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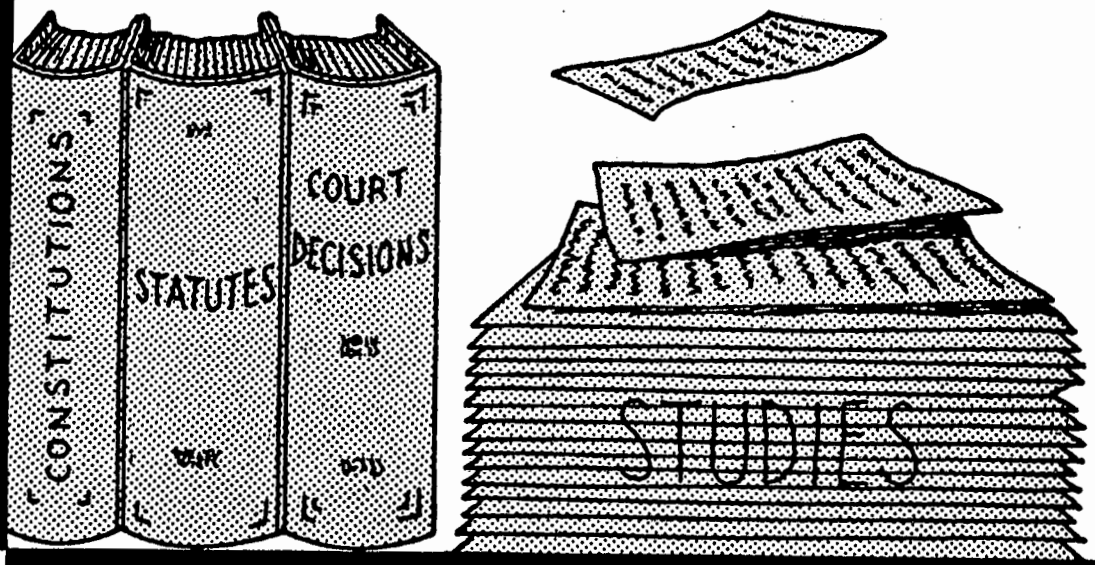
Special Report 42

HIGHWAY SYSTEM CLASSIFICATION

A LEGAL ANALYSIS

Part I



National Academy of Sciences—
National Research Council

publication 638

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Part I

A Report of the
Highway Laws Project

1959

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PREFACE

The Highway Laws Committee of the Highway Research Board is in the process of preparing comprehensive reports on legal aspects of all major highway functions. To date the Committee staff has completed reports on several main segments of its program, including "Relocation of Public Utilities Due to Highway Improvement," published by the Board as Special Report 21, "Expressway Law" (Special Report 26), "Acquisition of Land for Future Highway Use" (Special Report 27), "Condemnation of Property for Highway Purposes," Parts I (Special Report 32) and II (Special Report 33), "Legislative Purpose in Highway Law," (Special Report 39), and "Outdoor Advertising along Highways" (Special Report 41). Others, including "Federal-Aid Provisions in State Highway Laws," and "Constitutional Provisions Concerning Highways," will be published in the near future.

The objectives of these studies are to assemble existing legal provisions and to isolate and analyze the significant elements found therein.

This report concerns the primary highway systems of the 48 States, Alaska, Hawaii, and Puerto Rico. It is the first of a series of studies on the subject of highway classification, and will be followed by other reports covering State secondary systems, and county, township, municipal, and other local systems. Because of the great amount of material pertaining to system classification found in the statutes, the Committee determined that it would be more feasible to prepare separate reports for the different systems, as they are completed. This method of analysis has its drawbacks, inasmuch as in a number of States there is an interrelation between the several systems, making it difficult to discuss one without the others. This is particularly true of those jurisdictions having a State secondary system, which may include certain highways or types of highways which in another State might be included in the primary system. Upon completion of the several classification studies, an attempt will be made to bring out these interrelationships in a summary report.

Some of the States are in the process of revising their highway codes in an attempt to provide adequate tools with which to carry on the accelerated highway program now under way. Others contemplate such revisions. It is hoped that this report will be of some value to these States, and such others as may later find modernization in this respect necessary, in pointing out the essential elements of a classification statute, how other States have approached the problem, and how the courts have interpreted such classification statutes as have been brought before them for review. The necessary elements are considered under appropriate headings, providing information as to present practices in the several jurisdictions, as well as a discussion of the relative merits of various types of provisions.

This report was researched and prepared by Marion Markham, of the Bureau of Public Roads, and Karl S. Vasiloff, of the Highway Laws Project staff. The photographs used are by courtesy of the U. S. Bureau of Public Roads.

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SUMMARY OF FINDINGS

There are a number of reasons why an orderly grouping of the roads and streets in any State will promote the efficiency of the highway plant. Modern traffic requirements demand truly functional systems. Ideally, the establishment of integrated systems will bring together under one jurisdiction roads and streets which render the same type of service. Such a classification will tend to improve management and eliminate, or at least minimize, conflicts among the several governmental units. It will also facilitate the planning and financing of long-range programs.

A recent Illinois statute dealing with highway system classification has aptly summarized the advantages of such a classification in a declaration of legislative policy, as follows:

> . . . Integrate highways into complete systems and these systems into a comprehensive network to serve the highway transportation needs of the State.
>
> Bring together in a single system those highways that should be under the same jurisdiction because of the type and extent of demands for highway transportation service.
>
> Achieve a higher degree of administrative efficiency.
>
> Group together those highways requiring the same level of technical competence for design, construction, and operation.
>
> Provide for integrated and systematic planning and orderly development in accordance with actual needs.
>
> Group highways basically so that they can be readily subclassified to meet minor needs. . . .[1]

In a relatively short section, this State has appropriately enumerated the main purposes of highway classification.

Functionally, roads and streets in any State fall into three broad categories—those of interest to the State as a whole; those of community interest; and those performing a purely local function. Of concern here is the first category—roads of State-wide interest—commonly known as State primary highways. In line with their function of serving the State at large, the roads comprising this system serve to connect the seats of county and State government, as well as other main population centers both within the State itself and those in adjoining States. In general, the system carries the high-speed, long-distance traffic generated by economic and social activities in the various regions of the State.

A number of States have found that if these State-wide highways are to be well integrated and established on a system basis, one administrative body must be charged with responsibility for the system. The most logical agency is the State highway department. The degree of authority delegated to this body is a matter, of course, for determination by the legislature. In most instances, the legislatures have seen fit to give the State highway departments rather broad powers with respect to the primary highway system. Some, however, have elected to retain authority to designate,[2] abandon [3] or, even in a very few instances, to alter or change [4] the primary highway system.

The State highway department is a responsible public body, with on-the-spot and technical knowledge of highway needs of the State and the condition of the highway plant. There are strong arguments to support the belief that such a body would be a logical one to be entrusted with full responsibility for the establishment of the primary highway system. Legislative standards for the guidance of the highway department in so doing can be and have been included in the authorizing statute in many States. Redress for disregard of such standards could be obtained in the courts. Some instances will appear in the body of this report where the judiciary has been called on to review the State highway department's actions in this respect and it is noteworthy that the courts have generally upheld the States' authority in the absence of an abuse of discretion by the highway department.

[1] SMITH-HURD ILL. ANN. STATS., ch. 121, §344.

[2] California, Minnesota, Mississippi, Nevada, Rhode Island, and Washington.

[3] Minnesota, Mississippi, Nevada, South Dakota, and Utah.

[4] Utah and Washington.

On the other hand, there is a politic, or human, element which possibly should be taken into consideration, and it may be that the legislature is more responsive to the needs or wishes of the people of the State. Presumably, the legislature, in selecting the system, acts upon the recommendations of the highway authorities, and the resultant product could reflect a blend of legislative and engineering skill. A combination of the two methods, legislative and administrative, might be desirable—the legislature specifying the general outline of the primary system in the law and directing the highway authorities to designate the actual routes, based on technical and engineering considerations.

Legislation pertaining to primary highway classification in many of the jurisdictions has included provisions directing that a hearing involving the county or municipality, in some instances, and the interested persons in others, be held when the State highway department proposes to add, alter, or delete a primary highway route. There is much to be said for allowing those affected to have their say if the proposal is inimical to local or personal interests. But public hearings take time, and urgent highway improvements can be delayed by such proceedings to such an extent that the interests of the traveling public are often adversely affected. What policy is to prevail in a particular State should be determined by its State legislature, after weighing the pros and cons.

The requirement sometimes is found in the statutes requiring approval of any addition, change, or deletion by the local governmental unit affected. This, likewise, should be a decision made by the State legislature.

Many of the jurisdictions have provisions scattered through the statutes, which pertain to primary system classification, some with little apparent relationship to previous enactments, which are often in conflict with the newer legislation. In some cases the older statutes have been repealed by implication but they still appear in the code. On the other hand, one or two include practically the whole story in one comprehensive provision. A number of States have comparatively recent statutory provisions pertaining to highway classification generally.[5] These statutes generally set forth the several systems to be included, criteria to be used in their selection, and the administrative body charged with responsibility for each. Undoubtedly this is a step in the right direction, although in some of the States, failure to repeal previous enactments pertaining to highway systems, either by so stating or by implication, may be said to add to, rather than diminish, the confusion.

Supposing, then, that the State proposes to revise its highway classification law, what are the elements that should be considered? Examination of the statutes of the 48 States, Alaska, Hawaii and Puerto Rico, together with judicial interpretation thereof, suggests the following as desirable:

1. *Declaration of legislative purpose.*—Since the courts are now looking to the declaration of legislative purpose when interpreting statutes, it would seem desirable to include such a declaration when drafting a highway classification statute.[6] It would not only serve as a guide to the judiciary but also as a guide to the executive officers charged with operating the highway plant. To be useful, however, it should not be so general as to be meaningless and not so specific as to hinder the operation of the highway officials in the discharge of their duties. The Illinois statute quoted above may well be considered in this connection.

2. *Separability or severability.*—The usual separability or severability clause should be included in the highway code in order to protect the program against total invalidation, when one of its divisible parts is deemed by the courts to be unconstitutional.

3. *Definitions.*—The inclusion of definitions of terms used in all highway legislation is essential. It is particularly important in connection with statutes bearing on highway classification because any ambiguity may pose serious problems that may make operation of the entire highway pro-

[5] Florida, Idaho, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, New Hampshire, Ohio, Oklahoma, South Dakota, and Washington.

[6] Florida, Idaho, Illinois, Louisiana, Nebraska, and North Dakota have included a declaration of purpose in their classification statutes. For a discussion of this subject, see Highway Research Board Special Report 39, *Legislative Purpose in Highway Law.*

gram more difficult. A multiude of terms have been used in the various classification statutes of the 51 jurisdictions authorizing alteration of or deletion from the primary highway system, for example. In only a few instances are definitions of the terms used included. What constitutes an "alteration," a "relocation"? How far can the State highway department go in "straightening" a primary highway? Is "abandon" synonymous with "close," with "discontinue?" What is the exact meaning of "vacate" as used in the statutes? The need for definitions is apparent.

4. *Statement of objectives.*—What objective is to be sought in creating a primary highway system for a State? Is it to connect all county seats, important municipalities, market areas, population centers, etc.? Connection of all county seats would serve to give equal importance to each area of the State, while connecting important municipalities would naturally give more weight to actual traffic patterns, since these urban areas necessarily generate more traffic. Or is the system to consist of only "main traffic routes," in which case more attention might conceivably be paid to cross-State traffic by non-residents merely passing through the State, than to the residents of the State.

At first glance, traffic might be considered the most important criterion that could be used in selecting a primary system. This is undoubtedly a functional criterion, but its use exclusively may result in anything but an integrated system. It can readily be seen that selection of all roads bearing over ten thousand vehicles per day might result in a very lopsided system, since such routes would tend to center in large municipal areas, and consist to a large extent of spurs radiating from its center. An integrated system, on the other hand, should serve all areas of a State. Some routes included would doubtless carry lower traffic volumes than others, but must be considered important as providing for traffic going from one area of the State to another. Thus, one of the main objectives of the primary system—to serve every area of the State—would be accomplished.

In addition to serving traffic and Statewide objectives, the primary highway system ought to facilitate interconnection between the major regions of a State, serve business, industry and agriculture, provide access to recreational areas, serve the national defense, and other important functions.

One or more of the objectives or criteria discussed above are found in the statutes of 35 jurisdictions.[7] Most, if not all of these criteria should be considered in connection with an adequate enabling statute on this subject. A statutory provision based on two sections of the Idaho code [8] might serve as a guide in this respect, as follows:

> The State highway system shall comprise the principal arterials in the State, including connecting highway arteries and extensions through cities and villages, and shall include a road to every county seat in the State. In determining which highways or sections thereof the public interest requires shall be a part of the State highway system, the State highway department shall consider the importance of each highway to cities and villages, existing business, industry and enterprises and to the development of natural resources, industry and agriculture, and in so doing shall be guided by statistics on existing and projected traffic volumes. The department shall also consider the safety and convenience of highway users and the financial capacity of the State to construct, reconstruct and maintain the highways selected.

5. *Designation of system.*—In most instances State primary highway systems *per se* were selected many years ago, so that the question as to who shall designate a system presently may be of little significance. However, there may be urgent need for reclassification of the various systems as they now exist. Many roads on the original primary system, for example, have ceased to fulfill the function for which they were originally designated. They may have ceased to connect important trading or market centers. Traffic may have gone elsewhere. They might well be included in a lesser system to serve secondary or local needs. Other roads, originally included in local systems, may now carry huge traffic

[7] Alabama, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Alaska, and Puerto Rico.

[8] IDAHO CODE, §§40-109(a), 40-121.

volumes, serving important State-wide needs. These may be considered as candidates for inclusion in a functional State primary system.

Some of the State legislatures have taken cognizance of this fact, and have authorized the State highway departments to reclassify the various roads of the State on a functional basis, generally setting forth the criteria for each in the enabling legislation.[9] In the absence of special circumstances in a particular jurisdiction, the inclusion of such a provision in a classification statute appears desirable.

6. *Expanding the system.*—A necessary part of any highway classification statute is a provision pertaining to additions to the primary highway system. The State itself must decide whether the additions are to be made by the legislature or by the State highway department, as is the case in the majority of the 51 jurisdictions.[10] But the authority, if delegated to the highway department, should be clear cut, so that the department will know exactly what its duties and powers are. If conditions are imposed on the highway department as to how or when additions may be made, they should be set forth in specific terms. In many States, provisions pertaining to additions to the system are scattered through the highway code, thus making it difficult to determine just what authority the highway department has. If the county or other local governmental units must be consulted, or a public hearing must be held, legislation should so specify in unequivocal terms. If the legislature retains authority to make additions, as in six States,[11] or grants the State highway department authority to do so under certain circumstances,[12] these circumstances should be carefully set forth in order to permit the highway department to proceed under the terms of the statute.

7. *Changing the system.*—An equally important element of any classification statute is a provision for changing or altering parts of the system. In many instances a more functional highway may be obtained by a relocation, which is also quite often a more economical procedure than improvement of existing highways. Most State legislatures have authorized the State highway departments to make changes under certain conditions [13]—a few have given the department carte blanche in this respect.[14] If the legislature does see fit to authorize its highway department to make changes at its own discretion, it should clearly so state. If conditions are imposed on the highway department, they should also be specifically enumerated in one provision, rather than include several different provisions of a confusing or contradictory nature. Also, if local hearings are required, or an opportunity to be heard must be granted to interested parties, the legislation should state this clearly.

8. *Contracting the system.*—Although the necessity for removing a section of highway from the primary system must sometimes occur in every jurisdiction, there are a number of jurisdictions in which no such specific legal authority exists.[15] There is a lack of clarity in many instances where such authority does exist. If the highway department is to be delegated authority in this respect,[16] the enabling legislation should specifically state whether it applies to any highway deemed no longer necessary as a part of the system, or only to sections superseded by relocations. If the legislature retains this authority to delete,[17] or permits the highway department to do so only under certain circumstances,[18] those circumstances should be clearly outlined.

[9] Indiana, Kansas, Louisiana, Maine, Oregon, and West Virginia.

[10] Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Texas, Virginia, West Virginia, Wisconsin, Wyoming, and Puerto Rico.

[11] California, Minnesota, Mississippi, Nevada, Rhode Island, and Washington.

[12] Louisiana, Michigan, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Utah, and Vermont.

[13] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Hawaii, and Puerto Rico.

[14] Delaware, Illinois, Iowa, Kentucky, Maryland, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, Tennessee, Texas, Vermont, and West Virginia.

[15] Alabama, Arkansas, Florida, Illinois, Kentucky, Missouri, New Mexico, Rhode Island, Tennessee, Vermont, Wyoming, Alaska, Hawaii, and Puerto Rico.

[16] Arizona, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Texas, Virginia, Washington, West Virginia, and Wisconsin.

[17] Minnesota, Mississippi, Nevada, South Dakota, and Utah.

[18] California, New York, Oregon, Pennsylvania, and South Carolina.

There is also need for clarification as to what becomes of a highway, or section thereof, which has been deleted from the primary system. If the State is authorized to close such a highway, the enabling statute should say so. If the highway may be closed, explicit instructions should be given as to disposition of the right-of-way, *i.e.*, may the State highway department dispose of the land, by sale or exchange, or does the affected property revert to the abutting owner, the party (or his heirs or assigns) from whom the land was acquired in the first place? A number of the statutory enactments direct that the road must be returned to the county, town, or other local jurisdiction. Does this apply only to roads that were originally under one of these jurisdictions before being taken over as a part of the primary system, or to all deleted sections? If only to the former, what becomes of roads which were never a part of any local system? This point should be clarified in the statute.

9. *Municipal connecting links.*—Since municipal connecting links have become an integral and very important part of the State primary highway system, provision for inclusion of such routes should be set forth in highway classification legislation. In the majority of the 51 jurisdictions having a primary highway system, authority to designate these municipal extensions or connections has been, logically enough, delegated to the State highway department.[19] If the system, as such, is to be under the jurisdiction of this body, there appears to be no sound reason why such extensions should be excepted.

The main thing is, however, to set forth the authority in such a way as to leave no doubt as to who is responsible. The same applies to relocations and deletions from the system. Some provision for local cooperation might very well be included in the enabling statute to avoid conflicts with the municipal authorities, who, in some states, at least, are assumed to have control over the street systems generally. The opportunity to be heard if objections are raised might be included, or consideration might be given to provisions such as those recently enacted in several States requiring adoption of a master plan by the municipality in cooperation with the State highway department in order to integrate the State primary highway system with other local streets.[20]

In connection with these municipal connecting links, it might be desirable to include in the enabling legislation authority which would permit the State highway department to construct belt-lines or bypasses around the municipalities through which the system routes extend. A requirement for a public hearing might also be included if thought desirable.

The subject of intergovernmental relations is much in the foreground in every phase of primary highway classification legislation. Opportunities for conflict of jurisdiction present themselves at every turn. Without going into the matter at any great length, it would appear logical or reasonable for the State highway department, if it has been given the responsibility for the State primary system, to have the final say with regard to designation, alteration, or abandonment of highways in the system, both in rural and in urban areas. It would appear equally desirable that affected parties, including the local governmental authorities, at least be given an opportunity to be heard if there are valid objections to the State's plans,[21] if this is consistent with State practice.

[19] Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Puerto Rico.

[20] Louisiana, Nebraska, and North Dakota.

[21] In this connection a report on intergovernmental relations in every field of highway endeavor is being prepared by the Highway Laws Committee and will be published in the near future.

INTRODUCTION

Until now, very little factual legal material on the subject of highway classification, an important functional aspect of State highway law, has been assembled.

By definition, a system is a combination of parts classified on some logical basis, and not a hit-or-miss aggregation of items. The dictionary actually describes a system as "an arrangement of elements into a whole, according to some principle."

The Nation's highway plant is made up of a number of functional and administrative systems. Public highways generally may be categorized as State highways, secondary or county roads, urban streets, etc. Super-imposed upon these networks are administrative Federal-aid highway systems, the U. S. numbered system, the National System of Interstate and Defense Highways, and others.

Inasmuch as many of the States are presently in the process of revamping their highway systems in order to keep pace with ever changing socio-economic conditions, and with the overwhelming growth in traffic needs, it may be helpful to these efforts to be apprised of all aspects of the law on this subject.

This is the first of a series of reports on highway classification and concerns itself with primary state highway systems, which presumably comprise the principal interstate and intrastate routes of all States and territories. Statutory primary highway systems exist in all States and territories except the District of Columbia. Subsequent reports will cover systems of secondary State highways, county highways, township roads, and municipal streets.

The State systems under consideration are not officially designated "primary" highway systems in all States. The most commonly used term, as a matter of fact, is "State highway system" or "system of State highways." However, a number of jurisdictions have classified their State systems as primary and secondary, and to avoid confusion as to the particular system under discussion, the designation "primary State highway system" has been used throughout this report.

Primary system data.—What is the magnitude of this primary system? A few statistical facts may be of interest. Its size in relation to the over-all highway mileage of the several States is not great. In 15 States, the primary highway system mileage comprises less than 10 percent of the over-all mileage of roads and streets; in 34 States less than 15 percent; in 44 States less than 20 percent. Only four States have primary highway systems comprising over 20 percent of the total mileage. (See Table 1 and Figure 1.) The total rural and urban mileage of primary highway systems runs from a low of 5.4 percent of the total mileage in North Dakota to a high of 29.1 percent in Kentucky.[22]

Generally speaking, the smaller States (in area) tend to have a proportionately larger primary system mileage. (See Table 2 and Figure 2). This is due in part, of course, to the fact that the larger States are generally found in sparsely settled western areas where traffic demands are relatively low. Thus the eleven western States with comparatively great land areas all have less than one mile of primary highways for each 10 sq mi of land area.[23] At the other extreme there are four States, small in area, which have over five miles of primary highways for each 10 square miles of land area. These States, of course, have relatively large populations concentrated in small areas.

There are many exceptions to this trend, as indicated in Figure 2. Thus, Texas, largest in land area, has a proportionately high mileage of primary highways. Georgia has a significantly higher primary system mileage than other States in its size group. Louisiana, Virginia and Maine, on the other hand, have significantly lower primary system mileages than States comparable in

[22] U.S. DEPT. OF COMMERCE, BUREAU OF PUBLIC ROADS, HIGHWAY STATISTICS 1955, 146 (1957).

[23] California's presence in this category is probably due to the fact that the population is concentrated in certain areas of the State, but there are vast areas of comparatively low density.

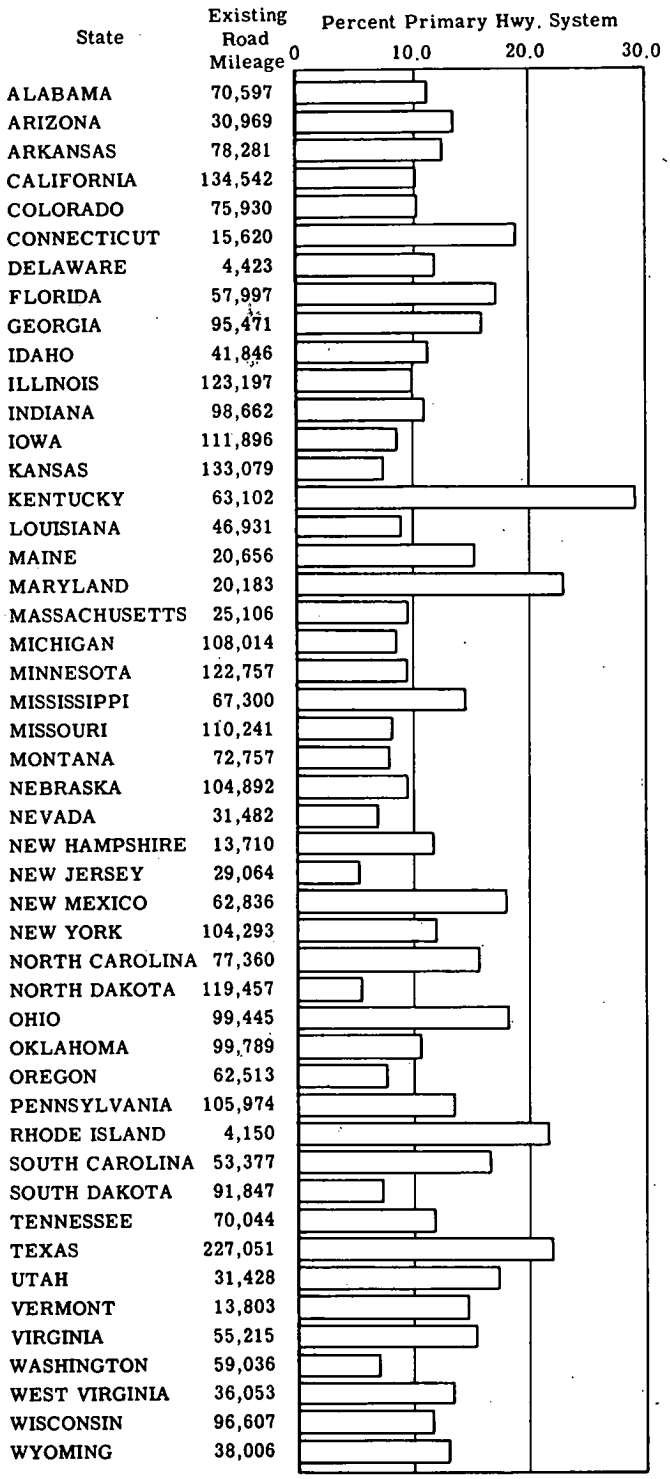


FIGURE 1

Relationship of State primary highway system to existing State road mileage, 1955 ("Highway Statistics 1955," p. 146, U.S. Bur. Pub. Roads).

