ROADSIDE PROBLEMS on the INTERSTATE HIGHWAY SYSTEM: LEGAL ASPECTS

David R. Levin
Chief, Land Studies Branch
Division of Financial and Administrative Research
Bureau of Public Roads

The Committee on Roadside Development was practically the first group to recognize the merits of some of the concepts which have been written into the 1944, and now into the 1956, Federal-aid highway legislation. The group has been very forward-looking, and has been talking about some of these things for many, many years.

This panel concerns the differences between the Interstate System and other systems of highways. There are eight significant differences between the Interstate System, as it is now conceived in the 1956 Act, and other highway systems. Four or five of these are of especial interest to roadside development people; the others may not be, but all will be mentioned, and then discussed from the point of view of those interested in roadside development.

CONTROL OF ACCESS

One of the first things that is noticeable in looking at the interstate geometric design standards is the matter of control of access. The Interstate System, by legal definition, has to be of the controlled-access type, except in the most sparsely settled areas. In this connection control of access refers to two kinds of access—access to roads and streets in the vicinity, and access to abutting property. The exception in terms of geometric design standards in sparsely settled areas does not concern access to abutting property. That kind of access is to be controlled on the 41,000 miles of road. The exceptions apply only to access to streets or roads in the vicinity. This point is not discussed in detail here, but in general all sections of the Interstate Highway System must be of controlled access type.

This has many implications from the roadside development point of view. It means that all roadside enterprises or activities or uses cannot have direct access to sections of the Interstate System. The AASHO has promulgated certain geometric design standards. These have been adopted by the Bureau of Public Roads, which, incidentally, has printed them in the form of a four-page leaflet. Those who may not be familiar with them but would like a copy can secure one either from the AASHO or from the Bureau. These geometric standards control access very rigidly.

In addition to those geometric design standards, the 1956 law requires that certain provisions protecting control of access be written into the project agreement. Here is the language of Sec. 112 of the 1956 Act:

> All project agreements between the Secretary of Commerce and the state highway departments for the construction of projects on the Interstate System shall contain a clause providing that the state will not add any points of access to or exit from the project in addition to those approved by the Secretary in the original plans for the project, without prior approval of the Secretary.

Of course, the intent of that special clause in all project agreements will be to protect the controlled access character of the Interstate System.

In some states—in just a handful, today—the state highway department itself does not have legal authority to control access. The Highway Laws Project of the Highway Research Board is now researching this entire matter of control of access and it is hoped that a complete document on that particular point will soon be available. What happens to Interstate projects in those states; how does one get around the state's inability to control access? The way that it is being dealt with under the 1956 Act, by its very language, is this: In those instances, if the state asks it to do so, the Federal government in its own name can acquire the rights of access and thereby preserve the controlled access character of the road. As soon as the state gets the legal authority to control access, the Federal government will deed back the access rights acquired pursuant to this provision. Until authority to control access is obtained by the state, the Federal government will retain the outer 5 ft of the Interstate right-of-way.

While on the subject of control of access, mention should be made of a problem that has arisen, especially in most of the 11 western states, with public lands and control of access over those public lands. Many of the states have complained that, when they have applied to the Department of the Interior or Bureau of Land Management, or the Defense Department, or whatever organization at the Federal level had control of public lands, these departments would tell them that they did not have the authority to grant the right of access over public land. The 1956 Act, for the Interstate System alone, takes cognizance of that circumstance and deals quite adequately with it in this way:

> Whenever rights-of-way including control of access on Interstate Systems are required over public lands or reservations in the United States, the Secretary of Commerce may make such arrangement with the agency having jurisdiction over such lands as may be necessary to give the state or other persons constructing the project on such lands adequate rights-of-way and control of access thereto for adjoining lands.

And here is a key clause:

> ... and any such agency is hereby directed to cooperate with the Secretary of Commerce in this connection.

In other words, if there was any doubt that the Bureau of Land Management or anybody else had any authority to convey access rights, this paragraph authorizes them and, in fact, directs them to do so and cooperate with the Bureau and state highway departments to facilitate the control of access on Interstate projects. So much for control of access. That is a key distinguishing characteristic of Interstate projects.

