

## LEGAL AND ADMINISTRATIVE CONTROL OF THE ROADSIDE IN OREGON

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The State of Oregon launched a program of location and construction of State highways under a State agency in 1913. The Oregon legislature in that year created a State Highway Commission and empowered it to locate and construct a system of State highways. By the provisions of the law the Commission was composed of the Governor, who then was Oswald West, the Secretary of State, who was Ben Olcott and the State Treasurer, who was Thomas Kay. In 1917 the legislature enacted a new law which embodied many of the principles of the old law, but provided for a Highway Commission of three non-salaried members, to be appointed by the Governor. The new Commission, like the first, was charged with the duty of locating and constructing a system of State highways.

The emphasis of their official obligations was on location and construction. No thought was then given to roadside development. The primary objective was a means of transportation; not scenery or roadside beauty. A companion act was passed by the same legislature, but was referred to the voters for approval. By the companion act the legislature set up a system of State highways which were designated by name or route, which highways the Commission was directed to construct and maintain. By the same act a bond issue of six million dollars was authorized. The highways designated by the State legislature comprised a mileage of approximately 4,000 miles. The citizens of the State approved the act and the Highway Commission immediately went to work.

The commissioners then in office and the succeeding commissioners carried on and now Oregon has approximately 4,805 miles of primary highways and 2,508 miles of secondary highways.

As we have already stated, the emphasis in the beginning was on the location and construction of highways. What was desired was a highway surface on which to travel. Little, if any, thought was given to roadside development or beautification. In fact, instead of roadside beautification we had in many cases roadside desecration. When highway cuts were made, they were often left ragged and unsightly. When fills were made, the slopes were often rough and rocky. Oftentimes waste materials were stockpiled along the highways. We were then trying to meet a demand for highways because then road surfaces were such that if a motorist got 5,000 miles out of a set of tires he was doing well; time, too, was a factor.

In Oregon much highway mileage passes through and is located within forests, where beauty and grandeur cannot, when once seen, be easily forgotten. The building of a highway through these fine forests called for the falling and destruction of beautiful pine and giant firs. A finished highway was then an invitation to owners of timber along the highway to fall the timber and transport the logs to market over the new highway. Only the marketable trees were cut and the dead and unsightly trees were left standing amidst the stumps and debris left as a result of the falling and removal of the stalwart giants of the forest.

Soon the women of the land organized to protest such desecration of roadside grandeur. They enlisted the aid of male citizens and by their joint effort there resulted the enactment of a law in 1921 by which the Highway Commission was authorized to:

. . . acquire . . . in the name of the people of the State of Oregon, by purchase, donation or by proceedings in

eminent domain, rights of way, land or trees and ground necessary for the culture and support thereof on or along the course of any state highway, or any public highway within a maximum distance of 300 feet on each side of the center thereof, in any case where the acquisition of such rights of way, land and trees will be for the benefit of the state highway or public highway in aiding the maintenance and preservation of the roadbed of such highway, or aid in the maintenance and preservation of the attractions and scenic beauties thereof

The Highway Commission at once exerted itself under the provisions of that law in the development of a program of acquisition of timber strips along State highways. Soon the value of such acquisitions was recognized, but it was recognized also that the law was too limited. The acquisition of a 300 foot strip of timber left the owner of the land adjoining that strip the right to cut the timber back of the narrow margin, leaving the ribbon area unprotected from strong winds and storms. Therefore, to overcome that situation the same people who urged the enactment of the 1921 act urged the passage of a law with wider opportunities and privileges, so in 1925 the legislature enacted a law, which was subsequently amended and by which the Highway Commission is authorized and empowered to:

Acquire by purchase, agreement, donation, or by the exercise of the power of eminent domain real property, or any right or interest therein, necessary or deemed necessary for the culture of trees and the preservation of scenic places, and other objects of attraction or scenic value adjacent to, along, or in close proximity to state highways, or which may be conveniently reached from or by a public highway, also land and ground necessary for the development and maintenance of parks, parking places, auto camps, camp sites, roadside development, recreational grounds, or resorts, forest or timbered areas, or other places of attraction and scenic value which in the judgment of the commission are necessary for the convenience of the public, and which will contribute to the general

welfare and pleasure of the motoring public or road user.