Table 1. Relationship of State Primary Highway Systems to Existing Road Mileage in the United States, 1955[1]

State	Existing Road Mileage			State Primary System Mileage			Percentage of State Primary System		
	Rural	Urban	Total	Rural	Urban	Total	Rural	Urban	Total
Ala.	62,217	8,380	70,597	7,101	868	7,969	11.4	10.4	11.3
Ariz.	29,016	1,953	30,969	4,111	114	4,225	14.2	5.8	13.6
Ark.	73,215	5,066	78,281	9,421	616	10,037	12.9	12.2	12.8
Calif.	110,004	24,538	134,542	12,466	1,263	13,729	11.3	5.1	10.2
Colo.	71,079	4,851	75,930	7,615	352	7,967	10.7	7.3	10.5
Conn.	10,690	4,930	15,620	2,422	590	3,012	22.0	12.0	18.9
Del.	3,819	604	4,423	462	70	532	12.1	11.6	12.0
Fla.	44,635	13,362	57,997	8,791	1,216	10,007	19.7	9.1	17.3
Ga.	83,035	12,436	95,471	13,605	1,638	15,243	16.4	13.2	16.0
Idaho	39,574	2,272	41,846	4,490	218	4,708	11.3	9.6	11.3
Ill.	102,446	20,751	123,197	10,477	1,867	12,344	10.2	9.0	10.0
Ind.	86,220	12,442	98,662	9,812	905	10,717	11.4	7.3	10.8
Iowa	100,609	11,287	111,896	8,635	1,058	9,693	8.6	9.4	8.7
Kan.	124,798	8,281	133,079	9,532	520	10,052	7.6	6.3	7.6
Ky.	59,701	3,401	63,102	17,620	752	18,372	29.5	22.1	29.1
La.	40,040	6,891	46,931	3,806	463	4,269	9.5	6.7	9.0
Me.	19,006	1,650	20,656	3,039	241	3,280	16.0	14.6	15.9
Md.	17,406	2,777	20,183	4,390	235	4,625	25.2	8.5	22.9
Mass.	15,893	9,213	25,106	1,665	523	2,188	10.5	5.7	9.7
Mich.	93,394	14,620	108,014	8,283	1,050	9,333	8.9	7.2	8.6
Minn.	110,111	12,646	122,757	10,272	1,545	11,817	9.3	12.2	9.6
Miss.	63,062	4,238	67,300	9,155	670	9,825	14.5	15.8	14.6
Mo.	98,659	11,582	110,241	7,920	1,111	9,031	8.0	9.6	8.2
Mont.	71,197	1,560	72,757	5,587	164	5,751	7.8	10.5	7.9
Neb.	99,355	5,537	104,892	9,673	420	10,093	9.7	7.6	9.6
Nev.	30,845	637	31,482	2,144	50	2,194	7.0	7.8	7.0
N. H.	12,408	1,302	13,710	1,483	168	1,651	12.0	12.9	12.0
N. J.	17,320	11,744	29,064	1,248	584	1,832	7.2	5.0	6.3
N. M.	60,639	2,197	62,836	10,937	470	11,407	18.0	21.4	18.1
N. Y.	86,532	17,761	104,293	12,139	961	13,100	14.0	5.4	12.6
N. C.	68,335	9,025	77,360	10,969	1,166	12,135	16.1	12.9	15.7
N. D.	117,045	2,412	119,457	6,245	248	6,493	5.3	10.3	5.4
Ohio	83,066	16,379	99,445	15,922	2,451	18,373	19.2	15.0	18.5
Okla.	92,462	7,327	99,789	10,097	539	10,636	11.0	7.4	10.7
Ore.	57,576	4,937	62,513	4,503	400	4,903	7.8	8.1	7.8
Pa.	88,113	17,861	105,974	12,855	1,871	14,726	14.6	10.5	13.9
R. I.	1,800	2,350	4,150	636	261	897	35.3	11.1	21.6
S. C.	48,926	4,451	53,377	8,150	758	8,908	16.7	17.0	16.7
S. D.	89,286	2,561	91,847	6,487	220	6,707	7.3	8.6	7.3
Tenn.	65,006	5,038	70,044	7,655	674	8,329	11.8	13.4	11.8
Tex.	197,144	29,907	227,051	47,241	2,604	49,845	24.0	8.7	22.0
Utah	27,751	3,677	31,428	4,853	596	5,449	17.5	16.2	17.3
Vt.	12,975	828	13,803	1,854	171	2,025	14.3	20.1	14.7
Va.	49,750	5,465	55,215	7,645	856	8,501	15.4	15.7	15.4
Wash.	52,407	6,629	59,036	3,807	322	4,129	7.3	4.9	7.0
W. Va.	33,074	2,979	36,053	4,519	445	4,964	13.7	14.9	13.8
Wis.	86,541	10,066	96,607	9,996	1,319	11,315	11.6	13.1	11.7
Wyo.	37,083	923	38,006	4,876	123	4,999	13.1	13.4	13.1
Total	3,045,265	371,724	3,416,989	386,611	35,726	422,337	12.7	9.6	12.4

[1] "Highway Statistics 1955," U.S. Bur. Pub. Roads, 1957, p. 146.

Table 2. Relationship of Primary State Highway System Mileage to Land Area in United States, 1950

State	Land Area[1] (sq mi)	State Primary Highway System[2] (mi)	Primary Highway per 10 Square Miles of Land Area (mi)
Tex.	263,513	36,687	1.4
Calif.	156,740	13,807	0.9
Mont.	145,878	5,919	0.4
N. M.	121,511	10,550	0.9
Ariz.	113,575	3,933	0.3
Nev.	109,789	2,224	0.2
Colo.	103,922	4,179	0.4
Wyo.	97,506	4,683	0.5
Ore..	96,315	4,897	0.5
Idaho	82,769	4,708	0.6
Utah	82,346	5,450	0.7
Kan.	82,108	9,927	1.2
Minn.	80,009	11,878	1.5
Neb.	76,663	9,578	1.2
S. D.	76,536	6,195	0.8
N. D.	70,057	6,779	0.9
Mo.	69,226	8,820	1.3
Okla.	69,031	10,141	1.4
Wash.	66,786	4,234	0.6
Ga.	58,483	15,186	2.6
Mich.	57,022	9,314	1.6
Iowa	56,045	9,736	1.7
Ill.	55,935	12,150	2.2
Wis.	54,705	11,244	2.0
Fla.	54,262	9,440	1.7
Ark.	52,675	9,716	1.8
Ala.	51,078	7,723	1.5
N. C.	49,097	12,854	2.6
N. Y.	47,944	15,163	3.2
Miss.	47,248	7,219	1.5
La.	45,162	4,559	1.0
Pa.	45,045	15,755	3.5
Tenn.	41,797	7,973	1.9
Ohio	41,000	18,416	4.4
Va.	39,893	8,996	2.2
Ky.	39,864	13,327	3.3
Ind.	36,205	10,587	2.9
Me.	31,040	3,284	1.0
S. C.	30,305	9,700	3.2
W. Va.	24,080	4,994	2.1
Md.	9,881	4,666	5.0
Vt.	9,278	1,925	2.1
N. H.	9,017	1,735	1.9
Mass.	7,867	1,988	2.5
N. J.	7,522	1,740	2.3
Conn.	4,899	3,139	6.4
Del.	1,978	1,167	5.9
R. I.	1,058	844	7.9
Total	2,974,665	399,129	1.3

[1] "Census of Population," Vol. 1, 1950, Bur. Census, p. 1-12.
[2] "Highway Statistics Summary to 1955," U.S. Bur. Pub. Roads, 1957, p. 107 *et seq.*

size. It will be noted in a subsequent report on State highway classification, that these latter States each have a designated secondary State highway system.

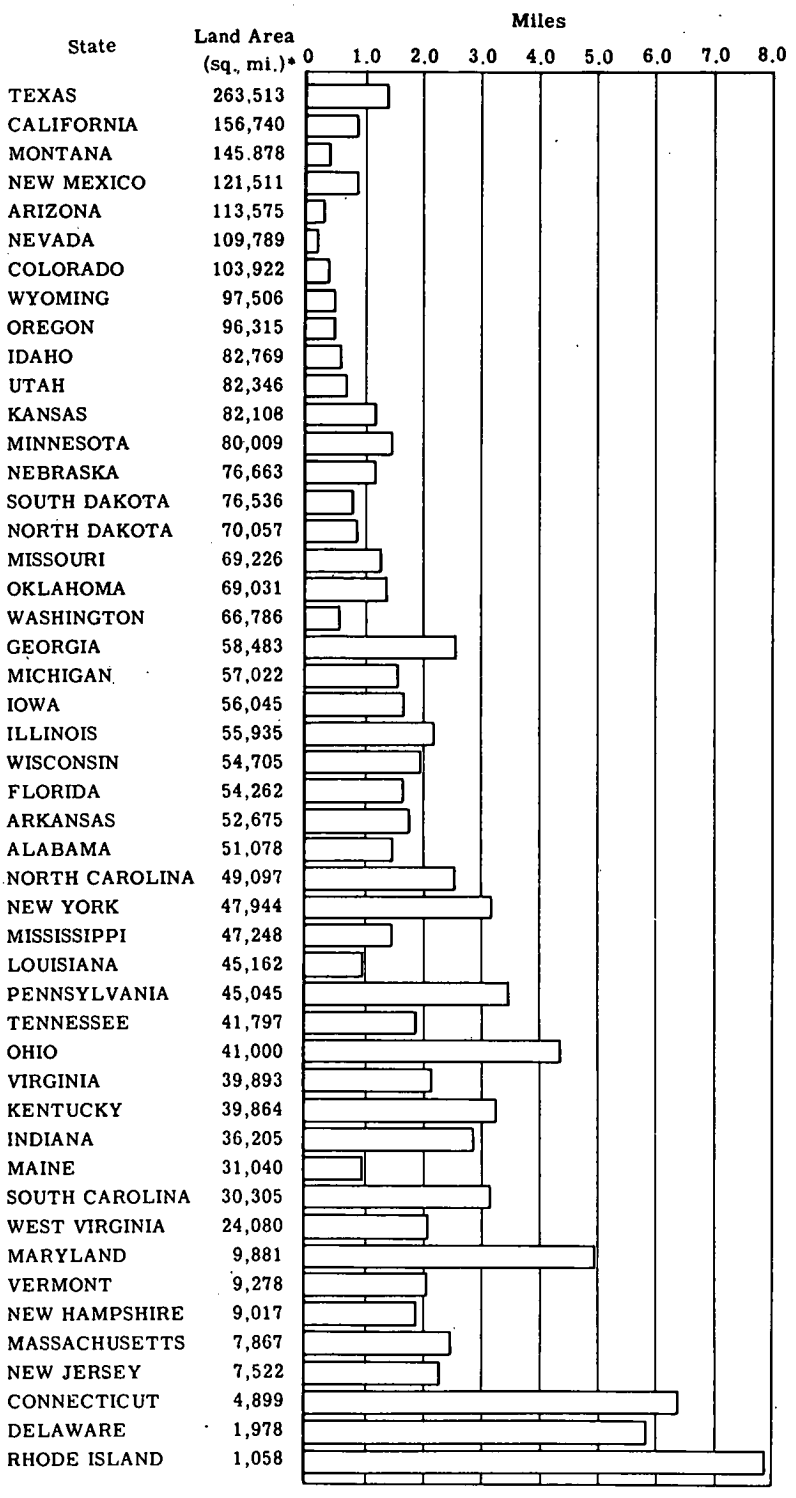
Although population has influenced the size of the primary system to some extent, there is no consistent relationship here, as revealed by Table 3 and Figure 3. A combination of these factors and many others probably influence the size determination in a particular State. Without a detailed qualitative analysis of the primary system in each State, it is impossible to account for the variations in relative size.

Relationship to Federal-aid systems.— There is a very definite relationship between the primary State highway systems of the several States and the Federal-aid primary highway system. Since the Federal-aid primary system, by law, consists of "an adequate system of connected main highways," [24] it is to be expected that, with few exceptions, highways included in this system will also be a part of the primary State highway system in a given State.

As indicated in Table 4, over 98 percent of the Federal-aid primary highways, both rural and urban, is included in the State system. These Federal-aid primary highways, however, comprise only slightly more than fifty percent of the State primary highway system mileage for the Nation as a whole. This can be accounted for by the fact that the Federal-aid primary highway system is limited in mileage to seven percent, or slightly more under certain circumstances, of the particular State's total road mileage.[25] The mileage of most State primary systems is substantially greater. In only two States—Delaware and Montana—does the Federal-aid primary system comprise the entire State primary highway system. In other States, the percentage ranges from a low of 20.5 in Kentucky to a high of 99.9 in Nevada. On a Nation-wide basis, Federal-aid primary highways comprise approximately 53 percent of the State primary systems.

A large proportion of the remaining State primary highway system mileage is com-

[24] 23 U.S.C., §103(b).
[25] *Ibid.* Mileage may be increased whenever provision has been made for completion and maintenance of 90 percent of the originally designated system of a State, with the approval of the Secretary of Commerce.



State	Land Area (sq. mi.)*
TEXAS	263,513
CALIFORNIA	156,740
MONTANA	145,878
NEW MEXICO	121,511
ARIZONA	113,575
NEVADA	109,789
COLORADO	103,922
WYOMING	97,506
OREGON	96,315
IDAHO	82,769
UTAH	82,346
KANSAS	82,108
MINNESOTA	80,009
NEBRASKA	76,663
SOUTH DAKOTA	76,536
NORTH DAKOTA	70,057
MISSOURI	69,226
OKLAHOMA	69,031
WASHINGTON	66,786
GEORGIA	58,483
MICHIGAN	57,022
IOWA	56,045
ILLINOIS	55,935
WISCONSIN	54,705
FLORIDA	54,262
ARKANSAS	52,675
ALABAMA	51,078
NORTH CAROLINA	49,097
NEW YORK	47,944
MISSISSIPPI	47,248
LOUISIANA	45,162
PENNSYLVANIA	45,045
TENNESSEE	41,797
OHIO	41,000
VIRGINIA	39,893
KENTUCKY	39,864
INDIANA	36,205
MAINE	31,040
SOUTH CAROLINA	30,305
WEST VIRGINIA	24,080
MARYLAND	9,881
VERMONT	9,278
NEW HAMPSHIRE	9,017
MASSACHUSETTS	7,867
NEW JERSEY	7,522
CONNECTICUT	4,899
DELAWARE	1,978
RHODE ISLAND	1,058

FIGURE 2

Miles of primary highway per 10 square miles of land area, 1950 ("Census of Population," Vol. 1, 1950, p. 1-12).

Table 3. Relationship of State Primary Highway Systems to Population in the United States, 1950

State	Population[1]	Primary System[2] (mi)	Primary Hwys. Per 100,000 Population (mi)
N. Y.	14,830,192	15,163	102.2
Calif.	10,586,223	13,807	130.4
Pa.	10,498,012	15,755	150.0
Ill.	8,712,176	12,150	139.5
Ohio	7,946,627	18,416	231.7
Tex.	7,711,194	36,687	475.8
Mich.	6,371,766	9,314	146.2
N. J.	4,835,329	1,740	36.0
Mass.	4,690,514	1,988	42.4
N. C.	4,061,929	12,854	316.5
Mo.	3,954,653	8,820	223.0
Ind.	3,934,224	10,587	269.1
Ga.	3,444,578	15,186	440.1
Wis.	3,434,575	11,244	327.4
Va.	3,318,680	8,996	271.1
Tenn.	3,291,718	7,973	242.2
Ala.	3,061,743	7,723	252.2
Minn.	2,982,483	11,878	398.3
Ky.	2,944,806	13,327	452.6
Fla.	2,771,305	9,440	340.6
La.	2,683,516	4,559	169.9
Iowa	2,621,073	9,736	371.5
Wash.	2,378,963	4,234	178.0
Md.	2,343,001	4,666	199.1
Okla.	2,233,351	10,141	454.1
Miss.	2,178,914	7,219	331.3
S. C.	2,117,027	9,700	458.2
Conn.	2,007,280	3,139	156.4
W. Va.	2,005,552	4,994	249.0
Ark.	1,909,511	9,716	508.8
Kan.	1,905,299	9,927	521.0
Ore.	1,521,341	4,897	321.9
Neb.	1,325,510	9,578	722.6
Colo.	1,325,089	4,179	315.3
Me.	913,774	3,284	359.4
R. I.	791,896	844	106.6
Ariz.	749,587	3,933	524.7
Utah	688,862	5,450	790.4
N. M.	681,187	10,550	1,548.8
S. D.	652,740	6,195	949.1
N. D.	619,636	6,779	1,094.1
Mont.	591,024	5,919	1,001.5
Idaho	588,637	4,708	799.8
N. H.	533,242	1,735	325.4
Vt.	377,747	1,925	520.2
Del.	318,085	1,167	366.9
Wyo.	290,529	4,683	1,611.9
Nev.	160,083	2,224	1,389.3
Total	149,895,183	399,129	266.3

[1] "Census of Population," Vol. 1, 1950, Bur. Census, p. 1-14.
[2] "Highway Statistics Summary to 1955," U.S. Bur. Pub. Roads, 1957, p. 107 *et seq.*

posed of Federal-aid secondary highways. Only four States—Delaware, Iowa, Montana, and Nevada—have no highways of this type included in the State primary system. On a Nation-wide basis, roads in this Federal system comprise slightly over 38 percent of the State primary system mileage, ranging from none in the States mentioned to 63.8 in Arkansas, as indicated in Table 4.

Plan of analysis.—There is a vast body of law pertaining to primary highway classification which, for purposes of analysis, has been broken down into six categories, as follows:

1. *Objectives of the primary system.* Criteria to be used in designating the primary highway system; *i.e.,* the standards or guides established by the legislature to guide the administrative agency charged with the responsibility of designating the system.

2. *Designating the primary highway system.* The authority or agency responsible for such designation, whether it be the legislature itself, an administrative body, or the State Constitution.

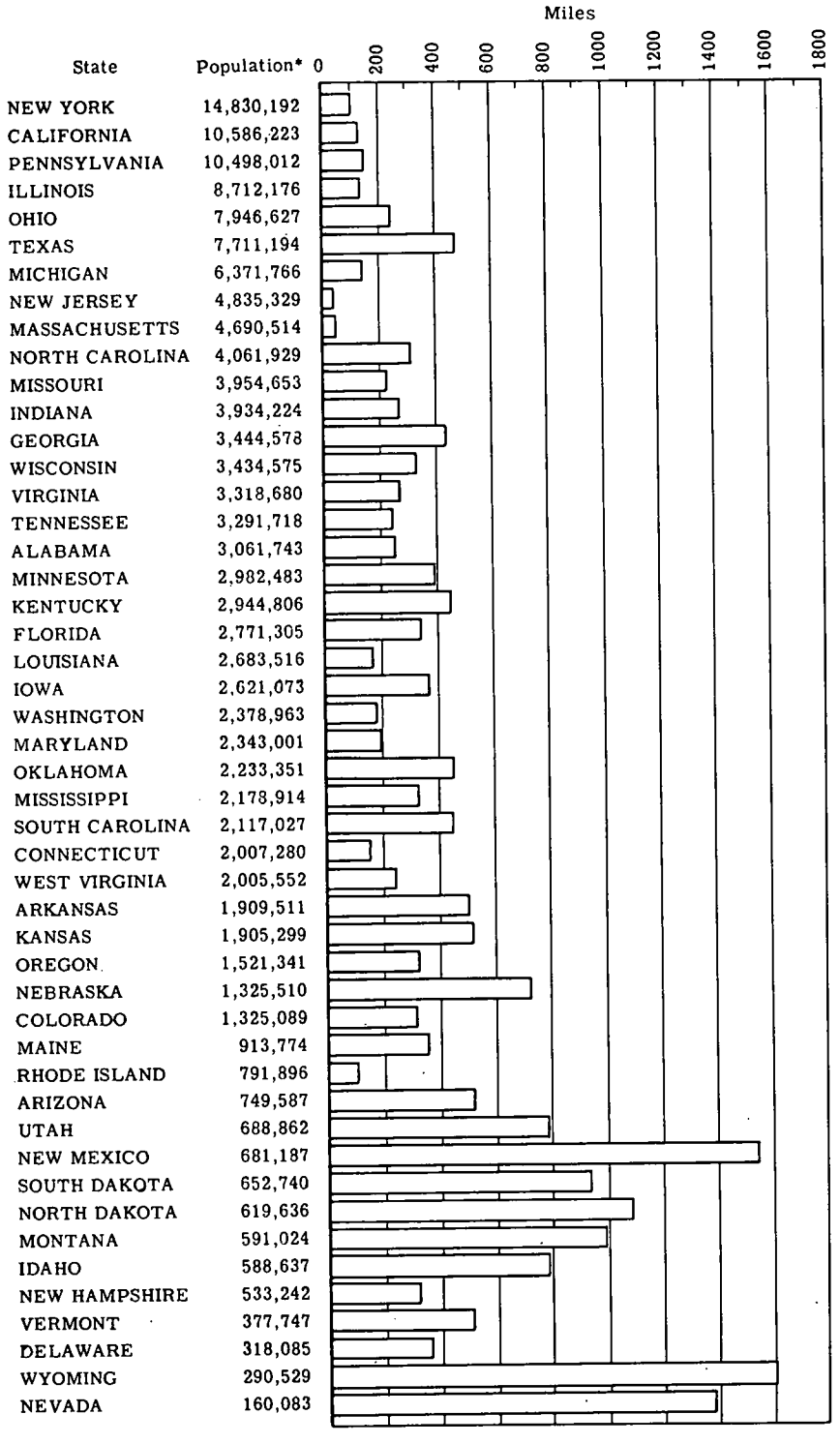
3. *Expanding the system.* Designation of any new facilities which may be added to the system, including highways constructed over new rights-of-way as well as the absorption of existing roads from local jurisdictions and the taking over of toll roads.

4. *Alteration or change in the physical location of existing State highways.* The limits of State highway authority in this respect is an important factor in this area.

5. *Contracting the system.* The removal or detachment of a highway from the system, as well as the disposition of the deleted highway.

6. *Municipal connecting links.* Urban extensions, as well as alternate routes and bypasses, and the authority pertaining to the designation, alteration, and deletion of these facilities with respect to the system.

The method of analysis utilized in this report consisted of dissecting the various highway codes into their many distinctive



State	Population*
NEW YORK	14,830,192
CALIFORNIA	10,586,223
PENNSYLVANIA	10,498,012
ILLINOIS	8,712,176
OHIO	7,946,627
TEXAS	7,711,194
MICHIGAN	6,371,766
NEW JERSEY	4,835,329
MASSACHUSETTS	4,690,514
NORTH CAROLINA	4,061,929
MISSOURI	3,954,653
INDIANA	3,934,224
GEORGIA	3,444,578
WISCONSIN	3,434,575
VIRGINIA	3,318,680
TENNESSEE	3,291,718
ALABAMA	3,061,743
MINNESOTA	2,982,483
KENTUCKY	2,944,806
FLORIDA	2,771,305
LOUISIANA	2,683,516
IOWA	2,621,073
WASHINGTON	2,378,963
MARYLAND	2,343,001
OKLAHOMA	2,233,351
MISSISSIPPI	2,178,914
SOUTH CAROLINA	2,117,027
CONNECTICUT	2,007,280
WEST VIRGINIA	2,005,552
ARKANSAS	1,909,511
KANSAS	1,905,299
OREGON	1,521,341
NEBRASKA	1,325,510
COLORADO	1,325,089
MAINE	913,774
RHODE ISLAND	791,896
ARIZONA	749,587
UTAH	688,862
NEW MEXICO	681,187
SOUTH DAKOTA	652,740
NORTH DAKOTA	619,636
MONTANA	591,024
IDAHO	588,637
NEW HAMPSHIRE	533,242
VERMONT	377,747
DELAWARE	318,085
WYOMING	290,529
NEVADA	160,083

FIGURE 3

Miles of primary highway per 100,000 population, 1950 ("Census of Population," Vol. 1, 1950, p. 1-12).