Of course, that does not mean that we cannot build primary road projects, or secondary road projects, or urban projects, with control of access, even if it is not on the Interstate System. All that is said here is that on all or most of the Interstate System access must be controlled.

ACQUISITION OF LAND FOR FUTURE USE

A second major legal difference between Interstate projects and other projects involves the matter of acquiring land for future use. That in some ways stems from the character of the 1956 Act. As is known, the 1956 Act provides the resources and authorization for a 13-year program for Interstate projects. With respect to all other federal programs, all that the 1956 Act authorizes is a 3-year program.

There is a statement of intention, of course, to go forward with the program after three years in these other cases, but the money is not set aside, and Congressional action will be required. In other words, with respect to a 3-year program, future-use acquisition as such is not necessarily involved. It can be handled generally within a biennium, let us say, of the state legislature or the Congress. Where a 13-year program is involved and where there is an administrative policy, as there is here, there is at least the hope at the state highway department level that, just as soon as the locations are tied down for the Interstate Highways, most of the land, if not all of it, for the entire 13-year period will be acquired during the next two, three, or four years.

Incidentally, more than one-half of the 41,000-mile system has already been pinpointed as to location, and it may take the states perhaps another six months or less to tie down all the precise locations of the Interstate System. The termini of the system are tied down right now; what remains to be done is to determine the precise locations and the character of the design. Most of the land for the Interstate System will probably be acquired five, six, seven, or eight years in advance of its actual use in terms of construction. That necessarily involves future-use acquisition.

From a legal point of view, the next thing to inquire into is this: Do the state highway departments have the authority to acquire land for future highway use? There, again, it is necessary to fall back on the findings of the Highway Laws Project of the Highway Research Board. Only 14 states have specific laws which authorize them to acquire land intended for future highway use. There are statutes in about five or six additional states which seem to imply that they can acquire land for future use. These added to the 14 make about 20 states. Then the Laws Project has uncovered court decisions that authorize future-use acquisition in about five or six more states. All told, there are about 25 or 26 states that can acquire land for future use.

This does not necessarily mean that in the remaining states there is going to be difficulty with future-use acquisition; but it is a big legal question, and the answers are not all known. In these remaining states, the highway departments will have to rely on the courts, and the issue will have to be litigated. A court may or may not approve, and there is at least one decision (Delaware?) where the court turned down a bid of the state highway department to acquire land for future use. Of course, there were complicating factors in that case; factors such as the fact that the highway department unfortunately did not have plans in sufficient detail to provide a solid enough foundation, so the court thought, to go ahead with a program of future-use acquisition. At any rate, there may be a problem in some of the other states.

The states are much aware of this, and probably in the 1957 legislative sessions there will be more legislative activity on the highway side than has been seen in the states for a long time.

Thus far we have two characteristic factors of the Interstate System: control of access and future-use acquisition.

RIGHT-OF-WAY ACQUISITION

A third characteristic factor of the Interstate System involves right-of-way acquisition. On Interstate projects, as previously indicated in connection with control of access, if the state does not have the right of immediate possession or has some other legal disability in its right-of-way laws and cannot go ahead as quickly as it wishes in connection with the Interstate program, a provision of the

1956 Act authorizes the Secretary of Commerce, after certain things are complied with (for example, the state must send in a request, over the signature of the chief executive officer, to the Secretary of Commerce) to acquire the land. Thus, there is the possibility of the use of federal machinery for right-of-way acquisition for Interstate projects.

The Bureau of Public Roads is not necessarily enthusiastic about using federal authority in this field, unless circumstances make it desirable, and the states probably would not be in favor of the wholesale use of this federal mechanism to acquire land. It is believed that Congress wrote it into the 1956 Act only to be used in case of emergency and only where state machinery itself seems to be inadequate. In other words, most of the people at the federal and state levels believe that the actual job of road building and of acquiring the land should be a state job. That has been the pattern and the formula used for many, many years. It has worked very well, and there is no reason to deviate from that; but there is a safety valve in case it is needed.