Develop, construct, improve, operate and maintain the places named in the foregoing paragraph to such an extent and in such manner as will best afford to the motoring public and road users necessary conveniences and accommodations and as will contribute to the general welfare of the people of the state or the members of the motoring public using and traveling the highways of the state.

In addition to the statutes already cited, there is a law which was enacted in 1915 which makes it unlawful for any firm, person or corporation to in any manner maintain an advertising sign within the limits of a State highway or on the property of another within view of such highway, without such owner's written consent. That law gave to the Commission authority to remove any advertising sign which has been erected and is being maintained illegally.

In 1939 the Oregon legislature granted to the Highway Commission authority to take not only an easement but the fee title to real properties acquired for rights-of-way or other public use and in addition the Commission is authorized to:

. . . when acquiring real property for right of way acquire all right of access from abutting property to the highway to be constructed, relocated or widened on such right of way.

In 1947 the legislature enacted a law which is known as the "Throughway Law," and by that law the Commission may locate and construct State highways as throughways and may under certain conditions relocate an existing highway and construct the same as a throughway. This law vests in the Commission wide authority with respect to roadside controls. In 1949 a law was enacted which denies an abutting owner an approach to a State highway without first getting the permission and consent of the Highway Commission. The only restriction in that law is that in exercising its powers and authority the Commission may not so exercise its powers "as to deny any property adjoin-

ing such road or highway reasonable access thereto."

The western boundary of the State of Oregon fronts on the Pacific Ocean. The shore line from the Columbia River on the north to the Oregon-California State Line on the south comprises a distance of approximately 325 miles. By virtue of a federal act which admitted the State of Oregon into the Union the western boundary of the State is fixed in the following language:

Beginning one marine league at sea, due west from the point where the 42nd parallel of north latitude intersects the same.

That means that Oregon's western boundary is one marine league from the shore line.

In 1899 the legislature declared by law as follows:

The shore of the Pacific Ocean, between ordinary high tide and extreme low tide, and from the Columbia River on the north to the Oregon California State Line on the south, excepting such portion or portions of such shore as may have heretofore been disposed of by the state, is hereby declared a public highway and shall forever remain open as such to the public.

Following the admission of the State into the Union, some portions of the shore of the ocean were alienated by State authorities and title thereto vested in private owners, but in 1947 the legislature declared that "no portion of said shore shall be alienated by any of the agencies of the State."

The Oregon legislature has said:

It shall be, and is hereby made, unlawful for any person to dig up, cut down, injure, destroy or in any manner remove any trees growing upon the right of way of any state highway without first procuring the written consent of the Oregon state highway commission so to do.

The Oregon legislature has sought to protect the wild flowers of the State and especially those growing along public highways, and in this connection said:

It hereby is declared to be the duty

of all citizens of this state to protect the wild flowers of this state, in this act referred to, from needless destruction and waste.

Following that declaration the legislature said:

It shall be unlawful for any person, firm or corporation within the state of Oregon to wilfully or negligently cut, dig up, trim, pick, remove, mutilate or in any manner injure or mar any plant, flower, shrub, bush, fruit or other vegetation growing upon the right of way of any public highway within the state of Oregon, or upon public lands, or upon the land of another within 500 feet of the center of any public highway, without the written permit of the owner, signed by the owner or his authorized agent . . .

The legislature, however, exempted from the provisions of the act employees of the Federal Government or of the State or of a political subdivision of the State engaged in work upon any State, county or public road while performing such work under the supervision of the Federal Government, the State or a political subdivision thereof.