Table 4. Relationship of State Primary Highway System To Federal-Aid Highway Systems[1]

State	Total State Primary System[2]	Total Federal-Aid Primary System	Federal-Aid Primary System on State Highway System		State Highway System on Federal-Aid Primary System	Federal-Aid Secondary System on State Highway System		State Highway System Not on Federal-Aid Systems	
	(mi)	(mi)	(mi)	(%)	(%)	(mi)	(%)	(mi)	(%)
Ala.	7,969	5,045	4,970	98.5	62.4	2,759	34.6	240	3.0
Ariz.	4,225	2,380	2,349	98.7	55.6	1,737	41.1	139	3.3
Ark.	10,037	3,373	3,373	100.0	33.6	6,402	63.8	262	2.6
Calif.	13,729	6,493	6,438	99.2	46.9	3,830	27.9	3,461	25.2
Colo.	7,967	4,003	4,003	100.0	50.2	3,791	47.6	173	2.2
Conn.	3,012	1,010	950	94.1	31.5	1,044	34.7	1,018	33.8
Del.	532	532	532	100.0	100.0	—	—	—	—
Fla.	10,007	4,172	4,140	99.2	41.4	5,481	54.7	386	3.9
Ga.	15,243	7,285	7,247	99.5	47.5	6,830	44.8	1,166	7.6
Idaho	4,708	2,994	2,992	99.9	63.6	1,585	33.7	131	2.8
Ill.	12,344	9,963	9,668	97.0	78.3	74	0.6	2,602	21.1
Ind.	10,717	4,688	4,668	99.6	43.6	5,824	54.3	225	2.1
Iowa	9,693	9,564	9,541	99.8	98.4	—	—	152	1.6
Kan.	10,052	7,375	7,373	99.9	73.3	2,446	24.3	233	2.3
Ky.	18,372	3,762	3,762	100.0	20.5	10,544	57.4	4,066	22.1
La.	4,269	2,560	2,544	99.4	59.6	1,620	37.9	105	2.5
Me.	3,280	1,611	1,609	99.9	49.1	1,180	35.9	491	15.0
Md.	4,625	1,883	1,775	94.3	38.4	2,401	51.9	449	9.7
Mass.	2,188	1,995	1,550	77.7	70.8	476	21.8	162	7.5
Mich.	9,333	6,308	6,308	100.0	67.6	2,922	31.3	103	1.1
Minn.	11,817	7,665	7,654	99.9	64.8	4,075	34.5	88	0.7
Miss.	9,825	5,104	5,104	100.0	51.9	3,966	40.4	755	7.7
Mo.	9,031	8,202	8,069	98.4	89.3	235	2.6	727	8.1
Mont.	5,751	5,752	5,752	100.0	100.0	—	—	—	—
Neb.	10,093	5,237	5,096	97.3	50.5	4,623	45.8	374	3.7
Nev.	2,194	2,194	2,191	99.9	99.9	—	—	3	0.2
N. H.	1,651	1,192	1,072	89.9	64.9	545	33.0	34	2.0
N. J.	1,832	1,667	1,576	94.5	86.0	51	2.8	205	11.2
N. M.	11,407	3,893	3,885	99.8	34.1	4,756	41.7	2,766	24.3
N. Y.	13,100	10,186	8,952	87.9	68.3	3,944	30.1	204	1.6
N. C.	12,135	6,812	6,722	98.7	55.4	5,209	42.9	204	1.7
N. D.	6,493	3,174	3,174	100.0	48.9	3,138	48.3	181	2.8
Ohio	18,373	7,515	7,515	100.0	40.9	9,439	51.4	1,419	7.7
Okla.	10,636	7,100	6,971	98.2	65.5	3,109	29.2	556	5.2
Ore.	4,903	3,871	3,850	99.5	78.5	994	20.3	59	1.2
Pa.	14,726	7,174	6,856	95.6	46.6	5,742	39.0	2,128	14.4
R. I.	897	465	404	86.9	45.0	277	30.9	216	24.2
S. C.	8,908	4,675	4,656	99.6	52.3	4,165	46.8	87	1.0
S. D.	6,707	4,368	4,291	98.2	64.0	2,195	32.7	221	3.3
Tenn.	8,329	5,214	5,214	100.0	62.6	3,069	36.8	46	0.6

Table 4—Continued

State	Total State Primary System[2]	Total Federal-Aid Primary System	Federal Aid Primary System on State Highway System		State Highway System on Federal-Aid Primary System	Federal-Aid Secondary System on State Highway System		State Highway System Not on Federal-Aid Systems	
	(mi)	(mi)	(mi)	(%)	(%)	(mi)	(%)	(mi)	(%)
Tex.	49,845	15,582	15,501	99.5	31.1	24,747	49.6	9,597	19.3
Utah	5,449	2,158	2,146	99.4	39.4	2,350	43.1	953	17.5
Vt.	2,025	1,244	1,242	99.8	61.3	767	37.9	16	0.8
Va.	8,501	4,652	4,631	99.5	54.5	3,728	43.8	142	1.7
Wash.	4,129	3,563	3,482	97.7	84.3	578	14.0	69	1.7
W. Va.	4,964	2,386	2,386	100.0	48.1	2,532	51.0	46	1.0
Wis.	11,315	5,762	5,758	99.9	50.9	5,297	46.8	260	2.3
Wyo.	4,999	3,406	3,349	98.3	67.0	1,617	32.4	33	0.7
Total	422,337	227,209	223,291	98.3	52.9	162,094	38.4	36,953	8.8

[1] "Highway Statistics Summary to 1955," p. 156.
[2] *Ibid.*, p. 146.

features with respect to primary system classification. Jurisdictions having similar code features were grouped together, which accounts for some jurisdictions appearing in several groups, particularly in those sections dealing with definitive or descriptive criteria. For example, a State may have established multiple criteria in its legislation pertaining to system classification.

Case law has been inserted wherever and whenever appropriate, rather than in a separate section. It is believed the court decisions will be more meaningful if presented in this fashion.

OBJECTIVES AND NATURE OF PRIMARY HIGHWAY SYSTEM

Of first importance in the selection of a primary State highway system is the determination by the particular jurisdiction of the objective of such a system—the role the system is to play in the life of the State.

Since each jurisdiction has its own characteristics and problems, germane to its own territory, the purposes which a primary system must serve may be unique to its own territory. Thus, the setting up of a universal set of criteria, applicable to all jurisdictions without variation, would be highly impracticable.

Not all jurisdictions have seen fit to include definitions, standards or criteria for designating the primary highway system in their legislation pertaining to its selection. Of the 51 jurisdictions considered in this report, 35 have some kind of legislation of this type [26] (see Table 5). The majority of such jurisdictions are those in which the highway authorities have been charged with the responsibility for designating the system, as indicated in the following chapter. In 18 of the 34 jurisdictions, this was found to be true.[27] In seven others, although the system was technically designated by the legislature, the State highway department played some part in such designation.[28] The criteria included in statutory provisions are presumably for the direction of the highway department.

In States where the primary highway system is designated by the highway department, criteria would appear particularly important as guides for use of the administrative body to which the authority to designate the system has been delegated. They are perhaps also desirable in States where the system is selected by the legislature, to provide a known set of rules to be used as a basis for selecting the system. Such provisions do appear in some of the States, generally in the nature of a declaration of purpose. The Pennsylvania statute, for example, states that certain roads (listed) forming and being main traveled roads or

[26] Alabama, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Alaska, and Puerto Rico.

[27] Alabama, Colorado, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, West Virginia, and Alaska.

[28] Michigan, Missouri, Nebraska, New Hampshire, New Mexico, Vermont, and Wisconsin.

Table 5. Statutory Provisions Defining or Describing Primary Highway Systems[1]
(Criteria for Selection)

Roads Designated by Legislatures or Highway Authorities		Connection or Inclusion of Geographical Areas		Integrated System	Development of State	Specified Types of Highways to Be Included	Traffic Needs	Public Welfare	Financial Limitations
Ga.	N. D.	Ala.	N. C.	Del.	Idaho	Colo.	Idaho	Ala.	Idaho
Ill.	Ohio	Fla.	N. D.	Idaho	N. Mex.	Fla.	Ill.	Del.	Md.
Ky.	Pa.	Ga.	Okla.	Ill.	N. C.	Idaho	N. Mex.	Idaho	
Md.	R. I.	Idaho	Pa.	Me.	N. D.	Ill.	N. D.	N. D.	
Mich.	S. C.	Ill.	N. C.	Mo.	Alaska	Mich.	Pa.		
Minn.[2]	S. D.	Iowa	Tenn.	S. C.		Miss.	Tenn.		
Miss.	Vt.	Kan.	W. Va.	Wis.		N. C.	P. Rico		
Neb.[3]	Va.	Md.	Alaska			N. D.			
N. H.[3]	W. Va.	Mo.				Ohio			
N. J.						Okla.			

[1] For provisions pertaining to mileage limitations see Table 4.
[2] Routes described in constitutional amendment.
[3] Roads shown on map.

routes leading to the State line, and between principal cities, boroughs and towns, shall constitute a system of State highways.[29]

In those jurisdictions where primary highway systems are designated by administrative procedure, perhaps some legislative direction is desirable, not only from a practical point of view (as a guide for the administrative body charged with the duty of constructing an adequate network of highways) but also from a constitutional viewpoint, since powers may not be delegated to an administrative body by the legislature without adequate standards.

Some of the provisions found, while defining or describing the system in a sense, could hardly serve as criteria or aids to the designating body. At least 19 States include provisions of this type in their statutes (see Table 5, Column 1). In some of these States, the statutes merely describe the primary highway system as composed of those highways authorized by law, or similar language.[30] These are the States where the system is at least primarily designated by legislature, except in Minnesota where the original system is designated in the constitution. It will be noted that four of these States—Illinois, Michigan, Mississippi, and Pennsylvania—appear in other columns in Table 5 indicating that other descriptive provisions are contained in the statutes. In the remaining States in this category no further description or criterion was found.

There are provisions in five States indicating that the primary system is composed of highways designated by the State highway department, or words to that effect.[31] Of these, only Kentucky statutes contain no further description of the system. Pertinent provisions of the other States are discussed in later sections of this report.

There is one other type of provision, somewhat similar to those already discussed, but which further provides that the primary highway system is composed of highways now designated as such, or shown on a map of the system. Seven States were found to have such provisions,[32] four of which—Nebraska, New Hampshire, Vermont, and Virginia—had no other provision describing the system. The provisions found in these States appear to be quite recent in origin. They really amount to a validation of a system previously adopted, and it was perhaps thought that no further description of the existing system was necessary. In this case, descriptions or criteria to assist the highway department would only be necessary in connection with additions to the system.

With these exceptions, all of the statutory (and constitutional) provisions examined could be said to serve not only as definitions or descriptions, but as criteria to aid in selection of the primary State highway system. This being the case, an attempt to separate those provisions which might be said to describe or define the system from those which establish criteria for the guidance of the designating body would result in a great deal of repetition, if not confusion. All of this type of material will therefore be discussed in this chapter.

These provisions can be grouped under several general headings for discussion purposes. (See Table 5.) There are, for example, statutes requiring that the system be an integrated one, others that county seats, principal municipalities, regions, or other States be connected. Some provide for the inclusion of urban extensions, while others specify that certain types of highways, such as Federal-aid and Interstate, be included in the primary system. Still others stress that the system aid the economic development of the State. These provisions will be discussed in the following subsections.

INTERCONNECTION OF COUNTIES

At least 14 States make reference to counties or county seats in statutory provisions defining or describing the primary highway system.[33] The general tenor of these provisions is to the effect that the system

[29] PURDON'S PA. STATS. ANN., tit. 36, §971.

[30] SMITH-HURD ILL. ANN. STATS., ch. 121, §292; COMP. LAWS OF MICH. 1948, §247.651; CONST. OF MINN., art. 16, §2; MISS. CODE 1942, §8053; N.J. S. A., §27:6-2; PURDON'S PA. STATS. ANN., tit. 36, §670-102; GEN. LAWS OF R.I. 1938, ch. 309, §21; S.D. LAWS OF 1955, ch. 106, §1(1).

[31] CODE OF GA. ANN., §95-1711; KY. REV. STATS., §177.020 (1); ANN. CODE OF MD. 1951, art. 89B, §2(B); N.D. REV. CODE OF 1943, §24-A0102(42); CODE OF LAWS OF S.C. 1952, §§33-101, 33-103.

[32] REV. STATS. OF NEB. 1943, §39-1302(25); N.H. REV. STATS. ANN. §230.2; BALDWIN'S OHIO REV. CODE §5535.01; CODE OF LAWS OF S.C. 1952, §33-101; VT. LAWS OF 1957, H.B. 245, §2; CODE OF VA. 1950, §33-23; W.VA. CODE OF 1955, §1434.

[33] Alabama, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maryland, Missouri, North Carolina, Oklahoma, Pennsylvania, Tennessee, and West Virginia.

should connect the county seats of adjoining counties. At least nine States were found to have such provisions.[34] Substantially the same purpose is served by the provisions in three States whose statutory provisions required that primary highways extend into each county,[35] and in two other States where there must be a primary road to every county seat.[36] In one State, the primary highway system is to be composed of intercounty and interstate highways.[37]

INTERCONNECTION OF PRINCIPAL MUNICIPALITIES, MARKET CENTERS, POPULATION CENTERS, ETC.

A total of 11 jurisdictions have statutory provisions specifying that certain municipalities, market centers, population centers, etc., be connected by the primary highway system.[38]

Urban areas in Florida with over 10,000 population must be connected while the principal municipalities must be connected in Illinois, Kansas, North Carolina and Pennsylvania. Missouri and South Carolina are required to connect centers of population.

The primary system in Alaska is to be a network of highways linking together cities and communities throughout the Territory. Market centers are to be connected in Georgia and Kansas, while in Iowa and North Dakota, main market roads are part of the State primary system.

TYPES OF HIGHWAYS TO BE INCLUDED IN PRIMARY HIGHWAY SYSTEM

There is a group of States in which legislation specifies that the primary system shall include certain types of highways, such as arterials, interstate highways, and Federal-aid highways, as noted in Table 5. At least ten States have provisions of this type.[39]

In Idaho, the primary highway system is defined as comprising the principal highway arteries of the State. The systems of Florida and North Dakota must also include arterial roads and highways.

Recently enacted statutory provisions in Florida and Ohio take note of the new National System of Interstate and Defense Highways. Florida includes Interstate highways in its definition of the State primary highway system, and Ohio specifies that the entire mileage of the new system is to be included in the State's primary system.

Federal-aid primary roads are specifically included by statute in Colorado, Florida, Illinois, Michigan, and Mississippi as a part of their State primary highway systems. In North Dakota, Federal-aid highways must be included where practicable and justifiable. Colorado also includes Federal-aid secondary roads.

State primary highways in North Carolina must "link up with State highways of adjoining States." Oklahoma and North Dakota specify that interstate highways are to be included in the State primary system.

A SYSTEM OF INTEGRATED OR CONNECTING HIGHWAYS

A number of States stress the idea of an integrated system, or a system of connecting highways. There are at least seven States having a broad, general provision of this kind, as noted in the following paragraphs.[40]

Three jurisdictions—Maine, Missouri and South Carolina—provide for a State-wide system of connecting highways. The Wisconsin statutes, which refer to 2,200 miles of the State trunk system given priority for improvement and called the State arterial highway system, declare that the system is to be an integrated, State-wide interregional

[34] CODE OF ALA. 1940, tit. 23, §34; FLA. STATS. 1955, §335.04(3)(b); CODE OF GA. ANN., §95-1706; SMITH-HURD ILL. ANN. STATS., ch. 121, §350a; CODE OF IOWA 1958, §313.2; GEN. STATS. OF N.C., §136-46; PURDON'S PA. STATS. ANN., tit. 36, §971; TENN. CODE ANN, §54-502; CONST. OF W.VA., art. XIV.

[35] GEN. STATS. OF KAN. 1949, §68-406; ANN. CODE OF MD. 1951, art. 89B, §7; MO. REV. STATS. 1949, §227.020.

[36] IDAHO CODE, §40-109(a); GEN. STATS. OF N.C., §136-45.

[37] OKLA. STATS., tit. 69,§44.

[38] FLA. STATS. 1955, §335.04(3)(a) CODE OF GA. ANN., §95-1708; SMITH-HURD ILL. ANN. STATS., ch. 121, §274; CODE OF IOWA, §§306.2, 313.2; GEN. STATS. OF KAN. 1949, §68-406; MO. REV. STATS. 1949, §227.020; GEN. STATS. OF N.C., §136-46; N.D. REV. CODE OF 1943, §24-0101; PURDON'S PA. STATS. ANN., tit. 36, §971; CODE OF LAWS OF S.C. 1952, §33-103; ALASKA LAWS 1957, ch. 152, tit. I, art. 1, §2.

[39] COLO. REV. STATS. 1953, §120-13-1; FLA. STATS. 1955, §§335.04, (3)(a) and (b); IDAHO CODE, §40-109(a); SMITH-HURD ILL. ANN. STATS., ch. 121, §§292, 352; MICH. STATS. ANN., §250.111; MISS. CODE 1942, §8021; GEN. STATS. OF N.C., §136-45; N.D. REV. CODE OF 1943, §§24-0101, 24-0402; BALDWIN'S OHIO REV. CODE, §5512.02; OKLA. STATS., tit. 69, §44.

[40] DEL. CODE ANN., tit. 17, ch. 1, §132(a); IDAHO CODE, §40-109(a); SMITH-HURD ILL. ANN. STATS., ch. 121, §350A; REV. STATS. OF ME. 1954, ch. 23, §5; MO. REV. STATS. 1949, §227.020; CODE OF LAWS OF S.C. 1952, §§33-101, 33-103; WIS. STATS. 1955, §84.025.

PLATE A

US 11 and 80 (State Highway 7) between Livingston and York, Alabama. In this State, State highways are designated by the State Highway Department with due regard to the public welfare.

and inter-community network of highways. The network of highways must be integrated in Illinois, serving interstate travel and interconnecting counties, cities, and various regional areas of the State. In Idaho the system is defined as comprising the principal highway arteries of the State, including connecting and principal highway arteries.

Finally, the objective in Delaware is a consistent, congruous, comprehensive and permanent system of State highways.

PROVISIONS PERTAINING TO GENERAL WELFARE OF JURISDICTION

As indicated in Table 5, a few jurisdictions have included in their statutes pertaining to the primary highway system rather generalized provisions to the effect that in designating the system, the common welfare of the people is to be considered.[41] Idaho statutes specify that consideration be given to the common welfare of the people of the State. In Delaware, the system is to "accommodate the greatest needs of the people, without regard to personal advantage or disadvantage, or bias toward any person or persons, community, political party or organization." North Dakota requires that full regard be given to the interest and well being of the State as a whole. Due respect is to be given to the public welfare in Alabama.

These provisions are helpful in setting forth the general purpose of the primary highway system, but provide no definite standards to guide the administrative body which designates the system.

PROVISIONS PERTAINING TO DEVELOPMENT OF STATE

Somewhat more specific are provisions found in five jurisdictions which require that development of the State be given consideration in designating the primary highway system.[42] All of these jurisdictions require that the development of natural resources be an objective in the selection of the primary highway system. Idaho also specifies that the relative importance of each highway to existing business as well as to industry and agriculture be considered. In North Carolina the development of agriculture, commerce, and natural resources is to be taken into account. Alaska law specifies that the network of highways comprising the system contribute to the development of commerce and industry, aid the

[41] CODE OF ALA. 1940, tit. 23, §34; DEL. CODE ANN., tit. 17, ch. 1, §132(a); IDAHO CODE, §40-121; N.D. REV. CODE OF 1943, §24-0102.

[42] IDAHO CODE, §40-121; N.M. STATS. 1953, §55-2-18; GEN. STATS. OF N.C., §136-45; N.D. REV. CODE OF 1943, §24-0102; ALASKA LAWS OF 1957, ch. 151, tit. I, art. 1, §2.

extraction and utilization of its resources, and otherwise improve the economic and general welfare of the people.

TRAFFIC AS A FACTOR IN DESIGNATION OF PRIMARY HIGHWAY SYSTEMS

Of the 22 jurisdictions including specifications or criteria in legislation pertaining to selection of a primary highway system, in only seven is traffic specifically mentioned.[43] Thus Idaho and North Dakota legislation specifies that statistics on existing and projected traffic volumes be considered when selecting State highways. The primary highway system in Illinois is to consist of highways serving the largest volume of traffic, and in New Mexico highways that will best serve traffic volumes are to be selected. In Pennsylvania and Tennessee, main-traveled roads are to be included in the system. Possible traffic is to be borne in mind by the Puerto Rico Director of Public Works in classifying roads. Possibly this type of provision may prove to be the most advantageous to the motoring public, the State and the highway officials. It provides a certain degree of flexibility that is desirable. Additionally, it may serve the same purpose as those provisions requiring that primary State highways serve population centers, main market centers, principal municipalities, etc., for naturally these areas will draw the heaviest traffic volumes. It may further serve the same purpose as provisions requiring the connection of county seats, but only when the county seat is also a population center, which, of course, is not always the case. This is undoubtedly a functional criterion.

FINANCIAL LIMITATIONS

A final category includes two States in which financial limitations are imposed on the selection of the primary highway system.[44]

The Idaho law specifies that the Board of Highways in determining which highways shall be part of the State highway system, shall take into consideration among other things, the financial capacity of the people of the State to acquire right-of-way and to construct, reconstruct and maintain State highways. The Maryland State Roads Commission is charged with the duty of selecting such a primary State highway system as can reasonably be expected to be completed with the funds provided.

MILEAGE LIMITATIONS

Although not strictly speaking a definition or description of the primary system, provisions restricting the number of miles that may be included in the primary system are mentioned here. Of the 51 jurisdictions having a primary highway system, only 11 have statutory limitations on the mileage that may be included as indicated in Table 6.[45] These limitations range from 4,200 miles in Louisiana to 12,000 in Indiana.

A number of these States have statutory authority to increase the length of the system under certain circumstances or at certain times or intervals. Thus, an increase of 500 miles was authorized in Indiana in 1937 and 1938. Nebraska may add 50 miles each year. Minnesota may increase its system mileage if necessary to obtain Federal-aid. North Dakota may increase its system mileage, but only for the purpose of constructing bypasses or alternate routes.

In 1955, the Louisiana legislature amended its classification statute, in order to provide for a primary system of 4,200 miles, a secondary system of 4,300 miles and a farm-to-market system of 6,750 miles, with a proviso to the effect that the total mileage of the three systems shall not exceed 15,750 miles. The overplus of mileage, (750 miles) according to the law, is for the purpose of adjustments that may become necessary from time to time within the sole discretion of the Board of Highways, working in conjunction with the police juries or municipalities. .

In most instances statutory mileage limi-

[43] IDAHO CODE, §40-121; SMITH-HURD ILL. ANN. STATS., ch. 121, §350a; N.M. STATS. 1953, §55-2-18; N.D. REV. CODE OF 1943, §24-0101; PURDON'S PA. STATS. ANN., tit. 36, §971; TENN. CODE ANN., §54-502; LAWS OF P.R., tit. 9, §8.

[44] IDAHO CODE, §40-121; ANN. CODE OF MD. 1951, art. 89B, §7.

[45] FLA. STATS. 1955, §335.04(3); SMITH-HURD ILL. ANN. STATS., ch. 121, §350(a); BURNS' IND. STATS. ANN., §36-2901; GEN. STATS. OF KAN. 1949, §68-406; LA. REV. STATS. 1950, §48:191 as amended, Laws of 1955, Act 40, §2; MINN. CONST., art. XVI, §2; MISS. CODE 1942, §8021; REV. CODES OF MONT. 1947, §32-1606(2); REV. STATS. OF NEB. 1943, §39-1310; N.D. REV. CODE OF 1943, §24-0101; CODE OF LAWS OF S.C. 1952, §33-103.

Table 6. Statutory Mileage Limitations of State Highway Systems

State	Mileage Limit	Remarks
Fla.	11,000	
Ill.	9,000–11,000	In unincorporated areas.
Ind.	12,000	May increase 500 mi in 1937 and 1938. 12,000 mi only stipulated until 1937.
Kan.	10,000	Except by Act of Legislature.
La.	4,200	Additional 750 mi allowed for adjustments in primary, secondary and farm-to-market systems.
Minn.	12,200	May exceed limit to obtain Federal aid.
Miss.	8,600	Additional mileage has been designated by Legislature.
Mont.	6,250	
Neb.	10,000	May increase limit 50 mi each year.
N. D.	7,700	May increase limit only to construct bypasses or alternate routes.
S. C.	10,000	

tations are not inflexible. A primary reason for their enactment is to forestall indiscriminate attempts to increase system mileage and needless overexpansion at the expense of proper maintenance of existing facilities.

On the other hand, the imposition of mileage limitations may, in some cases, interfere with the flexibility of a highway system. The normal development of a portion of a State, or the proper exploitation of a State's resources, may be obviated because of the lack of authority by a State highway department to provide adequate highway facilities.

JUDICIAL INTERPRETATION

There are a number of significant "ground rules" which the courts have recognized in legal contests concerning system and route locations. As early as 1927, the Georgia Supreme Court recognized that the system must serve as large a territory as possible, and it must include the main trunk line routes through the State. As between two alternative routes that would serve both these objectives equally well, the route presenting the fewer topographic and construction difficulties should be the route to be selected, the court said.[46]

About the same time, an Illinois court declared that safety, economy and convenience are factors to be considered in the selection of routes on the State system.[47] Other elements that are entitled to some consideration are:

(1) that the selected route should serve the State at large, and not a particular locality,
(2) that the cost to the traveling public be less, and
(3) that the route be safe for travel.[48]

A few years later, the judiciary of the same State recognized other factors in system designation: the relationship of the road in question to other roads on Statewide system; [49] the expense of future maintenance; future traffic; and the convenience of local residents as well as transient traffic.[50]

While the courts, in general, have been liberal in their interpretation of the highway official's problem in locating highways, they have been most strict on occasion. For example, where a proposed State highway was to run just inside the corporate limits of a county seat and not through the town as formerly, a North Carolina court held this to be no connection with the town as required by law, and ruled that the commission was without authority to adopt such route.[51] In a later case in Illinois, it was held that in selecting a route for a highway, the fact that one proposed route had been the principal and accepted means of travel between two points for 45 years raised the presumption that it was a most-direct and most-feasible route.[52]

[46] Jackson v. State Highway Dept., 164 Ga. 434, 138 S.E. 847 (1927).
[47] Hitt v. Dept. of Public Works & Bldgs., 336 Ill. 306, 168 N.E. 337 (1929).
[48] Wiley v. Dept. of Public Works & Bldgs., 330 Ill. 312, 161 N.E. 783 (1928).
[49] N.S. & M.R. Co. v. Ill. Commerce Commission, 354 Ill. 58, 188 N.E. 177 (1933).
[50] Dept. of Public Works & Bldgs. v. Pittman, 355 Ill. 482, 189 N.E. 491 (1934).
[51] Town of Newton v. State Highway Commission of North Carolina, 192 N.C. 1, 133 S.E. 522 (1926).
[52] Weber v. Dept. of Public Works & Bldgs., 360 Ill. 11, 195 N.E. 427 (1935).

