the Interstate System, for the pleasure of highway travelers, and the economy of the state and its communities.

In addition to prescribing the uses that can be made of areas adjacent to the Interstate System, such regulatory control could include the sizes and kinds of buildings and other structures permitted, together with their minimum setback distance from the highway. There might be provisions for beautification and proper maintenance of property, including buildings, within a specified distance from the highway, to assure that abutting land and improvements are not unsightly or in a condition of obvious disrepair. It would also seem appropriate to provide for the planting of trees and shrubs to frame buildings and other improvements so as to make them more attractive when viewed from the highway, and, in appropriate instances, when screened from the highway by such planting, to permit what would otherwise be nonconforming uses of property. The perplexing billboard problem could also be embraced.

Such land use control would not only be beneficial to the highway user from the viewpoint of enjoyable travel, but it would also reduce untimely obsolescence of highways by deterring the use of adjacent areas in such a way as to generate traffic in excess of the highways' capacities.

For example, a newly constructed interchange, connecting a rural road with the Interstate System, may be entirely adequate to accommodate all anticipated traffic for the next 20 years based upon a substantial continuation of present land use in the vicinity; however, the establishment of a large industrial plant behind the interchange may overtax its capacity and require its replacement even before it is opened to traffic, resulting in the wasteful expenditure of public funds.

If highway engineers know that industrial and commercial development will be permitted only in certain designated areas in the vicinity of Interstate highway locations, they can design the highways to adequately provide for any anticipated traffic, with the actual construction to be by stages if the completed facility is not presently justified. Thus, every dollar spent will be a permanent investment in the ultimate facility that will be designed to meet all traffic requirements in the reasonable future in light of the states' master plan and zoning regulations.

## Electronic Highways

Recent publications indicate the possible development of electronic highways—highways and vehicles so equipped that an operator need only maneuver his vehicle to the highway and then press a button indicating his destination. From that point on, operation of the motor vehicle is controlled by electronic devices. The operator need pay no attention to the vehicle itself. The vehicle will be automatically steered to the destination and automatically slowed or stopped in order to avoid obstructions on the highway. Technologically speaking, such development is entirely possible today. The principal question remaining is whether or not highway authorities are willing and ready to permit the installation of necessary equipment upon public highways.

Suppose for a moment that such equipment becomes a reality. Where lies criminal and civil liability if a mechanical flaw leads to property damage or personal injury or death? If malfunction of the electronic mechanism of the automobile results in an accident, does liability rest upon the owner and operator of the vehicle or upon the producer of the automobile? If a defect in the controlling mechanism installed as a part of the highway results in an accident, does liability rest upon the public authorities who installed the equipment, upon the producers of such equipment, or upon the automobile operator who, by pushing a button, released his vehicle to the control of such equipment? There will be no attempt to answer these questions, but merely to submit them for consideration, with the suggestion that our present laws may not be entirely adequate should such a development in highway transportation occur.

### CONCLUSION

Being a government by law, rather than by men, highway construction, maintenance, and operation, as a governmental function, must be founded upon adequate legal authority and sound legal principles. Considering the vital role that highways play in the national, community and individual life, it is essential that highway attorneys meet the highest standards of professional ability to assure that the public interest is best served. The importance of competent legal counsel for every state highway department cannot be overemphasized. Highway attorneys must take the initiative in developing and applying the law that is necessary to keep pace with the ever-changing highway transportation picture.

State highway departments are experiencing a growing need for legal services that can best be provided by attorneys who devote their full time to highway matters. Not only does this make legal counsel readily available at all times, but also affords an opportunity for attorneys to acquire broad knowledge of highway matters and an understanding of highway problems, while developing greater professional proficiency through specialization in the field of highway law.

Whether attorneys are employed directly by the highway department or permanently assigned to the department by the State Attorney General, the best available legal talent should be sought and then utilized to the fullest in all phases of the department's activities. An attorney who participates in the day-to-day operations of a highway department can eliminate many problems before they arise, through proper counsel and advice, and because of his familiarity with highway matters, he can intelligently plan for and develop legal tools to meet present and future highway requirements.