## SUMMARY

By way of summary of statutory authority vested in the Highway Commission which now prevails in the State of Oregon we submit the following resumé:

1. Authority to locate, construct and relocate highways.
2. Authority to acquire land bordering on highways for the purpose of preserving trees and promoting landscape values.
3. Authority to acquire and control access to and from highways.
4. Authority to regulate approach roads.
5. Authority to acquire and develop parks, recreational areas and other places of attraction and public interest.
6. Authority to construct throughways, regulate access and preserve and develop roadside beauty and scenery.
7. Authority to regulate the use of the shore of the ocean.
8. Authority under certain limits to control and regulate outdoor adver-

tising.

9. Authority to connect highways with the shore of the ocean by constructing pedestrian trails and bridle paths.

10. Protection of trees and wild flowers.

The foregoing is a general list of authorities now provided and enjoyed in Oregon. Later in this paper we shall enumerate new statutory authorities which the Commission proposes to request the Oregon legislature to enact when in session in 1951.

### ADMINISTRATIVE RESULTS

Acting under the law by which the Commission is authorized to acquire land bordering State highways and to acquire land suitable for parks, and to preserve scenic beauty or other values along or in the vicinity of State highways, the Highway Commission has to date acquired 181 separate areas all of which are supervised by the State Parks Superintendent; in fact, these areas were purchased or otherwise acquired by the Highway Commission influenced in a large measure by the recommendation of the State Parks Superintendent. These areas comprise a total of approximately 64,000 acres and embrace a wide variety of recreational interests. Of those 181 areas 114 have, in one way or another, been developed for use and enjoyment of the general public. Some of them border on main State highways and all are easily reached over well constructed highways so that all are available to the traveling public.

This development program was advanced during the Civilian Conservation Work Program and the progress made under that program has resulted in a major contribution to the use and value of State parks and their enjoyment by our citizens and by the thousands of visitors who annually travel Oregon highways. Both the acquisition of like areas and the development program are continuing to the extent that funds are available therefor.

The Highway Commission, in addition to the acquisition and development of areas for park purposes, has acquired large areas which have been dedicated

to the widening of highway rights-of-way, and by so doing the Commission has made possible the preservation of existing stands of timber and has also made possible the reforestation of lands from which trees have been removed. The Commission has in some instances followed a policy of leasing from federal agencies timbered strips or areas which were not for sale, but which later were exchanged by the government for timbered lands owned by counties. Then the government lands acquired by the counties were conveyed to the State pursuant to agreement between the county and the State.

The Highway Department is engaged in another interesting activity and that is the establishment of historical landmarks or signs by which points of major historical interest and value along State highways are marked. These markings are easily read by travelers on the highway. At present there are thirty-six such signs or monuments now installed and maintained by the Department. These signs contain brief instructive scripts indicating the historical significance of the spot marked. These markings are made possible by widened right-of-way or by widened shoulders, or in some instances by the development of a small parking area.

By reason of the authority vested in the Commission, to which reference has heretofore been made, the cutting, trimming or other treatment of trees within the right-of-way is prohibited without permit and regulation by the Highway Commission. In Oregon, power poles, telegraph poles, telephone poles and other instrumentalities needed by public utilities are given a free right to occupy the right-of-way of a public highway, but such use as we have just stated is under certain regulations and control of the Highway Commission with respect to State Highways.

Likewise, as we have said, the citizens of Oregon are required to protect all flowers and other vegetation growing within the right-of-way, or growing without the right-of-way for a specified distance.

Access to State Highways from abutting lands is regulated by the

statute mentioned which denies to an abutting owner the right to construct an approach road without the consent of the Highway Commission.

Within the authority vested in the Commission there have been constructed numerous off-the-highway parking areas and facilities thus making it possible for highway users to leave the highway and park with safety and convenience while they enjoy superb view afforded at chosen locations. The Highway Commission has recently adopted a program which includes, among other activities, the development of roadside picnic areas for the convenience, enjoyment and relaxation of highway users. This program was initiated in 1948 and since that date thirteen areas have been placed in use, seven are now under construction and four additional areas have been approved for construction. It is proposed that this program will be continued within reasonable bounds and until all of the major highways of the State have this road-user service. These areas in development are of comparatively simple design employing safe off-the-highway parking, picnic tables and garbage cans for the disposal of refuse. Where reasonably possible, water is made available and in some instances simple cooking facilities are provided.