SUMMARY

Since 34 jurisdictions have some kind of legal definition, description of or criterion for the selection of their primary highway systems, the question arises as to why the remaining 17 jurisdictions do not. Perhaps these 17 jurisdictions have found no real need for such provisions. In a recent Oregon decision, pertaining to the authority of the State Highway Commission to classify and reclassify State highways, the court noted that no definition of a State primary highway was included in the statutes, and took occasion to declare that such a highway was one so classified by the State Highway Commission.[53] In other words, classification was held to be a function of the State Highway Commission, and not of the courts. The same reasoning may apply in other States having no statutory provisions of the kind.

However, statutory descriptions or criteria may serve as a directive to the State highway department, indicating the legislature's intent in providing for establishment of a primary system. In those States wherein the legislature itself designated the system, no further description appears necessary. Generally speaking, none were found for States in this category. Where the legislature has delegated authority to designate the system to the State highway department, on the other hand, statutory provisions defining primary highways as roads connecting counties or county seats, principal municipalities, market centers, etc., or as arterials or interstate highways might be extremely helpful to the designating body in carrying out the legislative mandate. In any event, definitions, if included, should be sufficiently clearcut to prevent disputes arising as to their actual meaning.

Examination of Table 5 discloses that two States—Idaho and North Dakota—have included all or nearly all of these commonly found provisions. The Idaho provision is perhaps the most comprehensive and reads as follows:

> In determining which highways or sections thereof, the public interest requires shall be a part of the State highway system, the board (of highway directors) shall consider the relative importance of each highway to cities and villages, existing business, industry and enterprises and to the development of cities and villages, natural resources, industry and agriculture and be guided by statistics on existing and projected traffic volume. The board shall also consider the safety and convenience of highway users, the common welfare of the people of the State, and of the cities and villages within the State and the financial capacity of the State of Idaho to acquire rights-of-way and to construct, reconstruct and maintain State highways. * * *[54]

Another section of the statute defines the State highway system as comprising principal highway arteries, including highway arteries and extensions through cities and villages, and a road to every county seat in the State.[55]

North Dakota revised its highway law in 1953 to include, among other provisions, several sections pertaining to designation of the State primary system. These sections provide that:

> In designating, locating, creating and determining the several routes of the State highway system, the Commissioner (of Highways) shall take into account such factors as the actual or potential traffic volumes, the conservation and development of the State's natural resources, the general economy of the State and communities, and the desirability of fitting such system into the general scheme of the nation-wide network of highways.[56]

> The State highway system, consisting of main market, arterial and interstate public roads, as heretofore created, shall not exceed 7% of the entire road mileage of the State, whether such roads are township, county or State roads, and in no case shall such highway system exceed 7,700 miles in length.[57]

> In the selection and designation of highway systems, as provided for under this title, due consideration shall be given to those highways on which Federal-aid funds have been expended, and where practicable and justifiable, such Federal-aid highways shall be included in said systems.[58]

The provisions of these two States appear

[53] Harland v. State Highway Commission, 208 Ore. 167, 300 P.2d 412 (1956).

[54] IDAHO CODE, §40-121.
[55] *Id.*, §40-109(a).
[56] N.D. REV. CODE OF 1943, §24-0102.
[57] *Id.*, §24-0101.
[58] *Id.*, §24-0402.

to be comprehensive enough to serve as a rather general guide for the designating body. The objectives include the connection of geographical areas, traffic needs, the welfare of the people of the State, and the development of the State's resources. The system envisioned by these provisions would be functional and flexible, and thus in the interests of the State as a whole and the people residing therein.

DESIGNATION OF PRIMARY HIGHWAY SYSTEM

The practices utilized by legislative and administrative bodies in their selection of primary highway systems will be dealt with in this chapter. Is there any uniformity among the jurisdictions in designating their systems, or does each jurisdiction have its own method? Is one method of designation superior to another, or does it actually make any difference as long as the highway is where it should be?

EXCLUSIVE ADMINISTRATIVE DESIGNATION

In 27 jurisdictions, the highway authorities are authorized to designate the primary highway system, as noted in Table 7.[59] The functions of these administrative bodies, whose duties include the selection of the primary system, are similar. However, there is considerable variation in the wording of the pertinent statutes. In the majority, the highway department is simply authorized to designate a system of primary highways.[60] The North Carolina statute varies from the others to some extent, inasmuch as it specifies that affected counties, cities, and towns must be given an opporunity for a hearing if objections are made. However, the decision of the State Highway Commission is final. The Colorado statute specifies that the State highway system is to consist of the Federal-aid primary roads, the Federal-aid secondary roads, together with urban connections, plus an amount not to exceed five percent of the mileage of such systems which may be declared to be State highways by the State Highway Commission while not being a part of any Federal system. Such a provision does not necessarily restrict the State's authority since the State Highway Department actually exercises considerable discretion in the selection of these systems.

The highway departments' authority is curtailed to some extent in other States by mileage limitations and legislative specifications as to ultimate objective and, in many instances, the type of highway to be included, as was pointed out.

[59] CODE OF ALA. 1940, tit. 23, §34; ARIZ. REV. STATS., §18-106; ARK. STATS. 1947, §76-501; COLO. REV. STATS. 1953, §120-13-1; GEN. STATS. OF CONN. 1949, §969(c); DEL. CODE ANN., tit. 17, ch. 1, §132(a); FLA. STATS. 1955, §335.02; CODE OF GA. ANN., §95-1504; IDAHO CODE, §40-120(1-4); BURNS' IND. STATS. 1933, §36-107; CODE OF IOWA 1958, §312.2; GEN. STATS. OF KAN. 1949, §68-406; KY. REV. STATS., §177.020; REV. STATS. OF ME. 1954, ch. 23, §§5, 32; ANN. CODE OF MD. 1951, art. 89B, §2(B); ANN. LAWS OF MASS., ch. 81, §5:; REV. CODES MONT. 1947, § 32-1606(2); GEN. STATS. OF N.C., §136-47; N.D. REV. CODE, 1943, §24-0102; OKLA. STATS., tit. 69, §58; CODE OF LAWS OF S.C. 1952, §33-103; TENN. CODE ANN., §54-501; W.VA. CODE OF 1955, §1460; WYO. COMP. STATS. 1945, §48-105; ALASKA LAWS OF 1957, ch. 152, tit. I, art. III, §1; REV. LAWS OF HAWAII 1945, ch. 89, §4963(1); LAWS OF P.R., tit. 9, §§1, 5, 8.

[60] Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Kentucky, Maryland, Montana, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, Alaska, and Hawaii.

Table 7. Designation of Primary Highway System

Administrative			Legislative		Administrative and Legislative	Constitution
Ala.	Ind.	N. D.	Calif.	Ohio	Mich.[2]	Minn.
Ariz.	Iowa	Okla.	Ill.	Pa.	Mo.[3]	
Ark.	Kan.	S. C.	La.[1]	R. I.	Neb.[4]	
Colo.	Ky.	Tenn.	Miss.	S. D.	N. H.[4]	
Conn.	Me.	W. Va.	Nev.	Utah	N. M.	
Del.	Md.	Wyo.	N. J.	Va.	Ore.	
Fla.	Mass.	Alaska	N. Y.	Wash.	Tex.	
Ga.	Mont.	Hawaii			Vt.	
Idaho	N. C.	P. Rico			Wis.[5]	

[1] Legislature lays out routes, but State Board of Highways has 500 mi to make adjustments in the three systems in the State.
[2] Legislature authorizes a specified mileage; State Highway Commissioner lays out the highways.
[3] State Highway Commission may connect population centers (1,500 mi).
[4] Legislature adopted map prepared by State HighwayCommissioner.
[5] Also by special Legislative Highway Committee and approved by the Commission.

In addition to the jurisdictions which give their highway departments power to designate primary systems, there are four States which undoubtedly have the same objective in mind, but which do not mention a "system" of roads. They merely authorize their highway departments to designate State highways.[61] In Alabama, for example:

> The State Highway Department shall locate, construct, and maintain highways and State roads so as to connect each county seat with the county seat of the adjoining county by the most direct and most feasible route, by a permanent road, having due regard to public welfare, and to connect county seats of the several border counties at or near the State line, with a public road in the border State.

In Wyoming it is the State Highway Commission's duty, from time to time, to designate public highways to be known as State highways, etc. Again, a system, as such, is not specified.

Indiana and Iowa have what might be called validating laws in their present statutes. In Indiana, for example, the legislature has declared all highways previously designated (by the State Highway Commission) under a certain act providing for designation of a system of State highways, to be State highways. Similarly, in Iowa, the primary road system is to embrace the roads which have already been designated (by the State Commission) as primary roads under authority of a certain act of said legislature.

Puerto Rico uses a different approach by providing that all roads must be classified as first, second, or third class, according to the "width at level." The Secretary of Public Works is given authority to so classify existing roads, and "each newly constructed road."

Two other States in this category have vested authority to classify highways in the highway department, namely, Maine and West Virginia. Maine statutes specify that the State Highway Commission is to be the sole authority in the designation of State highways.[62] The Commission is further directed to classify all highways in the State as State highways, State-aid highways, third class highways or fourth class highways, "and may from time to time amend such classification." West Virginia may classify routes within primary and secondary road systems.

The Oregon State Highway Commission is authorized by law to classify and reclassify highways in the State system as primary or secondary.[63] Oregon's practices of classification will again be discussed in a subsequent section covering joint classification by legislatures and highway departments.

Additionally, Illinois, where the original system was designated by the legislature, has authorized its Department of Public Works to classify all public highways in the State into four systems: primary, secondary, municipal, and local.[64]

EXCLUSIVE LEGISLATIVE DESIGNATION

In a total of 14 jurisdictions, the legislature designates the primary highway system exclusively.[65] Generally speaking, routes to be included in the system are listed in the statutes, and in at least three States[66] the highway department is directed to locate the roads within specified control points. A recent decision of the New Jersey Supreme Court affirmed the authority of the State Highway Commissioner to select the particular highways within reasonable limits upon highway routes designated by statute.[67]

Virgina has been included in this category because the original primary system was designated by the legislature in 1918 (see Fig. 4). A 1922 act revised the system, listing the routes to be included. This system was validated in 1938 by an act which also authorized the State Highway Commission to add an additional 100 miles.[68]

[61] Alabama, Connecticut, Massachusetts, and Wyoming.
[62] All interested parties must be given opportunity to be heard.

[63] ORE. REV. STATS., §366.220.
[64] SMITH-HURD ILL. ANN. STATS. ch. 121, §346.
[65] DEERING'S CALIF. CODES, *Streets and Highways*, §5; SMITH-HURD ILL. ANN. STATS., ch. 121, §274; LA. REV. STATS. 1950, tit. 48, §191, as amended Laws of 1955, act 40, §2; MISS. CODE 1942, §8021; NEV. REV. STATS. ANN., §408-295 *et. seq.*; N.J. S. A., §27:6-1; MCKINNEY'S CONSOL. LAWS N.Y. ANN., book 24, art. 12, §340; BALDWIN'S OHIO REV. CODE, §5511.01; PURDON'S PA. STATS. ANN., tit. 36, §670-971; GEN. LAWS OF R.I. 1938, ch. 309, §21; S.D. CODE OF 1939, §28-0209-1; UTAH CODE ANN. 1953, §27-6-2; VA. CODE OF 1950, §§33-12(1), 33-26; REV. CODE OF WASH., §§47.04.020, 47.-16.010 through 47.16.200, 47.28.010.
[66] California, Louisiana, Washington.
[67] Burnett v. Abbott, 14 N.J. 291, 102 A.2d 16 (1954).
[68] LAWS OF VA. 1918, ch. 10; LAWS OF 1922, ch. 316; LAWS OF 1938, ch. 172.

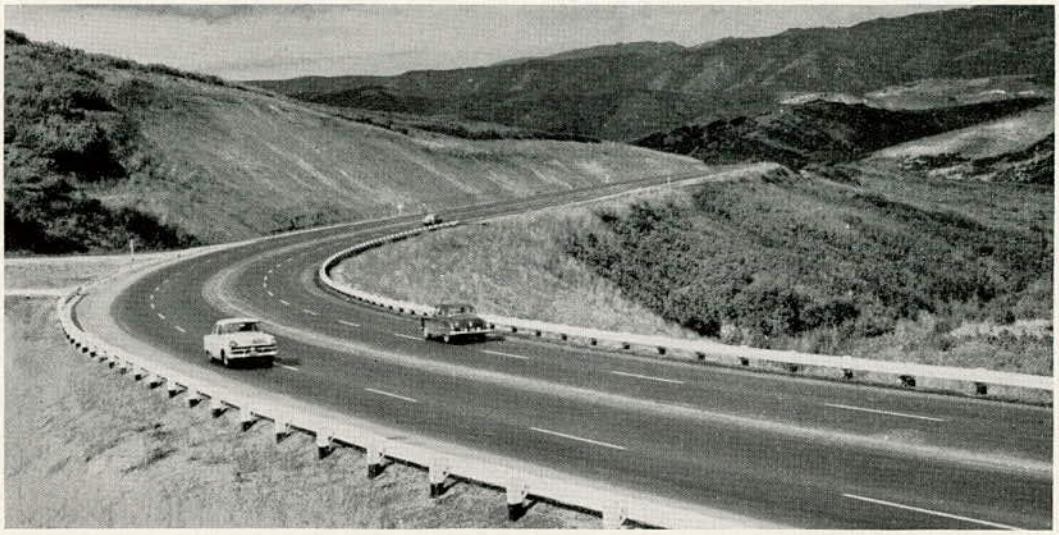


PLATE B

US 40 (State Highway 2) between Salt Lake City and Gorgoza, Utah. State highways in this State are designated by the legislature.

The statutes at the present time include the validating act:

> Except as the same shall be changed as hereinafter provided, the roads and bridges now comprising the State highway system, sometimes referred to as the primary system of State highways, shall continue to constitute and be known as the State highway system and the term "State Highway System" or "primary system of State highways" when used elsewhere in this Code or in any other act or statute shall refer to and mean such State highway system, sometimes called the primary system of State highways, as so constituted. * * *

The highway commission is also given authority to add routes to the system, and to transfer routes from the secondary to the primary system, but the total mileage of roads so transferred may not exceed 50 miles during any one year. Thus the highway commission at the present time actually has rather broad control over the system.

In other instances, where the legislature

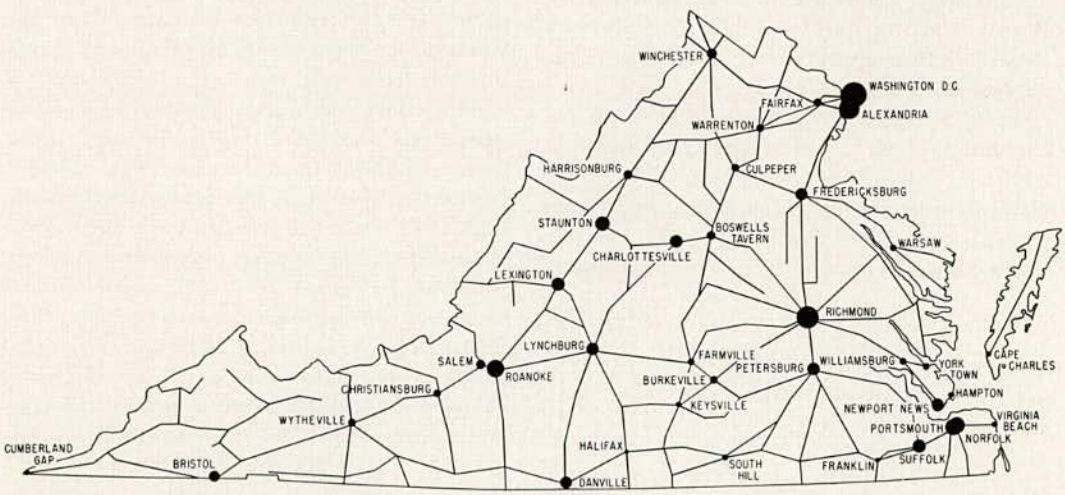


FIGURE 4

The act creating this first State highway system in Virginia (1918) specified that the indicated points be connected by State-administered roads.

itself designated the primary highway system, the highway authorities are authorized to add or delete highways under certain circumstances. This authority will be discussed in a later section.

ADMINISTRATIVE AND LEGISLATIVE DESIGNATION

In nine jurisdictions, the statutes provide for designation by both the legislature and the State highway department.[69]

In Michigan, "State Reward Trunk Line Highways" were originally designated by the legislature and are described in the statutes. These highways formed the nucleus of the State Trunk Line Highway System. Additionally, the Michigan legislature on at least four occasions designated specific routes as State trunk line highways.

Through the years the legislature has also permitted the State Highway Commissioner to make additions to the system. This was done by authorizing this official to designate State highways not to exceed 500 miles. At least five instances of such procedure were noted in the statutes. On one occasion the Commissioner was authorized to solicit the cooperation of the county road commissioners, district road commissioners, or township boards, as the case might be, for the purpose of determining the routes of the proposed highways. The other four sections specify that the Commissioner must obtain approval of the State Administrative Board and the State Highway Advisory Board before designating the new highways.[70]

In substance then, it appears that the original system was designated by the legislature, and although the State Highway Commissioner was given authority from time to time to add mileage to the system, the initial move came from the legislature. That body decided first whether the primary system mileage should be increased, and authorized the appropriate bodies to designate the new routes.

The Michigan statutes discussed above appear to have been superseded by Sec. 247.651 of the statutes, enacted in 1951, declaring that the State trunk line highway system consists of all roads, streets, and highways constituted State trunk line highways pursuant to State statutes.

In Missouri, the legislature has designated certain highways as comprising the primary State highway system. It has also authorized the State Highway Commission to designate approximately 1,500 miles of highways connecting the principal population centers.

The Missouri State Highway Commission appears to have considerable latitude in locating primary highways designated by the legislature, as evidenced by court decisions involving the commission's authority in this respect. Legislative designation, for example, specified that a certain State highway should go through the towns of Avalon and Tina. Another section directed the commission to comply with all Federal law in order to obtain Federal-aid for highways. The Bureau of Public Roads refused Federal-aid on the proposed highway, so the commission relocated the route, excluding the two towns mentioned. Suit was instituted by resident citizens and assessed taxpayers of the counties of Livingston and Carroll to enjoin the State Highway Commission from so doing.

The court held that, construing the two provisions together, the commission must locate and construct the highway through the towns specified, except on Federal aid highways where Federal funds could not be obtained on the location specified. In effect, the court held that if only State money was used, the termini designated by the legislature must be followed. But where Federal funds were involved, the State Highway Commission might in effect ignore the control points. Two justices dissented, on the ground that if the U.S. Congress ever extended Federal-aid to the whole State primary highway system in Missouri, it would overthrow the designation of the State pri-

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[69] COMP. LAWS OF MICH. 1948, §§247.651, 250.2, 250.101, 250.111, 250.121, 250.131, 250.142, 250.151, 250.161, 250.171, 250.181; MO. REV. STATS. 1949, §227.010; REV. STATS. OF NEB. 1943, §39-1302(25); N.H. REV. STATS. ANN., §§230.2, 230.4(1), 232.1, 233.1, 233.2; N.M. STATS. 1953, §§55-1-4, 55-2-18; ORE. REV. STATS., §366.220; VERNON'S CIV. STATS. TEX. 1948, arts. 6673-c, 6674-b; VT. LAWS OF 1957, ch. 245, §11; WIS. STATS. 1955, §§84.02(1), 86.18.

[70] The State Administrative Board is composed of the Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor General, Attorney General, State Highway Commissioner, and Superintendent of Public Instruction. (Comp. Laws of Mich. 1948, §17.1). The State Highway Advisory Board consists of five members appointed by the State Highway Commissioner with at least one member a resident of the Upper Peninsula. (*Id.*, §225.2(a)).

mary highway system by the legislature entirely.[71]

In another case, a certain degree of flexibility was allowed in determining what constituted "direction" in Missouri. In laying out a State highway designated by the legislature, the State Highway Commission proceeded to construct a new highway between the designated points instead of adopting a highway already in existence between the two points.

In an action to determine whether the State Highway Commission had complied with the statutory designation, which specified that the road should run "south and west" to a certain point, the court held that the language did not mean directly south or west. These were general directions which might be varied by the State Highway Commission to suit conditions existing at the time the highway was located.[72]

The situation in New Mexico appears to be that the legislature has, through the years, designated certain routes as a part of the primary highway system. But the State Highway Engineer may also designate State highways apparently under the provisions of the same act. Thus, "State highway," as used in this act, shall include any highway declared to be a State highway by an act of the legislature, or designated as such by the State Highway Engineer. Additionally, the State Highway Engineer, in a subsequent section of the statutes, is directed to select and designate the highways that would comprise a system of State roads, "which shall, as nearly as practicable, be such as will best serve the traffic needs and develop the resources of the State."

In Oregon, the State Highway Commission is authorized to select a system of State highways, which system is to include (in addition to such other highways as may from time to time be selected and adopted by the highway commission) those designated in the statutes.

The Texas legislature has designated as the State primary highway system all highways included in a plan prepared by the State Highway Engineer, pursuant to statutory direction.

Wisconsin statutes validate a variegated designation of State highways in that State, as follows:

> The system of highways known as the trunk highway system, heretofore selected and laid out by the Legislature, and by the State highway commission, and by special legislative State trunk highway committees, and approved by the commission, and as revised, altered, and changed by, and under authority vested by law in the State highway commission is hereby validated and confirmed, and designated the State trunk highway system, but without prejudice to the exercise of the power given to change such system, and all acts by which parts of the system were heretofore adopted, or declared to be trunk highways, are confirmed and validated.

The Wisconsin legislature has also authorized any county having a population of 250,000 or more to have its county board lay out a State highway in the county as well as a county highway. This, of course, is for the benefit of Milwaukee, the only county in the State with a population of this size.

In Nebraska, the maps prepared by the State Highway Commission, showing a proposed State highway system and filed with the clerk of the legislature, was adopted by the legislature as the State highway system.

The primary highway system in New Hampshire is described in the statutes as consisting of all existing or proposed highways designated on a map entitled "Primary State Highway System, 1945," prepared by the highway commissioner, and filed in the office of the Secretary of State.

Additionally, the New Hampshire statutes provide that all Class I highways are laid out by a commission appointed by the Governor and Council.[73] Class I highways consist of all existing or proposed highways in the primary State highway system, except all portions of such highways within the compact sections of cities or towns of 2,500 inhabitants and over.[74] Other statutory

[71] Logan v. Matthews, 330 Mo. 1213, 52 S.W.2d 989 (1932).

[72] Palmer v. State Highway Commission, 224 Mo. 1070, 69 S.W.2d 653 (1934).

[73] According to Pt. 2, Art. 60 of the New Hampshire Constitution, a council is composed of five officials from the State elected for the purpose of advising the Governor in the executive functions of government.

[74] All further references to Class I highways in New Hampshire will be as State highways to avoid any ambiguity.

provisions elaborate on this procedure. The Governor, with the advice of the Council, determines whether there is occasion for laying out a State highway in a location proposed by the State Commissioner of Public Works and Highways. If a need is found for such a highway, the Governor appoints a three-man commission which lays out the highway.

There is some apparent ambiguity here, in that it is difficult to tell just who determines the necessity for laying out a State highway. In some instances, the Governor and Council may determine this matter on their own initiative. Apparently, sometimes the Commissioner of Public Works and Highways makes the decision. In some cases the Governor and Council act only on the recommendations of the Commissioner of Public Works and Highways and in others, the commission appointed by the Governor and Council is the final arbiter in this respect. It seems logical to assume that the procedure is a combination of all of these methods.

In Vermont, where the system is composed of highways designated by the legislature, a 1957 revision provides, among other things, that State highways shall be those highways designated as such on a map entitled, "Vermont State Highways as of January 1, 1957," filed in the office of the Secretary of State. It is further provided that the map shall be revised biennially by the State Highway Board to reflect any additions or deletions made by the board, as directed by the statute. The additions referred to are State-aid highways which, if improved with a better than gravel surface, the State Highway Board may take over upon petition of the selectmen of the town in which such highway is located, and subject to approval of the Governor.

CONSTITUTIONAL DESIGNATION

Out of the 51 jurisdictions, only in Minnesota is the primary highway system designated in the constitution. Under a recent amendment to the constitution, the primary highway system was reestablished to consist of the original 70 routes originally laid out in the constitution, plus those highways added by the legislature prior to the effective date of the amendment, July 1, 1957.[75]

Both the original and the revised provision specify that there is to be no deviation from the starting points or termini set forth in said routes, nor from the various villages and cities named therein through which such routes pass. However, the more specific and definite location of the routes is to be fixed and determined "by such boards, officers or tribunals, and in such manner, as shall be prescribed by law."

The constitutional provision also authorizes the State legislature to add by law new routes to the system, which it has done from time to time, and directs the Commissioner of Highways to "specifically and definitely" locate the additional routes.[76]

The concept of a system of highways, as such, or the matter of classification generally, is mentioned in only a handful of State constitutions.[77] For example, the Alabama constitution authorizes "highways" and "State trunk roads." California provides for a "system of State highways," and aid for "any county highway." Although Kansas provides only for a "State system of highways," this has been construed to be broad enough to authorize the classification of all highways in the State and to provide for their construction and maintenance either by the State, its political subdivisions, or any combination of them as the State may deem proper.[78]

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

The West Virginia constitution authorizes the establishment of both county roads and "a system of State roads," the latter to connect county seats. Wyoming does not mention systems at all, but provides that "the Legislature shall have the power to

[75] MINN. CONST., art. 16, §2.
[76] MINN. STATS., §160.67.
[77] ALA. CONST., Amend. XI; CALIF. CONST., art. IV, §36; KAN. CONST., art. XI, §9; LA. CONST., art. VI, §19; MICH. CONST., art. VIII, §26; W.VA. CONST., art. VIII, §24, art. XIV; and WYO. CONST., art. 16, §9.
[78] State ex. rel. Arn, Att. Gen. v. State Commission of Revenue and Taxation, 163 Kan. 240, 181 P.2d 532 (1947).

provide for the construction and improvement of public roads and highways in whole or in part by the State, either directly or by extending aid to counties."