Before leaving the subject of right-of-way acquisition, it should be pointed out that for Interstate projects the Federal government will contribute $0.90 and the state $0.10 out of every dollar. In connection with the $0.90, there is no restriction on its use for right-of-way purposes. If a state is allotted $1,000,000 for Interstate projects in a particular year, it can spend $1,000,000 for land if it wants to program these projects and the Bureau approves them. It can spend all of it for land for Interstate projects in the first two or three or four years or in any way it wants; if it wishes to spend 50 percent for land, it can do that. Thus there is a mechanism for financing right-of-way at the federal level, as well as legal authority to acquire the land itself.

A new Bureau memorandum on right-of-way acquisition is just off the press. Entitled "Policy and Procedures Memorandum 20-4.1," this memorandum follows basically the same policy, with some changes, as the old GAM343. Those concerned will want to get copies of the new memorandum.

ROADSIDE PROTECTION

The fourth characteristic factor concerns roadside control and protection. Reference is made not only to the previously quoted section stating that the project agreement must contain a clause concerning access control, but additionally, the 1956 Act says:

> Such agreements shall also contain a clause providing that the state will not permit automotive service stations or other commercial establishments for serving automotive users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize the state or political subdivision thereof to use the air space above and below the established grade line of the highway pavement for the parking of motor vehicles, provided such parking uses do not interfere in any way with the free flow of traffic on the Interstate System.

Thus, to start with, there is a provision that on Interstate projects, within the right-of-way itself, there can be no filling stations or commercial establishments of any kind. Actually, this is not radically new, because in the Bureau there has been a regulation to the effect that Federal highway rights-of-way on the entire Federal-aid system shall be held to be inviolate, and that has been construed to mean that there shall be no physical or functional encroachments on that right-of-way. This was put in the project agreement in addition to that other general language so that a project agreement will specifically tie this down.

It may be argued that such a restriction is all right with respect to the right-of-way, but what about the roadside areas adjacent to the right-of-way on Interstate projects? Can there be facilities in such areas? Is that permitted under the Act? The inquiry should be answered in this way: Inasmuch as there will be no direct access to anything other than to a few public roads, perhaps, in the most sparsely settled areas of the nation, any filling station or commercial enterprise, even if it is off the Interstate right-of-way, will not have any access. However, there will be frontage roads along sections of the Interstate System where they are justified by the intensity of roadside use, the density of population, and other factors.

Where they are to be frontage roads, obviously there can be whatever type of facilities are desired along those roads, including houses, commercial establishments, filling stations, etc. These frontage roads of course, will connect with the right-of-way of the Interstate System at appropriate interchange points and in an appropriate design manner, consistent with highway safety.

Thus, there are four major elements to the Interstate System from the roadside development point of view. There are four other aspects which may be of less interest here, but they are mentioned for the sake of completeness.

SIZE AND WEIGHT LIMITATION

The fifth characteristic of Interstate projects which distinguishes them from other kinds of Federal-aid projects is the size and weight limitation. There is a whole new section in the new law which says that the size and weight of vehicles shall not exceed a prescribed amount (18,000 lb on one axle, etc.) or such provision as prevailed in a particular state in July 1956, whichever is the greater. In other words, a definite attempt is being made to control the size and weight of vehicles which will use Interstate highways.

TOLL ROADS AND APPROACHES

Another distinguishing characteristic of the new Act is concerned with toll roads and approaches to toll roads. Many persons are not aware of the fact that the 1956 Act actually authorizes the incorporation of existing toll roads in the routes of the Interstate System. Of course, it says that those toll road must meet the same geometric design standards as have been approved for the whole Interstate System. Some of the existing toll roads do not meet Interstate standards; the newer ones do, of course. The New York Thruway is obviously one that would meet Interstate standards.