Any consideration of roadside development in Oregon calls for recognition of areas and facilities provided by the National Forest Service and National Park Service. There are here in Oregon two National Park Service areas, both of which are provided with picnic and camp facilities for the use of the general public. The major portion of the mountains and forested areas of the State are under Forest Service jurisdiction and there have been established numerous campgrounds and picnic areas, all of which are made available to highway users. An incomplete compilation discloses a minimum of thirty-eight Forest Service public-use areas along our primary highways.

One of the most difficult problems in Oregon has to do with regulation or control of outdoor advertising.

A law to which we have heretofore called attention makes it unlawful for any person, firm or corporation to erect or maintain an outdoor advertising sign within the limits of the right-of-way of a public highway or on the property of another without the consent of the owner of such property. The Highway Commission is vested with authority to remove advertising signs which have been erected within the right-of-way, but of course, with respect to land abutting upon the highway the owners of advertising signs can, in most instances, easily procure a permit from the owner of the abutting land. The objections to outdoor advertising signs are just as appropriate to signs on land abutting the highway as they are to signs within the right-of-way. It is hoped that by the enactment of a zoning law some of these evils and offenses may be overcome or controlled.

The State of Oregon enjoys a wonderful advantage and privilege by reason of having its western boundary marked and defined by the Pacific Ocean. Highway 101, which is a State highway and also a federal highway, follows in a general route the Pacific Ocean. That highway in length is 386.41 miles. The shore of the Pacific Ocean from the Columbia River on the north to the Oregon-California boundary on the south is 325 miles in length. Until recently the State Land Board was permitted to alienate parts of the shore of the ocean, but that authority has been removed and has been denied to any and all State agencies. Prior to the enactment of the recent statute 23 miles of the shore of the ocean or tide lands had been alienated. The Highway Commission has recently repossessed a substantial mileage of that alienated area.

The Oregon legislature has provided by statute certain regulatory measures and controls with respect to the shore of the ocean. (a) It has declared the shore of the ocean between ordinary high and extreme low tide to be a public highway. (b) It has provided that no portion of the shore of the ocean may be alienated. (c) It has provided that no sand, rock or other natural product of the ocean or beach other than fish or

wild life, agates, or souvenirs shall be taken from the beach without permit issued by the Oregon State Highway Commission. (d) It has made the rules of the road applicable to the shore of the ocean. (e) It has regulated the setting of bonfires on the shore of the ocean

The Highway Commission has purchased from private ownership areas which have been devoted to State parks and which comprise 48-1/2 miles of the 325 miles of the shore line. The Commission has been authorized by law to construct pedestrian paths and bridle paths from the Oregon Coast Highway to points on the beach, thus making it possible for members of the general public to reach and enjoy the beach at places where topography is such that motor vehicles can not be driven to the beach.

The Highway Commission is now engaged in the acquisition of a tract of land in Curry County which will cover a shore line distance of fifteen miles and an acreage of 1500 acres. This area will lie between the highway and the beach. A portion of this area is owned by an English syndicate, and the English syndicate just recently, by bargain and sale deed, conveyed to the State of Oregon for park and recreational purposes all surface rights to 370 acres of the syndicate's holdings and that conveyance was made as a gift. The syndicate has retained the subsurface rights because of mineral deposits which lie beneath the surface. In connection with the acquisition of the land from the English syndicate it may be interesting to cite the fact that when the execution of the deed was notarized the notary public, when stating the date of the expiration of his Commission, said "My Commission expires with my death."

The Highway Commission has, by appropriate letter recognized the splendid gift and service made by the English syndicate and since one of the Commissioners left recently for London he took with him the Commission's letter and presented it in person.