MAP OF PRIMARY SYSTEM

In connection with the designation of the primary highway system, it is interesting to note that 37 jurisdictions have legislative provisions directing that a map be prepared, generally by the State highway authorities, showing such system.[79]

In most of the 37 jurisdictions the map is required to show only the primary highway system, although in 11 jurisdictions all roads are to be included; [80] in Arkansas, both the primary and secondary systems; in New Jersey, State and county highways; and in Pennsylvania all data are deemed necessary.

These maps may be filed in the office of the State highway department, as in 11 States,[81] with the county as in five,[82] with the Secretary of State in four,[83] or in a conspicuous place in the State Capitol as in Idaho. Copies of Georgia and Wisconsin maps must also be furnished the counties concerned. Legislation in ten States definitely indicates that the maps are for publication or distribution.[84] Distribution is free in Indiana. In Illinois and Indiana maps may be sold at cost. Legislation in the remaining jurisdictions does not indicate where the maps are filed, or whether they are published or distributed.

Obviously, maintaining an up-to-date map showing the complete primary highway system is desirable as a means of showing at a glance the complete picture. An official map, showing all highways of the State, would be a practical means of indicating where the responsibility lies for the many highways and routes in the State. A map of the primary system should be kept in the office of the State highway department, with a copy on file in an appropriate office of the county government.

Such a map should be revised and brought up to date periodically to reflect any changes or revisions in the system or systems shown. This might be a more difficult responsibility than the original preparation of the map, but absolutely essential if the map is to mean anything. Legislation in at least seven States wherein preparation of a map is obligatory requires that such maps be kept up to date.[85]

SUMMARY

From this analysis of legislation pertaining to designation of the primary highway system, it is obvious that the administrative method is the most popular. Twenty-seven jurisdictions use this method exclusively, as indicated in Table 7 (see Fig. 5).

The next most commonly used procedure is designation by the legislative body. Fourteen jurisdictions use this method exclusively. A total of nine States have a combination method under which both the legislature and an administrative body designate highways to be included in the primary highway system. This administrative body is the State highway department in all but one, New Hampshire, where the Governor designates the system. In Minnesota the primary or trunk line system is set forth in the State Constitution with the legislature also authorized to designate highways to be included in the system.

Which is the ideal method, or is there one procedure superior to all others in selecting routes to be included in the primary high-

[79] CODE OF ALA. 1940, tit. 23, §13; ARIZ. REV. STATS., §18-106(1); ARK. STATS. 1947, §§76-223, 76-501; GEN. STATS. OF CONN., 1949, §2255; DEL. CODE ANN., tit. 17, §117; FLA. STATS. 1955, §334.24(1)(a); CODE OF GA. ANN., §§95-1504, 95-1608; IDAHO CODE, §40-121; SMITH-HURD ILL. ANN. STATS., ch. 121, §294; BURNS' IND. STATS., §36-2914; KY. REV. STATS., §§176.050(f), 176.055(1); LA. REV. STATS. 1950, §48:348; REV. STATS. OF ME. 1954, ch. 23, §5; ANN. CODE OF MD. 1951, art. 89B, §§3, 7; ANN. LAWS OF MASS., ch. 81, §1; MINN. STATS. ANN., §161.03(8); REV. CODES OF MONT. 1947, §32-1614; NEB. LAWS 1957, Legis. Bill No. 442, §24; NEV. LAWS 1957, ch. 370, §§38, 55(1); N.H. REV. STATS. ANN., §230.2; N.J. S. A., §27:1-13; N.M. STATS, 1953, §55-2-18; MCKINNEY'S CONS. LAWS OF N.Y., Book 24, art. 12, §§343, 345; 1957 SESSION LAWS OF N.C., S.B. No. 28, §11; N.D. REV. CODE OF 1943, §24-0107; BALDWIN'S OHIO REV. CODE, §§5511.01, 149.17; ORE. REV. STATS., §366.475; PURDON'S PA. STATS. ANN., tit. 36, §670-203, tit. 71, §515(e); S.D. CODE 1939, §28.0209-1; TENN. CODE ANN., §54-113; VERNON'S TEX. CIV. STATS., art. 6670; VT. STATS. 1947, §6255; LAWS OF 1957, House Bill 245, §§5(a)(g), 11; VA. CODE OF 1950, §§33-30, 10-124(a); WIS. STATS. 1955, §84.02(5)(12); WYO. COMP. STATS. 1945, §48-110; REV. LAWS OF HAWAII 1945, ch. 120, §6121; LAWS OF P.R., tit. 23, §11.

[80] Delaware, Florida, Illinois, Kentucky, Massachusetts, Oregon, Tennessee, Texas, Wyoming, Hawaii, and Puerto Rico.

[81] Alabama, Arkansas, Connecticut, New Mexico, Ohio, Tennessee, Texas, Vermont, Virginia, Wisconsin, and Wyoming.

[82] Illinois, Maryland, Montana, North Carolina, and South Dakota.

[83] Georgia, New Hampshire, New York, and North Dakota.

[84] Arizona, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Minnesota, Oregon, and Pennsylvania.

[85] Idaho, Montana, Nebraska, New York, Ohio, Texas and Vermont.

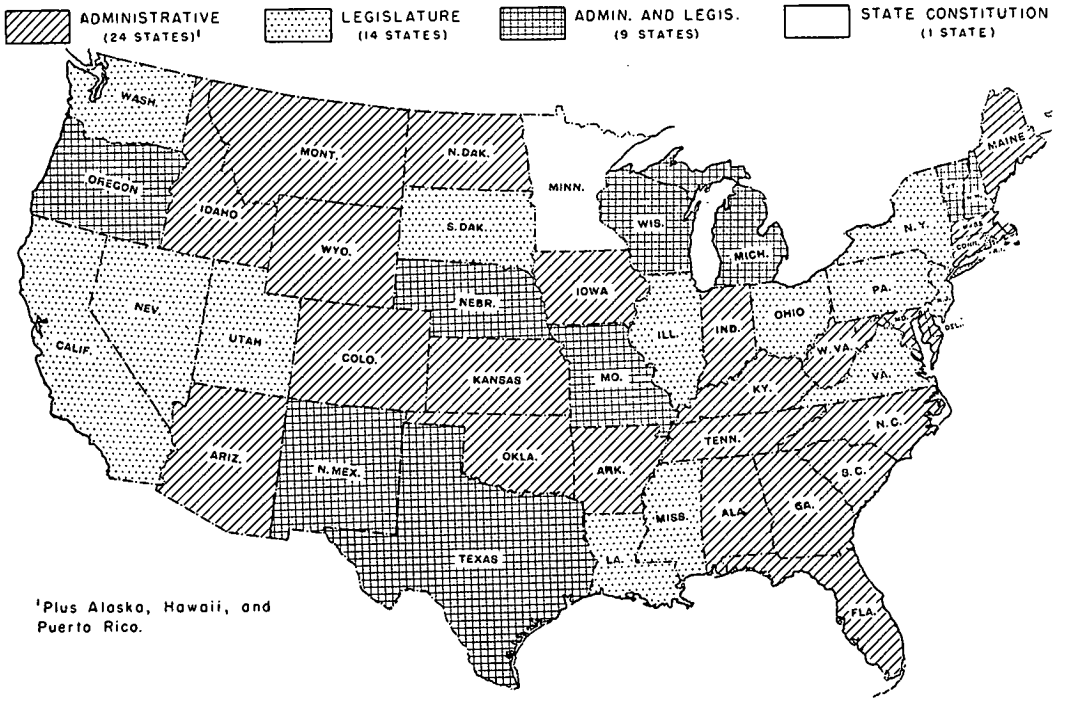

FIGURE 5

Who designates State highway system.

way system? At first glance, one might conclude that the highway department is the logical body to be given this important responsibility. The engineering talent of the administrative body definitely have the technical skill, experience, and data on which to base conclusions as to where these main highways should be located. They know the best routes from a topographic standpoint. They can locate the shortest route, incorporating all possible safety features. They also have data, based on extensive studies of travel habits, which enable them to take traffic volumes into consideration. All of these factors present an impressive case for designation by the highway engineers.

On the other hand, a highway system has to take into consideration many political features, or in more general language, the human element. Perhaps in this connection, the legislature, elected by the people of the State is more responsive. If the legislature, in adopting new routes, acts upon the recommendations of the highway authorities, which is presumably the case in most instances, it may be that this is a means of achieving a blend of engineering and political skill which would be wholly desirable.

Perhaps a combination method might be desirable. The legislature might include a general outline of the primary system in the law, directing the highway authorities to select the actual routes and their detailed location, setting up the legislative standards for such a selection.

As a matter of fact, one is confronted with a *fait accompli* in this connection, since in most instances the primary highway systems are well established, and only additions, deletions and changes in location are of importance at this time. Authority of the several jurisdictions in this respect will be discussed in a subsequent section.

ADDITIONS TO PRIMARY HIGHWAY SYSTEM

An important statutory element concerns itself with the power to add to, or modify, the established State primary system, or to delete sections thereof. Changes in land-use patterns, traffic volumes, governmental activities and other developments, including acts of God, may make some flexibility in the system highly desirable. Legislative provisions pertaining to these three functions, together with a discussion of what the courts have had to say on the subject, will be discussed in this and the two ensuing sections.

Every State has made additions to its primary system. Table 8 indicates the rural mileages of each system in 1923 and 1955, as well as the net change in mileage for each State. It will be noted that in a few instances the mileage has decreased rather than increased. Some of these decreases are attributable (in Colorado and Louisiana) to the fact that primary and secondary highways were not reported separately prior to 1934. In Montana, almost three thousand miles were returned to a local road status in 1943. Substantial mileage decreases in Rhode Island (some 300 miles in 1938) and Vermont (approximately 3,000 miles in 1930) are probably due to similar situations.

The over-all mileage of the primary systems in the 48 States increased substantially between 1923 and 1955—from 251,611 to 386,611 miles, a 53.7 percent increase. There appears to be no consistent pattern of increase, however. The system mileage in 10 States has more than doubled, for example,[86] while, in the same number, increases totaled less than 25 percent,[87] and in a few States, as previously noted, the mileage has actually decreased.

Examination of the mileage shown for the two years indicates that there has been considerable flexibility in system designation. The following sections will discuss the legal authority under which this has occurred.

Statutory provisions pertaining to additions to primary highway systems were found in 47 of the 51 jurisdictions having such a system.[88] (See Table 9.) In the majority, such authority has been delegated to the highway department. Legislative provisions to this effect were found in 31 jurisdictions.[89] In six States, the legislature itself determines what additions should be made, presumably acting at least to some extent on the recommendations of the State highway department.[90] In New Hampshire authority to make additions is delegated to the Governor and Council, while, in the remaining nine States, additions are made in some instances by the legislature, with the State highway department also being given authority to add routes, generally under certain specified circumstances.[91]

For purposes of discussion, statutory provisions pertaining to additions to the primary highway system have been isolated to indicate the scope of authority, ranging from those in which the highway authorities have what might be termed blanket authority to those where the Legislature has retained this authority for itself. (See Table 10.)

BLANKET AUTHORITY

In at least 12 jurisdictions, the highway department appears to have been given blanket authority to make additions to the system.[92]

[86] Arizona, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, South Carolina, and Texas.

[87] Idaho, Massachusetts, Missouri, New Hampshire, New York, Oregon, Pennsylvania, South Dakota, Washington, and Wisconsin.

[88] No provisions were found for Kentucky, Tennessee, Hawaii, and Alaska, but, since the highway departments in these four jurisdictions designate the system itself, they would presumably be permitted to make such additions as might be considered necessary or desirable.

[89] Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Texas, Virginia, West Virginia, Wisconsin, Wyoming, and Puerto Rico.

[90] California, Minnesota, Mississippi, Nevada, Rhode Island, and Washington.

[91] Louisiana, Michigan, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Utah, and Vermont.

[92] ARK. STATS. 1947, §76-501; DEL. CODE ANN., tit. 17, §133; IDAHO CODE, §40-120(1-4); SMITH-HURD ILL. ANN. STATS., ch. 121, § 274; ANN. CODE OF MD. 1951, art. 89B, §2(b); N.M. STATS. 1953, §55-2-18; GEN. STATS. OF N.C., §136-54; ORE. REV. STATS., §366.215; VERNON'S TEX. CIV. STATS., 1948, art. 6674q 4(c); W.VA. CODE OF 1955, § 1460; WYO. COMP. STATS. 1945, §48-105; LAWS OF P.R., tit. 9, §8.

Table 8. Summary of Mileage of State Primary Highway Systems (Rural) 1923–1955[1]

State	Mileage			Increase or Decrease (%)
	1923	1955	Increase or Decrease	
Ala.	3,958	7,101	3,143	79.4
Ariz.	1,891	4,111	2,220	117.4
Ark.	6,415	9,421	3,006	46.9
Calif.	6,400	12,466	6,066	94.8
Colo.	8,923	7,615	−1,308	−14.7
Conn.	1,780	2,422	642	36.1
Del.	351	462	111	31.6
Fla.	3,509	8,791	5,282	150.5
Ga.	6,236	13,605	7,369	118.2
Idaho	4,071	4,490	419	10.3
Ill.	4,818	10,477	5,659	117.5
Ind.	3,819	9,812	5,993	156.9
Iowa	6,646	8,635	1,989	29.9
Kan.	6,696	9,532	2,836	42.4
Ky.	6,500	17,620	11,120	171.1
La.	7,000	3,806	−3,194	−45.6
Me.	1,456	3,039	1,583	108.7
Md.	2,096	4,390	2,294	109.4
Mass.	1,477	1,665	188	12.7
Mich.	6,582	8,283	1,701	25.8
Minn.	6,974	10,272	3,298	47.3
Miss.	5,400	9,155	3,755	69.5
Mo.	7,640	7,920	280	3.7
Mont.	7,957	5,587	−2,370	−29.8
Neb.	5,742	9,673	3,931	68.5
Nev.	2,704	2,144	−560	−20.7
N. H.	1,367	1,483	116	8.5
N. J.	1,030	1,248	218	21.2
N. M.	7,963	10,937	2,974	37.3
N. Y.	11,260	12,139	879	7.8
N. C.	6,100	10,969	4,869	79.8
N. D.	4,860	6,245	1,385	28.5
Ohio	10,465	15,922	5,457	52.1
Okla.	5,556	10,097	4,541	81.7
Ore.	4,340	4,503	163	3.8
Pa.	10,718	12,855	2,137	19.9
R. I.	762	636	−126	−16.5
S. C.	4,015	8,150	4,135	103.0
S. D.	5,542	6,487	945	17.1
Tenn.	4,618	7,655	3,037	65.8
Tex.	16,668	47,241	30,573	183.4
Utah	3,132	4,853	1,721	54.9
Vt.	4,453	1,854	−2,599	−58.4
Va.	4,399	7,645	3,246	73.8
Wash.	3,076	3,807	731	23.8
W. Va.	3,532	4,519	987	27.9
Wis.	7,524	9,996	2,472	32.9
Wyo.	3,190	4,876	1,686	52.9
Total	251,611	386,611	135,000	53.7

[1] "Highway Statistics, Summary to 1955," U.S. Bur. Pub. Roads, 1957, p. 107. Urban data not available until 1934.

Some of the provisions in this category are a little more detailed than others, inasmuch as they specify that the public interest must be considered in making additions.[93] Other States include provisions for revisions and relocations, as well as additions to the system. But however worded, the intent is the same—the State highway department may use its discretion in making additions to the primary system.

PUBLIC NOTICE OR HEARINGS REQUIRED

In a second group of States, statutory provisions, permitting the State highway department to make additions to the primary system, include a proviso to the effect that public notice must be given or a public hearing must be held.[94] For example, interested parties in Maine must be given an opportunity to be heard on the designation of a State highway, following notice by publication. The county board may appear before the State Highway Commission in Arizona and be heard in the matter of the Commission's proposal to designate a State highway.

An Arizona case upheld the right of State highway authorities to decide which highways shall be added to a State primary highway system. In 1927, the Arizona State Legislature appropriated $150,000 to improve a certain State highway. Thereafter, the State Highway Commission began construction of a highway located some 15 miles south of the highway, for which the legislature had appropriated the $150,000.

Suit[95] was brought to enjoin the State Highway Commission from locating a new route and from expending the appropriated funds thereon. The court held that Sections 20 and 21 of Chapter 2 of the Highway Code[96] gave the State Highway Commission the power to add to, change, or abandon any part of the State primary highway system. The court also ruled that the State Highway Commission could abandon the

[93] Idaho, Illinois, and North Carolina.

[94] ARIZ. REV. STATS. §§18-151, 18-154; GEN. STATS. OF CONN. 1949, §969(c), LAWS OF 1957, P.A. 513; FLA. STATS. 1955, §335.04(3)(c), *as amended,* Laws of 1957, ch. 57-407; REV. STATS. OF ME. 1954, ch. 20, §19, ch. 23, §38; ANN. LAWS OF MASS., ch. 81, §5; REV. CODES OF MONT. 1947, §32-1614; BALDWIN'S OHIO REV. CODE, § 5511.01; S.D. CODE OF 1939, §28.0210; WIS. STATS. 1955, §84.02(3).

[95] Rowland v. McBride, 35 Ariz. 511, 281 P. 207 (1929).

[96] Now §§18-151, ARIZ. REV. STATS.

Table 9. Legal Authority to Add to Primary Highway System

Highway Department May Add				Legislature Adds	Legislature and Highway Department May Add	Governor
Ala.	Ill.	Mont.	Tex.	Calif.	La.	N. H.
Ariz.	Ind.	Neb.	Va.	Minn.	Mich.	
Ark.	Iowa	N. Mex.	W. Va.	Miss.	N. J.	
Colo.	Kan.	N. C.	Wis.	Nev.	N. Y.	
Conn.	Ky.[1]	N. D.	Wyo.	R. I.	Pa.	
Del.	Me.	Ohio	Alaska[1]	Wash.	S. C.	
Fla.	Md.	Ore.	Hawaii[1]		S. D.	
Ga.	Mass.	Tenn.[1]	P. Rico[2]		Utah	
Idaho	Mo.				Vt.	

[1] No specific provision, but since highway department is charged with the duty of designating the system, it is presumed that it may add thereto.
[2] Secretary of Public Works to classify each newly constructed road.

road designated by the legislature for improvement, after such improvement had been made. It refused to require the State Highway Commission to make the improvement along the designated highway, holding that the legislature intended to repose in the Commission broad discretion in designating State highways, in order that these highways might be wisely and skillfully located, so as to tap the different communities of the State and afford facilities for the greatest number of the State's citizens; also that such roads might be upon the most available routes for permanence and ease of travel. Unless the Commission's action was shown to be clearly arbitrary or capricious, the court would not interfere. However, the $150,000 appropriated for improvement of a specific highway in this particular instance could not be used to construct the new highway designated by the State Highway Commission.

A public hearing is necessary in Connecticut, Florida, Massachusetts, Ohio and South Dakota before the State highway department may add routes to the system. No additions may be made in Montana until "further investigation, or hearings" are held in the county in which additions are proposed.

Table 10. Analysis of Statutory Authority of State Highway Departments to Add to Primary Highway System[1]

Blanket Authority to Make Additions		To Meet Requirements of Federal-Aid Highway Laws	To Afford Connections With Other Primary Highways		Public Notice and/or Hearing Required		Mileage Limitations	Miscellaneous Provisions
Ark.	N. C.	Ala.	Ind.	N. J.	Ariz.	Mont.	Kan.	Ga.
Del.	Ore.	Colo.	Iowa	Pa.[2]	Conn.	Ohio	Mich.[2]	Mo.[2,3]
Idaho	Tex.	Okla.[4]	La.[2]	S. C.[2]	Fla.	S. D.	Neb.	N. H.
Ill.	W. Va.	S. C.[2]	Mich.[2]	S. D.[2]	Me.	Wis.	N. D.	N. Y.
Md.	Wyo.	Utah			Mass.		Ohio	S. C.[2]
N. Mex.	P. Rico						Va.[2]	P. Rico

[1] Kentucky, Tennessee, Hawaii, and Alaska statutes include no specific authority to add routes, but since State Highway Department designates the system, it is presumed that that it may add thereto.
[2] The State legislature has also added routes from time to time.
[3] Constitutional provision.
[4] Judicial decision.

PLATE C

US 99 (State Highway 4) north of San Fernando, California. A well-planned State highway system facilitates interconnection between the major regions of a State, even through rugged terrain.

The Wisconsin provision is considerably more detailed and perhaps more involved than the others included in this category, and may be of interest for that reason:

> Changes may be made in the State trunk system from time to time by the commission, if it deems that the public good is best served by making such change. The commission, in making such changes, may lay out new highways by the procedure under this subsection. Due notice shall be given to the localities concerned of the intention to make changes or discontinuances, and if the change proposes to lay a highway via a new location and the distance along such deviation from the existing location exceeds 2½ miles, then a hearing in or near the region affected by the proposed change shall be held prior to making the change effective. Such notice shall also be given to the State conservation commission and to the State soil conservation committee by serving a copy upon the conservation director and by serving a copy upon the secretary of the State soil conservation committee either by registered mail or personally. Whenever the commission decides to thus change more than 2½ miles of the system such change shall not be effective until the decision of the commission has been referred to and approved by the county board of such county in which any part of the proposed change is situated. A copy of the decision shall be filed in the office of the clerk of each county in which a change is made or proposed. Where the distance along the deviation from the existing location exceeds 5 miles the change shall constitute an addition to the State trunk highway system. The pre-existing route shall continue to be a State trunk highway unless the county board of each county in which any part of the relocation lies and the State highway commission mutually agree to its discontinuance as a State trunk highway. Whenever such county board or boards and the State highway commission cannot so agree the State highway commission shall report the problem to the next ensuing session of the Legislature for determination.

There are several elements included in this rather lengthy provision. First, as noted above, the public good must be served by the change. The localities wherein changes are to take place must be duly notified. Any changes deviating from an existing route by five miles are considered additions to the primary system. The language of this provision is slightly ambiguous in that, in the event a "change" involves a deviation of over 2½ miles from an existing route, a public hearing must be had, and the change must have the approval of the county in which the change is made. Does

this mean that any additions are subject to the approval of the county concerned or does the provision apply only to relocations? If so, this is one of the few States in which the State highway department does not have the final say in matters of this kind.

In all cases (with the possible exception of Wisconsin), the determination of the State highway department appears to be final. A public hearing on the matter of adding certain routes to the primary system seems desirable, both from the standpoint of public relations and the desirability of uncovering any valid arguments against the addition. A major objection, of course, is that a great deal of time is consumed in arranging and conducting such hearings at a time when traffic conditions dictate that additions be made promptly. Similar requirements for public hearings will be noted in later sections of this report in connection with relocations or alterations, and with deletions from the system. Perhaps the best solution would be to include a proviso in the enabling statutes requiring either that a public hearing be held if requested, or that an opportunity be extended to interested parties for such proceedings.

ADDITIONS TO AFFORD CONNECTIONS WITH OTHER PRIMARY HIGHWAYS

If the primary highway system is to be a statewide system of interconnected highways, as it is frequently described, it is essential that connections between various segments be maintained. Existing connections are sometimes severed by the relocation of one segment to the extent that it no longer intersects an existing primary road. It is also of prime importance that access to important cities and towns, or connections between such cities or towns, be facilitated, and that distances between such points be as direct as possible. To provide for these contingencies, at least eight States have enacted legislation authorizing the State highway department to add routes to, or lengthen existing routes in, the existing system when necessary to afford connections with other primary highways.[97] (See Table 10.)

Pennsylvania, for example, may lengthen (or shorten) primary highways in order to provide connections with other State highways which have been changed so that the two roads no longer intersect. In New Jersey, routes may be added if in continuation of, connecting with, and in addition to, routes designated by the legislature. Indiana has a more involved provision, the pertinent portions of which are as follows:

> In making additions to the State highway system no county highway shall hereafter be added to such system unless it bears an average daily traffic of at least 200 vehicles for the length thereof proposed to be added to such system: Provided, That such limitation shall not be applicable to links connecting a highway now in the State highway system with another highway in such system, whenever in the opinion of the commission it is desirable that such link be incorporated in the State highway system: Whenever funds are available for the maintenance thereof, the State highway commission shall add to and incorporate in the State highway system any county highway having an average daily traffic of 400 vehicles or more, which highway in the opinion of the commission would make a desirable addition to the State highway system. (36-2901)

What this boils down to, in connection with the topic here under consideration, is that no county highway carrying an average daily traffic of less than 200 vehicles may be added to the system unless considered a desirable link in the primary system. This provision seems to conflict, to some extent, with another section of the statutes which appears to give the State Highway Commission what amounts to a blank check, subject to approval of the governor, with respect to adding to the primary system. (36-107)

Additionally, the Indiana provision makes a special point of specifying that county highways bearing traffic of over 400 vehicles per day *shall* be added to the system. This, however, is qualified to some extent by two phrases—"whenever funds are available" and "which highway in the opinion of the commission would make a de-

[97] BURNS' IND. STATS. ANN., §§36-107 and 36-2901; CODE OF IOWA, §313.2; LA. ACTS OF 1955, Act. No. 40, §192(c); MICH. COMP. LAWS 1948, §250.2; N.J. S. A., §27:7-5; PURDON'S PA. STATS. ANN., tit. 36, §670-218; CODE OF LAWS OF S.C. 1952, §33-106; S.D. CODE OF 1939, §28.0210.

sirable addition to the State highway system."