But not one penny of Federal funds can be spent on those sections. In other words, they can be designated and incorporated legally and administratively, but the Bureau cannot spend money on them. The Bureau of Public Roads is currently making a study of toll roads—what they cost, what their standards are, and possible formulas for depreciation, based on the fact that they may have deteriorated physically or functionally and so on. Recommendations are to be made, together with a submission of the facts on these toll roads, to the Congress, and the Congress will decide what shall be done with respect to the financing of toll roads. There was quite a debate, in connection with the 1956 Act, as to whether or not Federal funds should be used to reimburse toll roads.

On Interstate projects, the Federal government can finance approaches to toll roads if those approaches will serve some other purpose as well; for example, serve abutting property, serve abutting industry, or do something in addition to serving the toll road itself. There are no limitations on the amount of money that can be

spent on the approaches to toll roads if the state wants to do it. Additionally, the Bureau can spend money on toll road approaches which will exclusively serve the toll road, subject to certain limitations; for example, the state or the toll road authority must agree to liberate or to free the road once the bonds are paid off, if Federal funds go into an approach which serves the toll road exclusively.

PREVAILING WAGE RATES

There is another characteristic which legally distinguishes Interstate from other kinds of highways, and that is the Davis-Bacon provision concerning prevailing wage rates. The 1956 Act requires that on Interstate projects workers must be paid rates not less than those prevailing on the same type of work in the locality, as determined by the Secretary of Labor. There is an additional requirement in the Act which says that the Secretary of Labor shall consult with highway officials on that. The Secretary of Labor and the Department of Labor have consulted the AASHO, and they are trying to work out a practical formula on this matter of wages.

HEARINGS

The new law providing for an accelerated highway program requires that hearings be held by state highway departments for Federal-aid highway projects, including Interstate projects, involving the bypassing of or passing through any city, town, or village. Such hearings are to involve, among other things, a consideration of the economic effects of a proposed location.

SUMMARY

To review the distinguishing legal characteristics of Interstate projects, perhaps the most important is the control of access, which is required on Interstate projects. Because the Interstate program is a 13-year program, there is a real opportunity for future-use acquisition, but the proper legal equipment is needed at the state level to acquire land for future highway use. For right-of-way acquisition, machinery exists for doing the job at the Federal level and for financing at the Federal level if the state cannot manage it for itself. In addition there is the matter of roadside control and protection under which the right-of-way itself and, in a way, even the areas adjacent to the right-of-way are protected. Furthermore, there are the size and weight limitation, the matter of toll roads and approaches, the prevailing wage rates provision, and the hearing provision.

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W. H. Simonson:

That was a very fine orientation for the subsequent panel members. The point that I gathered particularly from this presentation was the fact that the legislation sets up such great flexibility; that in administration it gives highway departments and the imagination of the designer a chance to work out their problems according to their ingenuity and skillfulness in interpreting the law and making the program "tick" according to the requirements of the legislation. I think it is a great thing that a law can be so well prepared that the skillful designer has the opportunity to carry out the intent of Congress for a fine transportation system on a long-range program.

Now, regarding the planning and design aspects of roadside development, this group is particularly interested in the geometrics, the landscape design plan for development. In other words, what are the differences between the new Interstate

System and other systems in the planning for roadside development? What can and cannot be done as regards the improvement of right-of-way and typical cross-sections, the improvement of special areas such as interchanges, approaches to major structures, and safety turnout and rest areas? Also, what about the problem outside the right-of-way—that of cooperative planning in regard to adjacent land use and development? That means cooperative planning between state highway departments, municipalities, federal authorities, and other public agencies, such as recreational and park groups, forest agencies, etc. The other panel members will no doubt bring out some of the possibilities for cooperative planning in the solution of mutual problems.

But first, in going to the next topic, the planning and design aspects of roadside development, attention is directed to Special Report 7 of the Highway Research Board, entitled "Parking Turnouts and Rest Areas." As distinct from past concepts, it now is known that the problem of parking in urbanized areas is becoming almost more serious than the problem of moving traffic. Looking forward on this long-range 13-year program, requires anticipating the problem of safe stopping along the roads as well as safe movement of traffic. That leads to the next panel member, George B. Gordon, of the Bureau of Public Roads, who will discuss "The Planning and Design Aspects of Roadside Development on the Interstate System."