Oregon is a State possessed of much recreational value such as rivers,

streams, mountains, valleys, water falls, forests, fishing, hunting and ocean grandeur. The Highway Commission has endeavored to bring all of these values and attractions within easy reach of the highway user. While making these places available to the tourist and the every day highway user, the Commission struggles to protect its highways by roadside development and control, by the planting and preservation of roadside vegetation and by providing rest stops for weary travelers. Evidence of the value and appreciation of the Commission's efforts are recorded in the ever-increasing volume of mail calling for travel information. So pressing has become this phase of our work that the Commission has established a Travel Bureau which employs a director and eight helpers who are kept busy answering mail and sending out requested information. Samples of some of such information has been delivered to the Research Council.

The Oregon Highway Commission will ask the 1951 Legislative Assembly to provide some new legislation which the Commission believes is essential if the natural values which Oregon possesses are to be adequately preserved, and if the highways constructed with the road users' money are to operate to full capacity.

One of the subjects which the Commission will offer for consideration is requested authority to control parking on highways. A second subject will be a request for the passage of a zoning law by which more effective control of outdoor advertising will be possible. A third bill which has been prepared and will be offered to the legislature is one which will restore to the Commission authority to sell bonds in the amount of sixty million dollars, the proceeds derived therefrom to be employed for the purpose of hastening proper reconstruction of our main highways so that the road user may obtain better service and greater safety. If the Commission is granted this authority there will be released from current revenues more money for roadside development and the improvement of park and rec-

reational areas.

What I have said is a feeble expression of the facts and conditions which prevail in Oregon. What we have done is not enough, but the spirit

and emphasis back of our task, supplemented by our love for and our appreciation of Nature's gifts to Oregon, will make it easy to carry on to greater accomplishment.

## MINNESOTA ROADSIDE SURVEY PROGRESS REPORT ON ACCIDENT, ACCESS POINT AND ADVERTISING SIGN STUDY IN MINNESOTA

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Minnesota, in cooperation with some 13 other states, actively participated in a study to determine the degree of relationship that exists between highway accidents and geometric design features. The study was initiated in 1947 in response to a joint request made by the National Safety Council and the Bureau of Public Roads. The compilation of data in the field and in the office, as well as the entering of information on tabulating cards, followed the procedures outlined by the Bureau of Public Roads. A duplicate set of tabulating cards was forwarded to the Bureau of Public Roads for an analysis which included similar information supplied by the other cooperating states.

In 1948, while the field work for this study was still in progress, the Bureau of Public Roads suggested that Minnesota include with this study an inventory of all advertising signs and access points along the routes comprising the original study. From this additional information an analysis of the effect of advertising signs and access points on highway accidents was to be made.

Although all of the rural mileage on U. S. 52 in Minnesota was originally selected as the study route, it was subsequently felt that its 370 miles did not adequately reflect the several predominant types of rural routes in the state. To overcome this deficiency and further enhance the value of the survey, an additional 140 miles

of several rural trunk highways were added, increasing the study to a total of 510 miles.

The mileages of various types of roadway included in the expanded study were: 420 miles of two lane roadway, 31 miles of three lane, 27 miles of four lane undivided and 32 miles of four lane divided roadway. This paper, however will deal only with the two lane roads which constituted over 82 percent of the mileage studied.

The several roadway elements which were encountered on the 420 miles of two lane roadway and their frequency per mile are shown in Table 1.

TABLE 1

FREQUENCY OF ROADWAY ELEMENTS

Roadway Element	Frequency per Mile
Tangent	1 03
Curve	0 99
Intersection	1 52
Structure	0 13
Railroad Crossing	0 04

As would be expected, the tangent and curve sections occurred with approximately the same frequency: 1.03 and 0.99 respectively. Intersections of all types had a frequency of 1.52, structures 0.13 and railroad crossings 0.04. The frequency of the two latter elements were deemed insufficient to warrant detailed analysis at this time.