Louisiana may also add parish or municipal roads needed to complete a necessary segment of an established primary highway, subject to the availability of funds, and provided that "said new roads taken into said system will not necessarily delay the needed construction and maintenance of highways in the three systems (primary, secondary and farm-to-market)."

The South Carolina State Highway Department may add to the State primary system any sections or connections which, in its judgment, may be necessary to the proper development of the Federal-aid or State primary highway system.

A Michigan provision lays out the termini of State highways in 10 different divisions. At the end of division 10 is the following proviso:

> . . . Provided, that the above designated trunk line highways not heretofore established or as such trunk lines are changed by the provisions of this act, or such additional trunk line highways as may be necessary to close gaps in important main highways, portions of which have been established under the provisions of this act, or to give each county its full quota of trunk line mileage, either as main lines or branches from the main lines, may be laid out as follows, to-wit: Upon petition of any county through its board of county road commissioners in counties under the county road system or through its board of supervisors in other counties, or upon his own action, the State highway commissioner shall make preliminary surveys and such other investigations as he shall deem necessary of one or more routes for State reward trunk line highways, through such county. After an investigation, and within a reasonable time, the State highway commissioner shall submit to the county road commissioners, boards of supervisors, good roads district commissioners or township boards, as the case may be, maps showing feasible routes and approximate estimates of cost of building over each of said routes, and thereupon the said board shall decide upon one (1) of the said routes which shall then be known as a part of the State reward trunk line highway system. Should said board fail to decide upon a route within a reasonable time, the State highway commissioner shall then designate the route and such route so designated shall then be known as and become a part of the State reward trunk line highway system. . . .

At first glance, this provision would appear to permit the highway authorities to add primary highways to the system when necessary to close gaps in important main highways. However, a 1914 court decision held otherwise.[98] Under the provisions of this act, the Branch County Road Commissioners took appropriate action to lay out a new highway. They then applied for State reward, but the State Highway Commissioner contended that this provision specified a separate method for laying out additional State highways, other than those mentioned in the 10 divisions.

The court held that the system was confined exclusively to these highways included in the 10 divisions, that the legislature did not intend to define the exact course of each highway, but had indicated the general direction by referring to various cities along the proposed route. Since the greater part of the burden of improving these highways fell on the counties, said the court, and there was more than one route between two points, the county should have a voice in selecting the route for the proposed highway. The above provision merely enabled the State Highway Commission to have the final say in any dispute as to the specific route. In effect, the court ruled that this was not an additional method of laying out highways, but merely machinery for settling a dispute, if such should arise.

Additions in Iowa and South Dakota may be made for the purpose of affording access to, or connecting, cities, shortening distances, etc. Specifically, the South Dakota provision authorizes changes or additions for the purpose of:

> . . . shortening the system distances between the interconnected county seats and connected cities of 750 or more population, or to make continuous the route of any State trunk highway through any city over twenty-five hundred population . . .

Notice of such changes or additions must be given by publication, and a public hearing must be held.

The Iowa provision authorizes the State Highway Commission to add roads to the primary road system for the purpose of affording access to cities, towns or State

[98] Luce v. Rogers, 181 Mich. 599, 148 N.W. 381 (1914).

PLATE D

Wilbur Cross Highway (State Highway 15) in Connecticut, at the Massachusetts State line. State highways may serve to connect population centers in adjoining States.

parks, for the purpose of shortening the direct line of travel on important routes, or to effect connections with interstate roads at the State line. The provision specifies, however, that no other increase shall be made in the mileage of primary roads until the present primary road mileage has been completed.

MILEAGE LIMITATIONS ON ADDITIONS

Authority in at least six States is qualified by limitations on the mileage which may be added to the primary system, as indicated in Table 10.[99] North Dakota, for example, may add only 25 miles in a year; Nebraska, 50 miles; and Ohio, 200 miles. The North Dakota State Highway Commission is further constrained in that additions within the 25-mile limit may only be made in the event it becomes necessary to construct bypasses and alternate routes on the State highway system.

The Virginia State Highway Commission may add such roads, bridges and streets to the primary system as it shall deem proper. It may also transfer roads from the secondary to the primary system, but the combined mileage so added and transferred may not exceed 50 miles during any one year.

The State Highway Commission of Kansas is authorized to add roads having statewide importance which will provide relief for traffic congestion on existing routes on the system. Such authority is included in a statutory section providing for revision, classification or reclassification of the State highway system found necessary on the basis of engineering and traffic study, including removal of such sections as have little statewide importance. However, the statute definitely specifies that the total mileage of the State highway system is not to be extended except by an act of the legislature. Apparently the State Highway Commission would have to go to the legislature if it desired to add a section of highway without at the same time removing a section of equal length or making such revisions in other routes as would compensate for the additional mileage.

In Michigan, both the legislature and the State Highway Commissioner have made additions to the State trunk line highway system at various times. The highway commissioner's authority, however, is apparently limited to specific legislative authorizations, whereby he has been given author-

[99] GEN. STATS. OF KAN. 1949, §68-406; COMP. LAWS OF MICH. 1948, ch. 250, §250.121 (typical provision); REV. STATS. OF NEB. 1943, §39-1310; N.D. REV. CODE 1943, §24-0102; BALDWIN'S OHIO REV. CODE ANN., §5511.01; CODE OF VA. 1950, §33-26.

ity, from time to time, to lay out and establish additional trunk line highways (not to exceed 500 miles) on such routes as are best adapted for serving the demands of public travel in various sections of the State.

A question arises as to the significance which these mileage limitations have in the development of a primary highway system, except, perhaps, to keep the system within reasonable bounds. Since so few States have seen fit to place such limitations on additions, it is apparent that, generally speaking, different methods have been used in other States to accomplish this objective.

COMPLIANCE WITH FEDERAL-AID HIGHWAY LAW

In five jurisdictions, additions to the primary system must conform to Federal requirements, as noted in Table 10.[100] These provisions are not involved or detailed—they merely provide that the State highway department "shall have full authority to make such changes, or additions, to the system of State roads to conform to the requirements of the Federal-aid Law" in Alabama, or "may add to the State highway primary system any sections or connections which, in the judgment of the department, may be necessary in the proper development of the Federal-aid primary highway system or the State highway primary system," in South Carolina. The Colorado statutes include a provision specifying that Federal-aid primary and secondary roads may be added to the State highway system according to need, as determined by the State highway department.

In Utah, Federal-aid projects may be designated as State roads by the commission and submitted to the legislature for approval, together with recommendations for other additions.

Although not mentioned in the statutes, a court decision in Oklahoma upheld the State's authority to designate a certain route as a primary highway so as to comply with Federal requirements. The State Highway Commission had agreed with the county to construct a State highway over a specific route. The county sold bonds to help finance a highway and the State Highway Commission agreed to put up the rest of the funds to construct the highway. After part of the route was constructed, the Federal Bureau of Public Roads intervened and demanded of the State Highway Commission that the balance of the route be constructed on a route different from the one for which the bonds were voted. The State Highway Commission was upheld by the court in complying with the Federal agency. To hold otherwise, ruled the court, would be an unwarranted interference with the discretion of the State Highway Commission as to the location and improvement of the highways of the State. Although the State Highway Commission could abandon the route originally agreed upon, the portion of the money supplied by the county, and not used, should be returned to the county.

MISCELLANEOUS PROVISIONS AUTHORIZING ADDITIONS TO THE PRIMARY SYSTEM

A number of jurisdictions have statutory provisions circumscribing the State highway department's authority to make additions to the primary highway system which do not fall into any of the categories heretofore mentioned. These miscellaneous provisions were found for the most part in jurisdictions where such authority as was included in the statutes was delegated to the highway department. In other words, there was no indication that the legislature itself made the additions. In New Hampshire, however, as noted earlier, the Governor himself, with advice of the council, may determine upon hearing whether there is occasion for the laying out or alteration of a Class I (primary) highway in a location proposed by the Commissioner of Public Works and Highways.[101] This provision is unique in that no other State gives the Governor this responsibility, although there are one or two instances where the Governor must approve changes in the system.

In New York and South Carolina, additions to the primary highway system are made by the legislature, but the State high-

[100] CODE OF ALA., 1940, tit. 23, §30; COLO. REV. STATS. 1953, §120-13-1; Board of Com'rs. v. Oklahoma State Highway Com'n., 163 Okla. 207, 23 P.2d 681 (1933); CODE OF LAWS OF S.C., 1952, §33-106; UTAH CODE ANN. 1953, §27-6-1.

[101] N.H. REV. STATS. ANN., ch. 233, §1.

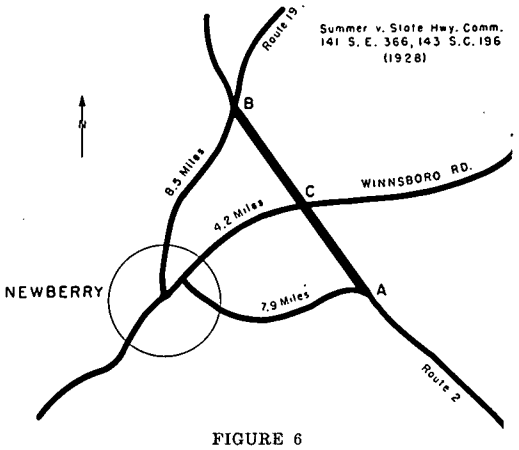

FIGURE 6

way department may also make additions under certain conditions. The Superintendent of Public Works in New York, for instance, may order that a certain highway be included in the primary system when constructed or improved under special law, if he determines it to be of sufficient importance and properly constructed.[102] The South Carolina State Highway Department may, as previously noted, add to the State primary highway system sections or connections which it determines necessary in the proper development of the Federal-aid primary highway system or the State primary highway system. This same provision also authorizes the establishment of such belt lines or spurs as it deems proper, which, however, may not exceed two miles in length.[103] The State Supreme Court, in 1928, was called upon to determine what constituted a "belt line," in a taxpayer's suit brought to enjoin the State Highway Commission and the Newberry County Highway Commission from constructing a highway 3.39 miles in length which would bypass the City of Newberry.[104] (See Figure 6.) The existing highway extended from A to Newberry to B. The proposed improvement would extend from A to C to B, providing a more direct route between A and B.

The court noted that the section was divided into two segments by another State highway, the Winnsboro Road, which formed a terminus for each segment. The construction of neither of the segments (A-C and B-C) interfered with or displaced the construction of any road designated by the act. Either one of the segments, without the other, formed part of a loop, skirted a busy city, and enabled travelers, if they so desired, to eliminate crowded streets from their route and materially shortened the distance to be traveled by one not wishing to go through the City of Newberry. The State Highway Commission might legally build either one of the segments without building the other, or it might build the two segments at different times. The mere fact that both segments were to be built at the same time did not change the fact that they were parts of distinct loops or belts. The court, therefore, concluded that the State Highway Commission had authority to construct the section of road in question.

Additional State-aid roads may be designated in Georgia under two statutory provisions. Under one section additional main traffic roads which are necessary to complete the interconnecting system of county-seat roads may be designated where unusual topographic conditions are met with, or where it is found necessary to serve important market points, and where the county seat to county seat routes involve substantially greater distances. However, no such roads may be built until the county seat roads have been completed.[105] Under another provision the State Highway Board is directed to prescribe appropriate rules and regulations by which new mileage may be added to the State highway system. However, no new mileage is to be added until 90 percent of the roads and bridges of the State highway system are paved, except in emergencies or unusual situations.[106]

Puerto Rico has a little different approach inasmuch as the Secretary of Public Works is directed to classify each newly constructed road, bearing in mind probable traffic after the same is constructed, and the importance of the county through which the road runs.[107]

[102] MCKINNEY'S CONSOL. LAWS OF NEW YORK ANN., Book 24, art. 3, §56.
[103] CODE OF LAWS OF S.C. 1952, §33-106.
[104] Summer v. State Highway Commission, 143 S.C. 196, 141 S.E. 366 (1928).
[105] CODE OF GA. ANN., §95-1707.
[106] CODE OF GA. ANN., §95-1610.
[107] LAWS OF P.R., tit. 9, §8.

Table 11. Analysis of Statutory Authority of State Highway Departments to Reclassify Highways

State May Take over Roads from Other Systems				State May Reclassify Roads	
Ariz.[1]	La.	N. J.	Vt.[1]	Ind.	Me.
Colo.[1]	Md.	Ohio[1]	Va.	Kan.	Ore.
Conn.	Mass.[1]	Okla.	Wis.[1]	La.	W. Va.
Ind.	Miss.[1]	S. C.	Wyo.		

[1] Upon petition of county or township.

TOLL HIGHWAYS

Toll highways are usually established separately from the rest of a jurisdiction's system of highways; usually a distinct authority is created to construct, finance, and manage such toll facilities. There are a total of fourteen jurisdictions which have statutory provisions for adding such toll highways to the State primary highway system.[108]

Provision must generally be made to have such toll highways added to the State primary highway system only when the bonds are paid off or some provision is made to set aside a sufficient sum to take care of such bonds.

TRANSFERS FROM OTHER SYSTEMS

Some statutory provisions specify in definite language that certain roads, included in the lesser systems, may be taken over by State highway departments and made part of the primary systems. There are at least 16 States in this category, as indicated in Table 11. The majority of these provisions pertain to county highways.[109] In four of these States, the taking over of county roads is at the petition of the county itself.[110] In Arizona the State highway department may decide on its own initiative to take over a county highway, or the County Board of Supervisors may request such action.

An additional four States have authority to include State-aid or secondary State highways in the primary system.[111] Thus, Oklahoma's State highway director may place on the State highway system any State-aid road he deems necessary to the best interest of the State when approved by a majority of the entire State Highway Commission. The State Highway Commission of South Carolina may transfer any route or section of a route from the State highway secondary system to the primary system when, in its judgment, such transfer is advisable to better serve the traveling public. When a Vermont State-aid highway has been improved with a better than gravel surface, the State Highway Board, upon petition of the selectmen of the town in which such highway is situated, with the approval of the Governor, may take over such highway as a part of the State highway system. The Virginia State Highway Commission may transfer such roads, bridges and streets as the commission shall deem proper, from the secondary to the primary State highway system.

Ohio may take over county or township roads upon petition of the local jurisdiction in charge of the road,[112] and New Jersey may take over any local road after notice to the jurisdiction having control of the road and a public hearing.[113]

An exchange of roads from one system to another is authorized in Connecticut and Louisiana. Under written agreement between the Connecticut State Highway Commissioner and the selectmen of any town,

[108] ARK. ACTS OF 1947, NO. 345; COLO. REV. STATS. 1953, §120-7-11; SMITH-HURD ILL. ANN. STATS., ch. 121, §314a42; BURNS' IND. STATS. 1933, 1937 Cum. Supp., §36-3219; KY. REV. STATS., §177.550; ANN. CODE OF MD. 1951, art. 89B, §§12, 121, 126P; N.J. S. A., §27:23-16; GEN. STATS. OF N.C., §§136-89-11c, 136-89-27; BALDWIN'S OHIO REV. CODE, §5537.21; OKLA. STATS., tit. 69, §667; PURDON'S PA. STATS. ANN., tit. 36, §§652o, 652-18, 653q, 654q, 655-16, 658-18, 660-18, 666-18, 667-18, 668-18, 669-18; VERNON'S TEX. CIV. STATS. 1948, art. 6674v; CODE OF VA. 1950, §33-255.16; W. VA. CODE OF 1955, §1659 (16, 17a).

[109] ARIZ. REV. STATS., §18-153; COLO. REV. STATS. 1953, §120-3-7; IND. STATS. 1933, tit. 36, §2901; LA. ACTS OF 1955, Act. No. 40, §192(c); ANN. CODE OF MD., 1951, art. 89B, §12; ANN. LAWS OF MASS., ch. 81, §4; MISS. CODE 1942, §8021; WIS. STATS. 1955, §84.02(7); WYO. COMP. STATS. 1945, §48-105.

[110] Colorado, Massachusetts, Mississippi, Wisconsin.

[111] OKLA. STATS., tit. 69, §20.7(f); CODE OF LAWS OF S.C. 1952, §33-105; VT. LAWS OF 1957, Act 245, §11; CODE OF VA. 1950, §33-26.

[112] BALDWIN'S OHIO REV. CODE, §5535.06.

[113] N.J. S. A., §§27:7-4, 27:7-5.

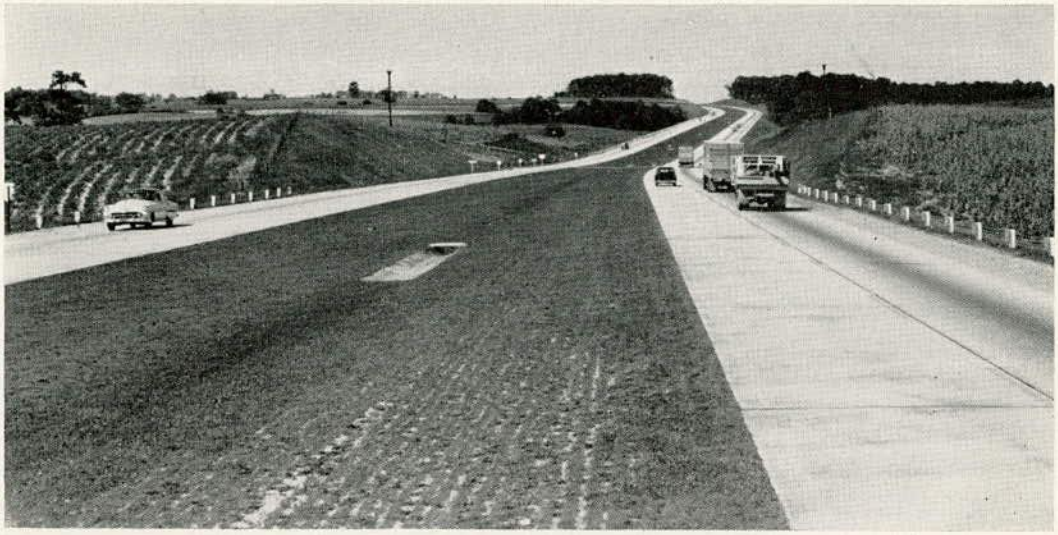

PLATE E

US 40 (State Route 144) between Ellicott City and Ridgefield, Maryland. A well-planned State highway system connects all areas in a State.

an existing State highway may become a town highway, provided a designated section of town-maintained road shall be accepted by the Commission as a State highway.[114] The Louisiana Board of Highways may at any time exchange any highway or bridge with any parish or municipality on such terms as it sees fit.[115]

In at least seven States, the State highway department has some standards prescribed for its guidance.[116] In Colorado, for example, the highway must be of such construction and state of repair as to make it proper for acceptance as a State highway. The Ohio statute is a little more detailed:

> In all cases where a county or township has constructed or improved any main market or intercounty road, the State Highway Commissioner, upon request, shall, within 60 days, indicate what changes or improvements will be required in the road in order to bring the road up to the approved standard of construction of such roads, or in any case where such road is about to be constructed or improved, the State Highway Commissioner shall, upon application, indicate within 60 days what changes will be required in the plans and specifications therefor to bring the road up to the standard required by the State for the construction of inter-county highways and main market roads. Whenever the changes so specified by the State Highway Commissioner have been made, or when such roads have been constructed according to the plans and specifications so approved by the State Highway Commissioner, such roads shall at once become State roads.

In Mississippi the State must determine that the county road to be taken over meets certain standards. In Vermont, the road to be taken over must be improved with a better than gravel surface, and in Louisiana, the parish road under consideration must be needed to complete a necessary segment of the State highway system.

In Indiana, as previously mentioned, and Wisconsin, traffic must be of a certain volume. The Indiana statute specifies that in making additions to the State highway system no county highway shall be added unless it bears an average daily traffic of at least 200 vehicles, except in the case of a link connecting an existing State highway with another highway in the system. Additionally, when funds are available, the State highway commission is directed to add any county highway having an average daily traffic of 400 vehicles or more, if the commission is of the opinion that the road would make a desirable addition. In Wisconsin county roads taken over must have

[114] GEN. STATS. OF CONN. 1949, §2234(a).
[115] LA. ACTS OF 1955, Act No. 40, §192(c)(d).
[116] Colorado, Indiana, Louisiana, Mississippi, Ohio, Vermont, Wisconsin.

traffic of over 250 vehicles per day. Additions are further limited to 500 miles.

It is interesting to note the degree of cooperation between State and local governmental units provided for in these provisions. In some of the States, of course, the taking over by the State of a county or town highway is authorized only on petition of the local unit. In others, notably Arizona, Louisiana, New Jersey and South Carolina, public notice and hearings are required before the State may take over a local road. Maryland requires that notice be given of such a transfer. In the other States, however, the State highway department seems to have been given carte blanche as far as such action is concerned. Supposedly, some notice is given the local authorities in these other States. However, arbitrary action on the part of the State highway department is certainly within the realm of possibility.

CHANGE IN CLASSIFICATION

The previous section dealt with a change in classification whereby a road constituting a part of a lesser system might be added to the primary system under certain circumstances. Additionally, there are six States in which the State highway department is given authority to reclassify highways in the various systems [117] which would involve, of course, additions to the primary system.

Under this type of authorization, the Indiana State Highway Commission may classify the State highway system into two or more classes, and from time to time may change such classification as the judgment of the commission deems to be necessary. The Louisiana Board of Highways may, at any time the need and traffic justifies, transfer a State highway from one road system to another.[118] The State Highway Commission of Maine may amend its classification of State highways.[119] The State Highway Commission of Kansas may make such classifications and reclassifications as are

[117] BURNS' IND. STATS. ANN., §36-2913; GEN. STATS. OF KAN. 1949, §68-406; LA. ACTS OF 1955, Act. No. 40, §192 (d); REV. STATS. OF ME. 1954, ch. 23, §5; ORE. REV. STATS., §366.220; W.VA. LAWS OF 1957, S.B. No. 4, §8, art. 2A.

[118] Primary, secondary and farm-to-market systems created by the act.

[119] Primary, secondary, and farm-to-market.

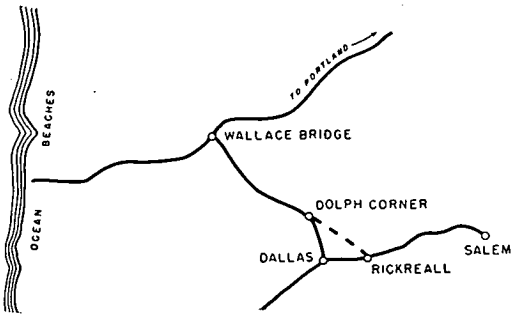

FIGURE 7

found necessary on the basis of engineering and traffic study. The Oregon and West Virginia State Highway Commissions may classify or reclassify highways comprising the State systems as primary and secondary highways. The authority of the Oregon State Highway Commission to reclassify a section of a secondary highway as a primary route was upheld by the Oregon Supreme Court in a recent case resulting from the refusal of the county court to agree to the proposed improvement as a secondary State highway as a necessary prerequisite to securing Federal funds.[120] The existing secondary highway (see Figure 7) ran from Salem through Rickreall and Dallas to Wallace Bridge, thence westerly to the ocean. The proposed improvement would connect Dolph Corner and Rickreall, bypassing Dallas. When the county refused to approve this improvement, the State reclassified the highway from Salem through Rickreall and Dolph Corner to Wallace Bridge as a primary highway. The portion of the highway from Rickreall through Dallas to Dolph Corner remained a secondary highway.

Suit was brought by the owner of property through which the new highway ran who alleged that the proposed highway would be a part of a secondary highway, and thus must have the approval of the local authorities. The court noted that the State Highway Commission was authorized to classify and reclassify State highways, and found no bad faith or abuse of discretion in the State's action. Even if the Commission took the action it did for the purpose of qualifying for Federal-aid without approval of the local authorities, it would

[120] Harland v. State Highway Commission, 208 Ore. 167, 300 P.2d 412 (1956).

not have been any mark of bad faith in the court's estimation.

LEGISLATIVE ADDITIONS TO PRIMARY HIGHWAY SYSTEM

In only six States does the legislature have the exclusive say as to what routes are to be added to the primary highway system.[121] As indicated in Table 9 there are nine States in which the legislature adds routes from time to time, but the State highway department may also make such additions under certain circumstances.[122] The prerequisites for making such additions by the highway department were discussed in the previous sections.

A New York statute is of interest in this connection inasmuch as it lists highways to be added in the several counties, and at the same time authorizes the Superintendent of Public Works to abandon to the counties an equivalent specified mileage of existing State highways.[123]

Although the State legislature is the final arbiter of what routes should be added to the system in six States, in all but two—Nevada and Rhode Island—statutory provisions were found which indicated that the State highway department plays an important part in either the selection or the detailed location of the additional routes. In California, for example, the State Highway Commission may authorize preliminary surveys to determine the advisability of including any highway or portion thereof in the State highway system.[124] It is presumed that recommendations to the legislature result from such surveys. Additionally, after the routes are officially added, the Commission is authorized to select, adopt, and determine the location thereof.[125]

As was previously noted, the primary or trunk highway system in Minnesota is designated in the State constitution. However, the constitution also authorizes the legislature to make additions thereto within the 12,200-mile limit prescribed in the constitution. The legislature may exceed that limit as needed or expedient to meet, use, or otherwise take advantage of any Federal-aid made available by the United States for highway purposes.[126] The State legislature has, accordingly, added routes to the system from time to time authorizing the Commissioner of Highways to specifically and definitely locate each of the routes prescribed, with the stipulation that he not deviate from the starting points or terminals, as set forth.[127]

In Washington, whenever the general route of a State highway is designated as running to or by way of certain designated points, without specifying the particular route to be followed, the Director of Highways is charged with the responsibility of determining the most feasible route to be followed by the highway to, or by way of, the designated points, and may select and adopt, as a part of the highway, the whole or any part of any existing public highway previously designated as a county, primary, or secondary road, or which was at any time classified as a county road.[128]

SUMMARY

The same question which arises in connection with each section of this study faces the State. Who should have the authority, in this instance, to add routes to the primary system? A majority of the jurisdictions (35) have seen fit to delegate this authority to the State highway department, as indicated in Table 9. A smaller number (9) have retained this authority, but at the same time grant the highway departments the power to add routes under certain conditions. Only six have retained complete authority in this respect. In the remaining State, the Governor has jurisdiction over system additions.

Although the majority of the jurisdictions considered may add to the primary system, in most instances such authority is by no means clear cut. Only in 12 jurisdictions does the State highway department appear to have unrestricted authority in this re-

[121] California, Minnesota, Mississippi, Nevada, Rhode Island, and Washington.
[122] Louisiana, Michigan, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Utah, and Vermont.
[123] MCKINNEY'S CONSOL. LAWS OF N.Y. ANN., Book 24, art. 3, §341.
[124] DEERING'S CALIFORNIA CODES, Streets and Highways, §75(c).
[125] *Id.* §75(a).
[126] CONST. OF MINN., art. XVI, §2.
[127] MINN. STATS. ANN. 1946, §§160.66, 160.67.
[128] REV. CODE OF WASH., §47.28.010.

spect (see Table 10). There appear to be a multitude of restrictions and conditions in many of the remaining States. Some States have several provisions pertaining to additions, sometimes seemingly contradictory. Some of the provisions found may have actually been superseded, but there is nothing in the statutes to indicate this state of affairs. The great need seems to be for a revision of the statutes to consolidate all provisions relating to additions to the system. The same situation will be found to exist in connection with alterations in the system and deletions therefrom in succeeeding sections.

If a State sees fit to delegate authority to the State highway department to designate the system in the first place, should not this same highway department be given authority to make additions thereto, at its own discretion without restrictions? If the legislature desires to retain the power to make additions to the system, by restricting the delegation granted to its highway department, such restrictions should be clearly defined.

CHANGING THE PRIMARY HIGHWAY SYSTEM

Routes comprising the original primary highway systems of the several jurisdictions were for the most part designated a great many years ago. Many changes have since become desirable. The objectives of the early twenties, when there was little or no high-speed automotive travel, and in fact comparatively little travel of any kind on the highways, were quite different from those of today. It made little difference if a route wound around every hamlet or farmhouse in its path. The farmer had probably donated the land for the road, and naturally did not want it routed straight through his property. Furthermore, engineering technology was very elementary when measured by today's terms. Crossing a mountain in a motor vehicle was a hazardous and harrowing experience on narrow, winding roads built for horse and buggy travel. The skill—and the funds—to burrow through the inside of a mountain or to cut through its side were lacking. Changes in travel patterns and in motor vehicles themselves have necessitated wholesale revisions and modernization of the highway plant.

Improvement of existing routes has been found costly and inefficient in many instances, particularly where expensive private development has taken place along its borders. So changes and alterations have been and still are needed. What is the statutory authority under which these changes are made? Has the legislature delegated sufficient authority to the highway department to do the needed job? Is this authority couched in such terms that the highway department knows exactly how far it can go in making desirable or necesssary changes? From the substantial amount of litigation noted in connection with this subject, it is obvious that in many cases there is a certain amount of ambiguity in the pertinent statutes. Although the courts have generally resolved such conflicts as have arisen in favor of the highway departments, it may be desirable to amplify the departments' authority in this respect.

In examining statutory provisions pertaining to changes in the primary highway system, one notes a variety of terms used. The word "change" is most often found, with "relocate" and "alter" running close behind. Then there is authority to "deviate," "realine," "straighten," "amend," "divert," "reroute," etc. According to the dictionary, there is little real difference in the meaning of these terms. And the exact word used has been of little help in determining just what was meant by the legislature in granting such authority. So, for all practical purposes, no distinction need be made in this respect in analyzing these statutory provisions.

Although the legislatures in some instances have enacted laws altering or changing primary highway routes, the authority has in general been delegated to the highway departments. (See Table 12.) In only two States, Utah and Washington, does the legislature appear to have sole authority in this respect. A 1957 Washington law was noted, which appropriated funds to the State Highway Commission and a Joint Fact Finding Commission on Highways for study of certain proposed relocations, thus indicating that the legislature acts on the recommendations of the highway commission and the fact finding commission.[129]

This Joint Fact-Finding Committee on Highways, Streets and Bridges was established in 1947 in an attempt to meet highway problems arising out of an increasing State highway program as well as the effects of the new Federal highway policy.[130] The committee currently consists of seven senators and eight members of the house.[131] Since the State Highway Commission reports to the legislature through this committee, the committee virtually amounts to the voice of the Commission in the legislature.

Among other things, the committee considers the need for relocating an existing highway and determines the equitable policy that should be established between the

[129] WASH. LAWS OF 1957, ch. 172.
[130] WASH. LAWS OF 1947, ch. 111.
[131] WASH. LAWS OF 1957, ch. 172, §32.

Table 12. Statutory Authority to Revise Primary Highway System

State Highway Department						Legislature	Other	No Provision
Ala.	Ga.	Me.	Neb.	Ohio	Vt.	Utah	R. I.[1]	Wyo.
Ariz.	Idaho	Md.	Nev.	Okla.[5]	Va.[5]	Wash.[2]		Alaska
Ark.	Ill.	Mass.	N. H.	Ore.[3]	W. Va.			
Calif.[3]	Ind.	Mich.	N. J.	Pa.[6]	Wis.			
Colo.	Iowa	Minn.[3]	N. Mex.	S. C.	Hawaii			
Conn.	Kan.	Miss.	N. Y.	S. D.	P. Rico			
Del.	Ky.	Mo.	N. C.	Tenn.				
Fla.[4]	La.	Mont.	N. D.[4]	Tex.				

[1] Town councils.
[2] Ch. 172, Laws 1957, appropriates funds to SHC and Joint Fact Finding Com. on Highways for study of certain proposed relocations.
[3] Legislature also revises.
[4] By implication.
[5] Court decision held State Highway Department had authority to relocate highways.
[6] Courts of Quarter Session may also relocate.
[7] County Board of County having population of 250,000 or more may also relocate.

State and counties in the event of such a relocation.[132] The enabling act gives the committee the general power and duty to ascertain, study, and analyze all available facts and matters relating or pertaining to changes, policies, and costs of the highway program. The committee then recommends to the legislature such changes, possible future necessities, and other highway improvements it deems necessary, in accordance with its findings. However weighty the recommendations of the committee may be, in the final analysis it is the legislature which decides what is to be done to the highways.

A Utah provision authorizes the State Highway Commission to "exercise such control over the location, establishment, changing, construction and maintenance of highways as is provided by law," [133] but no specific statutory provision covering changes was found.

In three other States, statutory provisions changing or altering primary highways were found,[134] but in all three the State highway department also has authority to make changes, as will be noted later in this section.

In only three States—Pennsylvania, Rhode Island, and Wisconsin—was authority found for changing primary highway routes by other than the State highway department. In Pennsylvania, authority is given to the county courts to change, or "supply by a new road," the route of any State road which may have been laid out by law. No change is permitted if the grade is made greater than five degrees.[135] Such changes must, however, have the approval of the Secretary of Highways,[136] who also has authority to alter State highways under given conditions as will be pointed out later in this discussion.

In Rhode Island, town councils are given the authority to straighten or change the location of highways, whether laid out by the State or otherwise.[137] This was the only provision pertaining to alteration of primary highways found in the Rhode Island statutes.

County Boards of counties having a population of more than 250,000 may relocate Wisconsin trunk line highways within their borders,[138] but in this State, the State Highway Commission may also make alterations in trunk line highways, as discussed later.

In six jurisdictions, no specific statutory provisions for alteration either by the legislature or the State highway department were found.[139] A Florida statute, however, provides that whenever any road or structure in the State highway system shall be repaired, reconstructed, relocated or in any-

[132] *Id.*, §33.
[133] UTAH CODE ANN. 1953, §27-2-6.
[134] DEERING'S CALIF. CODES, Streets and Highways, §302; MINN. LAWS OF 1957, ch. 948, §46; ORE. LAWS OF 1957, ch. 123.
[135] PURDON'S PA. STATS. ANN., tit. 36, §1982.
[136] *Id.*, §1985.
[137] GEN. LAWS OF R.I. 1938, ch. 72, §28.
[138] WIS. STATS. 1955, §86.18.
[139] Florida, North Dakota, Oklahoma, Virginia, Wyoming, and Alaska.

PLATE F

Looking west along State Route 9 in Wellesley, Massachusetts. State highways carry high-speed, long-distance traffic generated by economic and social activities in various regions of the State.

wise altered, in such a manner as necessitates closing the road to use by the public, the department shall provide a detour road to afford a safe means of travel around such road or structure so closed,[140] indicating that changes are presumably made by the highway department.

The Virginia Supreme Court of Appeals upheld the right of the State Highway Commission to relocate a section of an existing State highway in 1949, holding that a 1919 act providing that where routes had already been established no change would be allowed,[141] applied only to those State highways running to and from points named in an earlier law[142] which had been located and established pursuant thereto.[143] The highway in question was established in 1922.

In the aforementioned case, the highway commission undertook to construct a cut-off on State Route 3 in Lancaster County, but a group of landowners protested that such construction would violate the 1919 law. The court observed that the protesting landowners were trying to maintain a changeless road in a changing world to perpetuate the benefits of a greater volume of traffic going by their lands and business establishments than might travel that way after the new road was opened.

The court noted that the State had no intention of abandoning or closing the present portions of the highway, and held that even if it had been established before passage of the 1919 act, correct construction of the clause would not preclude the location, establishment, construction and inclusion of another section of highway in the system which would shorten the distance between existing points.

Although no specific provision was found in Oklahoma, in the light of a liberal judicial construction of Title 69[144] of the highway act by the courts, it has been made quite clear that the State Highway Commission has the power to relocate a primary highway.[145] The State Supreme Court said:

> It would be indeed a strained construction of the comprehensive terms of the Highway Act to hold that the power granted the highway commission to lay out, maintain, and, if need be, condemn lands for hundreds of miles of public highway, was ample, but that they had no power to make a change of a few hundred feet in the established highway if the exigencies should require—such construction is not warranted either by the words or by the purpose of such act.

[140] FLA. STATS. 1955, §335.15.
[141] CODE OF VA. 1950, §33-17; ch. 31, Acts 1919.
[142] Ch. 10, Acts of 1918.
[143] McMinn v. Anderson, 189 Va. 289, 52 S.E.2d 67 (1949).
[144] OKLA. STATS. 1951, tit. 69.
[145] Hennen v. State, 131 Okla. 29, 267 P. 636 (1928).

The *Hennen* case is cited in Oklahoma Stats. Ann., as the leading authority permitting the State Highway Commission to make changes in an established highway and condemn rights-of-way therefor.[146]

In a related section, the Department of Highways is authorized, through its authorized agents and employees, to enter upon any lands in the State for the purpose of making surveys and examinations determined necessary or convenient for the purpose, among other things, of relocating State highways.[147]

North Dakota statutes formerly authorized the State Highway Department to relocate, alter, amend, and revise the State highway system or any part thereof.[148] This section was omitted from the 1953 revision of the highway code and no comparable section was found. However, a section pertaining to abandonment of a section of primary State highways, seems to imply that such highways may be relocated, *i.e.*, the State Highway Commissioner is authorized to abandon sections of routes on the system when substantially replaced by improvements on new locations serving the area.[149] The declaration of legislative intent included in the 1953 enactment seems to substantiate this contention, inasmuch as it provides that:

> While it is necessary to fix responsibilities for the construction, maintenance and operation of the several systems of highways, it is intended that the State of North Dakota shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the State. To this end, it is the intent of the legislative assembly to give broad authority and definite responsibility to the State Highway Commissioner and to the boards of county commissioners so that working together, free from political pressure and local interests, they may provide for the State an integrated system of State and county highways built upon a basis of sound engineering with full regard to the interest and well-being of the State as a whole.[150]

A liberal interpretation of this declaration of intent would seem to authorize the State Highway Commissioner to make such alterations in primary highways as need be to effect this integrated system of State and County highways.

There are 46 jurisdictions in which the highway department has authority to make changes or alterations in primary routes, (See Table 12) either by statute, by judicial decision, or in the case of Florida and North Dakota, by implication. The various ramifications of this authority are discussed in the following sections. (See Table 13.)

BLANKET AUTHORITY

No conditions are attached to the authority delegated to the highway department in 14 States.[151] There is no typical statute in this category, the authority in most instances being included in provisions outlining the highway department's general authority in connection with the primary highway system. The authority of the highway department has been challenged in at least two States having so-called blanket authority, and in each the courts took a broad view of the States' powers in this respect. The tenor of the decisions indicates that if the highway department considers the change desirable, the courts will not interfere in the absence of an abuse of discretion on the part of that body.

The authority of the Illinois Department of Public Works and Buildings to make minor changes in routes designated by the State legislature has been upheld by the courts on three separate occasions.[152] Under existing legislation, the general location of the routes upon and along which the proposed roads are to be constructed are to be substantially as described. However, the department has authority to make such minor changes in the location of the routes as may become necessary in order to carry out the provisions of the act.[153] In up-

[146] OKLA. STATS. 1951, ch. 69, §20.5, Notes of Decisions 9, p. 41.
[147] *Id.*, §46.1.
[148] N.D. REV. CODE OF 1943, §24-0211.
[149] *Id.*, §24-0106.
[150] *Id.*, §24-A0101.

[151] DEL. CODE ANN., tit. 17, ch. 1, §132 c(3); SMITH-HURD ILL. ANN. STATS., ch. 121, §296(1a); CODE OF IOWA 1954, §§306.4, 313.2; KY. REV. STATS., §177.020(3); ANN. CODE OF MD. 1951, art. 89B, §53; MISS. CODE 1942, §§8023, 8038(b); REV. CODES OF MONT. 1947, §32-1614; N.H. REV. STATS. ANN., §229.13; N.J.S.A., §27:7-21(e); N.MEX. STATS. 1953, §55-2-18; TENN. CODE ANN., §54-510; VERNON'S TEX. CIV. STATS. 1948, art. 6674q-9; VT. STATS. 1947, §4971; and W.VA. CODE OF 1955, §1460.
[152] Department of Public Works and Buildings v. Spanogle, 327 Ill. 122, 158 N.E. 526 (1927); Hitt v. Department of Public Works and Buildings, 336 Ill. 306, 168 N.E. 337 (1929); Department of Public Works and Buildings v. Pittman, 355 Ill. 482, 189 N.E. 491 (1934).
[153] SMITH-HURD ILL. ANN. STATS., ch. 121, §§274 and 281i.

Table 13. Analysis of State Highway Department Authority to Revise Primary Highway System

Blanket Authority	Public Interest or Convenience	Requirement of Federal-Aid Law	Public Hearings; Consent of Local Governmental Units, etc.	Safety	Mileage Limitations	Misc.
Del.	Ariz.	Ala.	Ga.	Conn.	Kan.	Ark.
Ill.	Calif.	La.	Idaho	Ind.	Mich.	Mass.
Iowa	Colo.	Mo.	Minn.	Kan.	Ohio	Mich.
Ky.	Idaho	Hawaii	N. C.	Mich.		Mo.
Md.	Ind.		Ohio	Minn.		Nev.
Miss.	Kan.		S. D.	Neb.		N. Y.
Mont.	Me.		Wis.	Nev.		N. C.
N. H.	Mich.			N. Y.		S. C.
N. J.	Neb.			Pa.		S. D.
N. Mex.	Ore.					Wis.
Tenn.	Wis.					P. Rico
Tex.						
Vt.						
W. Va.						

holding the State's authority to make such changes, the courts stressed the fact that the primary system was for the benefit of the State at large rather than for any particular locality; and that a particular route need not necessarily be located on the shortest possible line between any two named communities. However, such factors as safety, maintenance expense, and the accommodation of the traveling public should be taken into account.

The authority of the Mississippi State Highway Commission to relocate primary State highways has also been upheld by the courts of that State on at least three occasions. Under existing statutes, the department has complete control and supervision, with full power and authority to locate, relocate, widen, alter, change, straighten, construct or reconstruct any and all roads on the State highway system.[154]

In an action brought to prevent the changing of a State highway, the appellants maintained that the Commission was not authorized to lay out a new road and depart substantially from the old location since the only authority vested in the Commission was that of reconstructing and maintaining existing highways designated by the legislature as State highways. Further more, the State constitution only authorized the legislature to designate State highways. To designate a State highway implied it was already in existence. Therefore, since the legislature could not itself make the changed location a State highway, that body could not delegate such authority to the highway commission.

The court was of the opinion that it was in response to an irrepressible demand for an improved system for long-distance motor travel that the constitutional provision authorizing the legislature to designate certain highways as "State highways" and placing such highways under the control and supervision of the State highway commission for construction and maintenance, was adopted.[155] Surely, said the court, it was intended that modern engineering skill should be brought to bear. Old curves and windings of the primitive layout of these roads that were to be made State highways should be relegated to the past to which they chiefly belonged, and that these main State highways should be straightened so far as practicable between the principal points in the highway, so that maintenance costs might be reduced by the reduction in distance and the laying out of better locations, and that time and expense to trav-

[154] MISS. CODE 1942, §8023.

[155] MISS. CONST., art. 6, §170.

elers might be conserved. This was what the legislative act in question [156] would accomplish and what the Commission in this case had done, and what it had the legal and constitutional right to do.[157] The court also held that the Commission acted within its authority in abandoning the original line to the county.

In a later case, the court upheld a relocation on the basis of this decision, adding that in relocations by the Commission to eliminate curves and shorten distances, and in otherwise finding better locations, the new line might depart from the old as much as eight to twelve miles. "So long as done for any good reason in the interest of through traffic, the authority in that respect is wholly at the discretion of the State Highway Commission." [158]

In this case the court also ruled that the highway department was without authority to enter into an agreement with the county, binding the Commission to maintain roads taken over by it after its abandonment thereof in the process of relocating the highway. When there had been a finished relocation, said the court, and in consequence an abandonment by the Commission of the old road, whence the abandoned road had reverted to the county, all jurisdiction and control of the old road had ended. The Commission was not authorized to make any contract beyond the period of its own jurisdiction.

The third case involved condemnation of land by the State Highway Commission for a proposed relocation of a State highway. The jury verdict was appealed by the landowner for several reasons, among them the exclusion of testimony as to future plans of the Commission with regard to maintaining the existing highway. The court found no error here, reiterating that the Commission was authorized to relocate highways in the public interest and was under no obligation to maintain the old route. Furthermore, the Commission was without authority to agree with a county to maintain an existing highway indefinitely.[159]

[156] MISS. CODE 1942, §8038(b).
[157] Trahan v. State Highway Commission, 169 Miss. 732, 151 So. 178 (1933).
[158] Wilkinson County v. State Highway Commission, 191 Miss. 750, 4 So.2d 298 (1941).
[159] Wheeler v. State Highway Commission, 212 Miss. 606, 55 So.2d 225 (1951).

The courts of West Virginia have also upheld the right of the State Road Commission to relocate primary State highways. In *Heavner* v. *State Road Commission* [160] the court found it was in the public interest to relocate, thereby eliminating difficult grades, an undergrade crossing, and a grade crossing.

The State Road Commission has statutory authority to locate and relocate any primary or secondary roads.[161] After a section of State Highway 20 had been relocated by the Commission, two property owners abutting the old road asked the courts to compel the Commission to continue the old road. Their request was turned down by the State Supreme Court which held that the Commission could not be compelled to restore the road to its original location where reasonable access to and from their property was provided. The court stated that the Commission's power under the quoted statute was broad and sweeping, and would seem to be beyond the control of the courts so long as action thereunder was not arbitrary, capricious, or fraudulent.

Noting that the manner in which the Commission acted left something to be desired, inasmuch as no notice to or consultation with the property owners took place, the court still felt it must uphold the exercise of the power so clearly vested in the Commission.

Included in this category are two States in which authority has been granted the highway department to "straighten" primary highways. In Delaware, for example, the State Highway Department is authorized to determine upon, lay out, construct or reconstruct State highways so as to make roads which, with reasonable maintenance, shall be permanent, and to this end the Department may lay out, open, widen, straighten, grade, extend, construct, reconstruct and maintain any State highway or proposed State highway.[162]

In addition to, and not in limitation of, its general powers, the New Jersey State

[160] 118 W.Va. 630, 191 S.E. 574 (1937).
[161] W.VA. CODE OF 1955, §1460—". . . and upon the petition of any interested party or upon his own initiative create, extend, establish any new road that shall be necessary."
[162] DEL. CODE ANN., tit. 17, ch. 1, §132b(1)c(3).

Highway Commissioner may widen, straighten and regrade State highways.[163]

No decisions as to how broad an interpretation the courts would put on this power to "straighten" were found. A broad interpretation would seemingly allow considerable leeway, since in effect, most relocations do involve straightening.

CHANGES IN THE PUBLIC INTEREST

The majority of the 11 States which have been included in this category [164] have what actually amounts to blanket authority to make changes in the primary highway system, since any changes should theoretically be made only when the public interest or welfare demands. A typical enabling provision is that of Oregon which permits the State Highway Commission to make such changes in the location of designated primary highways as in the judgment of the Commission will result in better alignment, more advantageous and economical highway operation and maintenance, or will contribute to and afford a more serviceable system of State highways than is possible under the existing location. California, Colorado, Indiana, Kansas, and Maine have similar provisions.

Authority of the California State Highway Commission to relocate a primary State highway was upheld by the courts in 1950.[165] Plans were made to change the location of Route 3. Action was brought by certain taxpayers who owned business establishments along the old route to enjoin the change. The taxpayers claimed that, according to the law, the established routes were to be permanent in character and so the highway commission was without authority to make alterations or changes. The court found no support for so narrow an interpretation. Permanent in character meant only that the roads were to be constructed of durable materials.

The taxpayers also contended that the constitutional provision authorizing the legislature to establish a system of State highways, and to pass all laws necessary and proper to construct and maintain the same, precluded the legislature from authorizing the relocation of any highway once established thereunder. In the court's opinion this provision could not be construed as including an unwritten provision that the highways, once established, could never be relocated even though changing conditions required relocation. The provision was designed solely to authorize establishment of a State highway system.[166]

The court held that the State had statutory power to alter or change the location of any State highway if in the Commission's opinion such alteration or change is for the best interest of the State.[167] Also, the legislature had designated only the termini of Route 3 and one point along the route, the court continued, so any part of the highway might be changed within the designated points when in the opinion of the State Highway Commission such change or alteration was for the best interest of the State.

Authority of the State highway department to make changes when in the public interest is qualified to some extent in the remaining States. In Arizona, for instance, the Superior Courts may review the determination of the State Highway Commission. The Commission's authority to relocate a certain highway was challenged in a condemnation suit instituted by the State to acquire right-of-way for a relocated highway.[168] Landowners abutting the old route claimed that the highway commission had promised that the existing highway would not be changed. On the strength of this promise, the abutting owners had constructed a tourist camp and recreation area which the Commission was desirous of having for the accommodation of the traveling public. When the highway was relocated, traffic was diverted from the old route, which remained in operation. It was still possible to use the tourist facilities.

The court held that even though a promise had been made and improvements constructed in reliance on the promise, the

[163] N.J. S. A., §27:7-21(c).
[164] ARIZ. REV. STATS., §18-151; DEERING'S CALIF. CODES, Streets and Highways, §71; COLO. REV. STATS. 1953, §120-3-8; IDAHO CODE, §§40-120(4), 40-121; BURNS' IND. STATS. ANN., §36-117; GEN. STATS. OF KAN. 1949, §68-406; REV. STATS. OF ME. 1954, ch. 23, §19; COMP. LAWS OF MICH. 1948, §§250.112, 250.114; REV. STATS. OF NEB. 1943, §39-1309(2); ORE. REV. STATS., §366.295; WIS. STATS. 1955, §84.02(3).
[165] Holloway v. Purcell, 35 Cal.2d 220, 217 P.2d 665 (1950).
[166] CONST. OF CALIF., art. IV, §36.
[167] DEERING'S CALIF. CODES, Streets and Highways, §71.
[168] State v. Carrow, 57 Ariz. 434, 114 P.2d 896 (1941).

State Highway Commission could change the highway. No agreement, said the court, could create a vested right in the adjoining property owner that the highway would continue to exist. The State Highway Commission could change the highway route whenever it determined, in a reasonable exercise of its discretion, that such a change was in the best interest of the public, even though the effect might be to seriously damage or even destroy the value of the property along the old highway line.

In Idaho and Wisconsin, as will be noted later, public hearings are required before changes may be made in primary routes. A State highway may be altered in Idaho when the Board of Highway Directors determines that such changes are in the public interest. Before the Board may make such a determination with regard to any highway serving or traversing any city or village, or the area in which such city or village, is located, it must specifically find and determine that the benefits to the State are greater than the economic loss and damage to the city or village affected,[169] and must hold a public hearing therein.

In Wisconsin, changes in trunk highways may be made if the State Highway Commission considers the public good will be best served by the change.

Nebraska's authority with respect to relocations or changes is subject to approval of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the State highway system, the State Highway Commission is to take into consideration such factors as traffic, costs, safety and convenience, and the general welfare of the people of the State.

The highway authorities of Michigan may change, alter, or straighten a State highway when the demands of public travel so require, or to best serve the public interest, provided that trunk line mileage is not increased as a result of such action, subject to approval of the State Administrative Board, whose main function is to exercise general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of the State, and of all State institutions. It may in its discretion intervene in any matter touching such functions and activities and may, by resolution or order, advise or direct the department, board, commission, officer or institution concerned as to the manner in which the function or other activity shall be performed.[170]

[169] One of the criteria for selecting the system in Idaho is the relative importance of each highway to cities and villages and their development. (IDAHO CODE, §40-121).

NOTICE AND HEARING, LOCAL CONSENT, ETC.

In at least seven States the highway department must either conduct a public hearing before altering or relocating a primary highway route, or obtain the consent of the local governmental unit affected thereby.[171] (See Table 13.) The Ohio and South Dakota procedures are essentially similar. In each, notice must be given of the proposed change, followed by a public hearing at which arguments pro and con may be heard. The highway department then notifies the county of its decision in the matter, which is apparently final. A public hearing must be held in Minnesota if one is requested by the county.

Provisions in Idaho also require notice and hearing in the affected locality, but the statutes in that State go farther in that if the State highway department decides to proceed with the relocation, an affected party may appeal to the courts as far as the State Supreme Court and no action may be taken until either the time limit for appeal has expired or the courts have rendered final judgment. Wisconsin statutes require notice to the affected localities of any changes in State highways. And, in the event the distance along the proposed deviation from the existing location exceeds 2.5 miles (or 5.0 miles if located on an arterial route), then a hearing in or near the region affected by the proposed change must be held prior to making the change effective. No change is to be effective until the decision of the State Highway Commission has been referred to the county board of each county (in which any part of the proposed change is situated) and approved by that body.

[170] COMP. LAWS OF MICH., 1948, §17.3.

[171] CODE OF GA. ANN., §95-1708; IDAHO CODE, §40-121; MINN. STATS., §161.03(4)(a); GEN. STATS. OF N.C., §136-57; BALDWIN'S OHIO REV. CODE, §5511.01; S.D. CODE OF 1939, §28.0210; WIS. STATS. 1955, §§84.02(3), 84.025.

Relocations in North Carolina must have the approval of the Board of Commissioners of the affected county.

The State Highway Department of Georgia has authority to relocate in their entirety any or all of the routes included in the primary highway system, keeping in view only the control points. In relocating any road or right-of-way the department must confer with the ordinary or county commissioners as the case may be, and give due consideration to their wishes. In case of disagreement, the judgment of the State Highway Board shall prevail.

Some years ago, the citizens of Macon County, Georgia, voted a bond issue for the express purpose of improving the old Dixie Highway No. 49, which was designated as a State-aid route. Subsequently, the route was resurveyed and relocated by the county commissioners with the approval of the State highway department. The object, as illustrated in Figure 8, was to eliminate three dangerous right angle curves. But the citizens of the county objected, asserting that the bond issue funds could not be used on a relocated route.

The Supreme Court upheld the action of the department and its authority to resurvey and relocate, provided that there was no material change in the general direction and location other than those dictated by the public interest in establishing a route

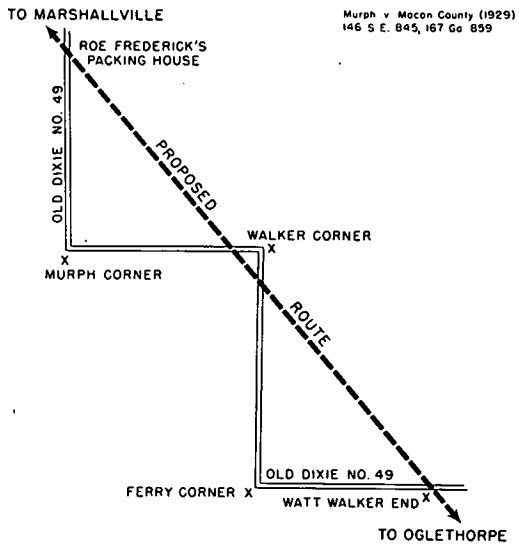

FIGURE 8

for use as the State highway system and taking into consideration the distance, cost of construction, topographic and construction difficulties, and expense of maintenance.

The court held also that since the voters were presumed to have had knowledge of the department's authority to resurvey and relocate the route, the requirement that the bond funds be used for Dixie Highway No. 49 alone applied equally to the changed route.[172]

SAFETY OF TRAVELING PUBLIC

Specific provisions for making changes in location of primary highways in the interest of the safety of the traveling public were found in nine States.[173] Some of these provisions qualify the highway department's authority to some extent, *i.e.*, such changes may be made only within the termini fixed by the legislature, in Minnesota; the consent of the Governor is necessary in Nebraska and Pennsylvania; and the county must approve the contemplated changes in Nevada.

The Indiana provision, as follows, is a little more detailed than others found in this category:

> The line or actual location of a State highway may deviate from the location of the public highway as actually traveled at the time such public highway was, under this act, designated as a State highway as may be deemed expedient by the State highway commission in order to shorten distance, to eliminate steep grades or sharp turns, to widen narrow portions or otherwise promote public convenience and safety.

In this, as in other States, public convenience and safety are often combined as reasons for allowing changes.

When faced with determining whether public safety was involved in a Kansas[174] case so as to authorize a relocation or other substantial change of the highway as provided by statute,[175] the court considered the

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

[173] GEN. STATS. OF CONN., 1949, §968(c); BURNS' IND. STATS. ANN., §36-117; GEN. STATS. OF KAN., 1949, §68-406; MICH. PUBLIC ACTS 1957, No. 262, §1a; MINN. STATS. ANN., §161.03(4)(A); REV. STATS. OF NEB. 1943, §39-1315; NEV. LAWS OF 1957, ch. 370, §58; MCKINNEY'S CONSOL. LAWS OF N.Y., Book 24, art. 3, §62; PURDON'S PA. STATS. ANN., tit. 36, §670-210.

[174] Bobbitt v. State Highway Commission of Kansas, 138 Kan. 487, 26 P.2d 1115 (1933).

[175] GEN. STATS. OF KAN. 1949, §68-406.

following statistical comparison of the three routes in question:

	Traveled Route	Route Proposed Never Opened	Present Approved Proposed Route
Corners at intersections	16	4	none
Curves	12	6	2
Railroad crossings	4	1	none
Miles	44¼	32½	30½

The court said that it was within the common knowledge of mankind that railroad crossings and right angle corners on a highway should be avoided whenever possible and, therefore, it took judicial notice of the fact.

The court concluded that since it could not change the reckless nature of man, it did the next best thing by allowing changes in the physical surroundings so that people could pursue their natural bent with as little danger to themselves and others as possible. Hence, on an improved highway, the fewer sharp corners and railroad crossings, the less danger to and the greater safety for the traveling public.

The court held in favor of the State Highway Commission of Kansas which was advocating the Federally approved route on the ground that it was in the interest of public safety.

MILEAGE LIMITATIONS

It was previously noted that no changes in the primary (or trunk) highway system in Michigan can be made which would result in an increase in mileage for the system.[176] Two other States, Kansas and Ohio, have similar restrictions.

Changes in Kansas may be made whenever the public safety, convenience, economy, etc. require, but the total mileage of the State highway system may not be extended except by an act of the legislature.[177] Changes may be made in the Ohio State highway system, but under no circumstances may the total mileage of the system be increased, by reason of additions thereto or changes thereof, more than 200 miles in any one year.[178]

CHANGES TO MEET REQUIREMENTS OF FEDERAL-AID LAW

The laws of four jurisdictions include provisions authorizing changes in location of State highways if necessary to meet the requirements of the Federal-aid law or to obtain the benefits provided for therein.[179] There is nothing unusual in these provisions, and no further mention need be made except to note that in three of the four jurisdictions—Alabama, Louisiana and Hawaii—this appears to be the only reason for which relocations may be made.

AUTHORITY TO CHANGE FOR OTHER REASONS

The authority discussed in this section (to make changes or alterations in existing State highways) follows no particular pattern and the statutory authority falls into none of the categories previously discussed. In Arkansas, the State Highway Commission is empowered, with any necessary consent of the proper Federal authorities, to make such changes in designated State highways as it may deem proper, such changes to become effective upon the filing of a new map, as a permanent and official record, in the office of the Commission. The statute specifically states that no portion of the system may be eliminated.[180]

Under this provision the Arkansas courts have held that the State Highway Commission may make changes in the system, however substantial.[181] In this case, the State Highway Commission sought to change the location of a 12-mile segment of highway. It was contended that the Commission was without authority to reroute the highway so as to bypass certain towns included in the original route, since these communities were on the map showing the highways which the legislature had adopted as the basic State highway system.

In its ruling the court noted that a 1923

[176] COMP. LAWS OF MICH., 1948,§250.114.
[177] GEN. STATS. OF KAN., 1949, §68-406.
[178] BALDWIN'S OHIO REV. CODE, §5511.01.
[179] CODE OF ALA., 1940, tit. 23, §30; LA. ACTS OF 1955, Act. No. 40, §191; CONST. OF MO., 1949, art. IV, §30; REV. LAWS OF HAWAII 1945, §4963(1)(2).
[180] ARK. STATS. 1947, §76-501.
[181] Woollard v. State Highway Commission, 220 Ark. 731, 249 S.W.2d 564 (1952).

statute superseded by the present law had authorized changes no matter how substantial, so long as a particular unit of the system was not eliminated. A unit of the system, said the court, consisted of a fairly direct route connecting one terminus with another. Applying that reasoning to the present case, the court did not consider that the section of highway now in question amounted to a "unit," since one would hardly refer to Jericho and Clarkedale, two miles apart, as termini of a National highway running from New Orleans to the Canadian border. The Arkansas terminal points of this thoroughfare were its entrance into the State at the Tennessee border and its exit at the Missouri line.

A Massachusetts statutory provision also specifies that a map or plan of the proposed alteration be filed in the office of the county commissioners for the county where the highway is situated, together with a certificate stating that the State Highway Department has "laid out and taken charge of said State highway, as altered in accordance with said plan." A copy of the plan or location as altered must also be filed in the office of the clerk of the town or city in which the highway is located.[182]

The authority of the Missouri State Highway Commission to locate and relocate State highways is spelled out quite specifically in the State constitution, as follows:

> (a) Supplementary State Highways and bridges in each county of the State as hereinafter provided;
> (b) State highways and bridges in, to and through State parks, public areas and reservations, and State institutions now or hereafter established; * * *
> (c) any tunnel or interstate bridge or part thereof, where necessary to connect the State highways of this State with those of other States;
> (d) any highway within the State when necessary to comply with any Federal law or requirement which is or shall become a condition to the receipt of Federal funds;
> (e) any highway in any city or town which is found necessary as a continuation of any State or Federal highway, or any connection therewith, into and through such city or town; and
> (f) additional State highways, bridges and tunnels, outside the corporate limits of cities having a population in excess of 150,000 either in the congested traffic areas of the State or where needed to facilitate and expedite the movement of through traffic.[183]

Purposes for which State highways may be relocated or altered in South Dakota are similarly spelled out in the statutes as follows:

1. Shortening the system distances between the interconnected county seats and connected cities of 750 or more population;
2. Make continuous the route of any State trunk highway through any city of over 2500 population.
3. Improve the highway grade.
4. Eliminate a railroad crossing or crossings.
5. Avoid heavy city street traffic.

Additionally the statute provides that no changes shall be made so that the system shall cease to interconnect every county seat or to connect every city having a population of 2500 or more by the last State census.[184] As previously noted, a public hearing must take place before any change may be made.

Nevada's enabling statute authorizes the State Highway Engineer to divert or change a State highway route, when the expense of constructing, building, rebuilding, maintenance, or repair thereof would be unreasonably great and could be materially reduced or lessened by a change of route.

In a decision handed down by a district court of Washoe County in 1949, the court held that the Department of Highways, having complied with all conditions set forth in the statute, was authorized to relocate a certain State highway.[185] A restraining action was brought by one R. H. Crump and others to prevent the moving of the existing highway to a new location, allegedly to the detriment of business on the old route. The court was apparently sympathetic to the complainants, because of the loss of business, but stated that the highway department could not legally be enjoined, having strictly complied with the provisions of the law, simply because of the

[182] ANN. LAWS OF MASS., ch. 81, §6.

[183] MO. CONST., art. IV, §30.
[184] S.D. CODE OF 1939, §28.0210.
[185] Crump et al. v. Department of Highways, No. 125460, Dept. No. 1, 1949.

fact that a few people were to be put out of business.

In New York the Superintendent of Public Works may deviate from the line of an existing highway, if thereby a shorter or more direct highway, or a lessened gradient may be obtained without decreasing the usefulness of the highway.[186] The Secretary of Public Works in Puerto Rico may reconstruct any road to lighten the grade, ease the curvature, obtain an easier or more direct route, etc.[187]

A North Carolina statute provides that:

> A map showing the proposed roads to constitute the State highway system is attached to Chapter 2 of Public Laws of 1921 and made a part hereof. The roads so shown can be changed, altered, added to or discontinued by the commission; Provided, no roads shall be changed, altered or discontinued so as to disconnect county seats, principal towns, State or National parks or forest reserves, principal State institutions, and highway systems of other States.[188]

Under this provision at least three cases have come before the courts of the State. The first arose when the State Highway Commission proposed to change the route between the county seats of Durham and Oxford.[189] Suit was brought against the Commission to enjoin construction of the relocated route because it would not pass through the Town of Stem, as did the old route. The court held that although Stem appeared on the map adopted by the legislature, it was not a "principal town" within the meaning of the statutory provision. The principal towns which might not be disconnected, said the court, should be determined by the State Highway Commission, exercising sound judgment, subject to judicial review, being a mixed question of law and fact. Furthermore, continued the court, the roads outlined on the map were intended as a tentative system of roads, and not as a permanent or final system.

Additionally, the court said that to limit all changes to those between the towns on the map would prevent the State Highway Commission from connecting a larger town to the State primary highway system if it were not shown on the map.

In the second case, the highway commission's authority to change the route of a primary highway connecting two county seats was challenged as being prohibited by the statute.[190] The court in this case held that the highway commission was without authority to make the proposed change since it resulted, in fact, in disconnecting the Town of Newton, a county seat. The old highway passed by the courthouse, while the new location would come just within the corporate limits of the town.

The court distinguished the *Cameron* case as involving only an interpretation of what constituted a "principal town," and not the elimination of a county seat.

In a third case, the State Highway Commission attempted to change the location of the same route. The court here held that the new highway was not a change of the old highway, but a totally new highway. A new highway may be laid out between the two county seats, the court said, but the old highway would have to be continued in the system. In effect, then, the State Highway Commission could construct the new highway as a part of the primary system if it deemed it necessary, but could not abandon the old route.[191]

Subsequent statutory enactments were apparently an attempt to clarify the authority of the State Highway Commission in this respect. Sec. 136-54 authorizes the Commission, when in its judgment the public good so requires, to change, alter, add to, or abandon and substitute new sections for any portion of the State highway system, provided no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. This authority is qualified, however, by other sections, notably 136-55 which prescribes a procedure for change or abandonment of portions of the State highway system under which the decision of the Commission is final. Then both Secs. 136-54 and 136-55 are subject to the provisions of Sec. 136-56, which requires the consent of the street governing

[186] MCKINNEY'S CONSOL. LAWS OF N.Y., Book 24, art. 2, §11(2).
[187] LAWS OF P.R., tit. 9, §9.
[188] GEN. STATS. OF N.C., §136-47.
[189] Cameron v. State Highway Commission, 188 N.C. 84, 123 S.E. 465 (1924).
[190] Town of Newton v. State Highway Commission, 192 N.C. 1, 133 S.E. 522 (1926).
[191] Town of Newton v. State Highway Commission, 194 N.C. 159, 138 S.E. 601 (1927).

body of a town before the number of State highways entering certain towns may be reduced, and Sec. 136-57, requiring consent of the road governing body of the county if the road in question has been located and constructed in accordance with plans and specifications prepared by and on file with the Commission, and Sec. 136-60, requiring consent of the county commissioners if the road in question was a portion of the county road system taken over by the State, under certain other statutory provisions.

Still another provision authorizes the State Highway Commission, among other things, to change or relocate any existing roads that the Commission may now own or acquire, provided, however, that all changes or alterations authorized by the section shall be subject to the provisions of Secs. 136-54 to 136-63.[192]

There appears to be considerable overlapping here, and possibly some ambiguity. Perhaps it would be desirable to combine all of these provisions into one section for purposes of clarification.

A 1951 enactment of the South Carolina legislature authorizes the State Highway Department to relocate any section of highways, included in the State highway primary system, when such relocation is required in order to conform to standards adopted for highways comprising the system.[193]

In an early case in this State the court held that the State Highway Department had no authority to change the location of a road between designated control points as established by the legislature in 1924.[194] On the contrary, the court ruled that the words of the act itself clearly intended the department, in constructing highways on designated routes, to maintain the identity of the then existing roads. In this case, the highway department was not permitted to relocate the highway, even though the new route would have been shorter and consist of fewer curves. The court said that the present roadbed was a controlling factor which should have been considered in determining the route to be followed.

A later case appeared to modify the *Boykin* case.[195] The court in this case upheld the State Highway Department's determination to relocate a State highway within a municipality. In so holding the court made a distinction from the *Boykin* case, because the plaintiff had conceded that if their cause was to be sustained, it would have to come within the principles announced in that case. Here, the court said it was unable to find anything in the language of the statutes which made the roadbed of the old highway such a controlling factor in the location and building of the highway as would require the department to follow it. Under the Boykin rule, unless the roadbed was a controlling factor, the department would not have to follow it. The court, therefore, was constrained to hold that the department had the right to relocate the load.

In any event, the question of whether or not the roadbed is controlling is academic since passage of the 1951 act.

SUMMARY

In light of the previous discussion, one may well ask, why is the authority of many jurisdictions so restricted or entirely lacking in regard to relocating or altering primary highways? Why should not the highway department have within its discretion the power to make such relocations, at least in rural areas? Presupposing a responsible highway department, why may it not be delegated authority to make such changes in the system as are dictated by the public interest or convenience? Presumably such a body would not take it upon itself to relocate a highway unless there was good reason for doing so. After all, a highway department has at best a limited amount of funds for all of its operations, and could be relied on, if at all competent, not to make costly relocations or revisions unless deemed absolutely necessary in the interests of efficiency.

Three States have authority to make alterations only if necessary for safety purposes.[196] The highway department in four

[192] GEN. STATS. OF N.C., §136-18(b).
[193] CODE OF LAWS OF S.C. 1952, §33-109.
[194] Boykin v. State Highway Department, 146 S.C. 483, 144 S.E. 227 (1928).
[195] Fant v. State Highway Department, 164 S.C. 187, 162 S.E. 262 (1931).
[196] Connecticut, Minnesota, Nevada.

jurisdictions may alter a primary highway only if necessary to meet the requirements of Federal-aid law.[197] Mileage limitations are attached to the authority to alter in three States.[198]

The feeling of the various State courts that have been called upon to rule on the matter seems to reflect the view that the primary highway system is the responsibility of the State highway department, which body should therefore have complete authority to make any necessary changes therein. The general rule seems to be that a State legislature may, in the absence of constitutional restrictions, establish grades for highways and provide for alterations therein or for their vacation or closing, and may delegate such power to subordinate public agencies.[199] Thus, if the State legislature decides to delegate authority to the highway department, why not make it as broad as possible? The urgent need for an improved highway system makes it imperative that the body to whom the responsibility therefor is delegated should not be unnecessarily hampered in its work.

The existence of a certain amount of ambiguity or overlapping has been noted in the course of the foregoing review of State statutes. The statutes of several States include more than one provision pertaining to the alteration of primary highways, all of which are apparently still in effect, and which appear to have been the result of different thinking on the part of the legislatures by whom enacted. Thus, in Michigan one provision authorizes alteration or straightening of a trunk highway when the demands of public travel require, subject to the approval of the State Administrative Board.[200] Under another provision, the State Highway Commissioner may change or alter the location of an existing trunk line highway, subject to approval of the State Administrative Board, if in its opinion the change will best serve the public interest, and not increase the trunk line mileage.[201] Finally, a 1957 law authorizes minor changes to secure a more direct and favorable location when in the judgment of the State Highway Commissioner the changes make for the safety of public travel.[202] A reading of these three provisions leaves some doubt as to just what authority the highway commissioner possesses.

Similar ambiguities in North Carolina statutory provisions pertaining to changes in primary highways have been previously noted. These two States are not by any means the only ones where such ambiguities may be found, but provide rather striking examples for the purposes of this discussion. If restrictions must be placed on a highway department's authority in this respect, why not include all of them in one provision, in the interest of clarity?

[197] Alabama, Louisiana, Missouri, Hawaii.
[198] Kansas, Michigan, Ohio.
[199] 25 AM. JUR., HWYS., §39, p. 361; 39 C.J.S., §113, p. 1047.

[200] COMP. LAWS OF MICH., 1948, §250.112.
[201] *Id.*, §250.114.
[202] MICH. PUBLIC ACTS OF 1957, No. 262, §1a.

CONTRACTING THE STATE PRIMARY HIGHWAY SYSTEM

What happens to a section of a State highway when it has outlived its usefulness, or when the road of which it is a part has been relocated, with the result that it is no longer a part of the integrated network of primary highways? Does it simply cease to exist for public travel, in which case the land encompassed in the right-of-way reverts to the fee owners, or, if the fee has been acquired by the highway department, is otherwise disposed of? Or does it become a part of a lesser State system, or county or town system? Where does the authority to abandon primary highways lie—with the legislature, the highway department, or the county? These and other questions will be discussed in the following sections in an attempt to interpret statutory and case law on the subject.

In terms of actual mileage, the problem does not appear too significant. The total mileage of primary highways abandoned during the ten-year period 1946 to 1955 amounts only to slightly over 1,500 miles.[203] (See Table 14.) During the same period the over-all mileage of the primary systems increased some 53,000 miles.[204] However, this poses a problem—opposition to the closing or abandoning of a road being as great as, or greater than to its relocation, as discussed in the previous section..

Statutory provisions pertaining to abandonment of primary highways were found in 38 States, as noted in Table 15. In 27 of these, the State highway department is vested with abandonment authority,[205] in five the legislature retains the authority,[206] and in five others, particular highways are deleted by law, but the State highway department has authority to abandon the old sections of routes which have been relocated.[207] In 3 States, statutory provisions seem to indicate that a primary highway may not be eliminated under any circumstances.[208]

Although no specific provisions pertaining to abandonment were found in the remaining 11 jurisdictions,[209] it cannot be said categorically that no such authority exists, since on more than one occasion the courts have held that the State highway department does have such authority, apparently under its broad general powers with respect to the primary system. This is illustrated by a Kentucky case involving a suit to enjoin the obstruction of a highway. The legislature had added an existing county road to the State primary highway system in 1932, and in 1935 the Department of Highways had constructed a new highway paralleling the old route. Abutting property owners had erected fences across the old right-of-way at about that time. The fences were maintained for some 14 years. The suit was brought by another landowner

[203] DEP'T OF COMMERCE, BUREAU OF PUBLIC ROADS, HIGHWAY STATISTICS (1946 THROUGH 1955).

Table 14. Extent of Abandonment of Primary State Highways[1]

Year	Primary Rural State Highways (mi)	Municipal Extensions of State Highway Systems[2] (mi)	Total (mi)
1946	75	4	79
1947	220	11	231
1948	177	10	187
1949	115	14	129
1950	120	22	142
1951	102	9	111
1952	123	12	135
1953	130	11	141
1954	158	28	186
1955	165	23	188
Total	1,385	144	1,529

[1] "Highway Statistics," 1946 through 1955, Bur. Pub. Roads.
[2] May include municipal extensions of other State systems.

[204] DEP'T OF COMMERCE, BUREAU OF PUBLIC ROADS, HIGHWAY STATISTICS 1955, 131 (1957).
[205] Arizona, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Texas, Virginia, Washington, West Virginia, Wisconsin.
[206] Minnesota, Mississippi, Nevada, South Dakota, Utah.
[207] California, New York, Oregon, Pennsylvania, South Carolina.
[208] Arkansas, Florida, Missouri.
[209] Alabama, Illinois, Kentucky, New Mexico, Rhode Island, Tennessee, Vermont, Wyoming, Alaska, Hawaii, Puerto Rico. (But note that New Mexico has statutory authority to abandon and close railroad grade crossings, §55-2-7(a)).

Table 15. Legal Authority to Delete Highways from Primary Highway System

State Highway Department			Legislature	Legislature and State Highway Department	No Provision	
Ariz.	La.	N. C.	Minn.	Calif.[1]	Ala.	R. I.
Colo.	Me.	N. D.	Miss.	N. Y.[1]	Ark.[2]	Tenn.
Conn.	Md.	Ohio	Nev.	Ore.[1]	Fla.[2]	Vt.
Del.	Mass.	Okla.	S. D.	Pa.[1]	Ill.	Wyo.
Ga.	Mich.	Tex.	Utah	S. C.[1]	Ky.[3]	Alaska
Idaho	Mont.	Va.			Mo.[2]	Hawaii
Ind.	Neb.	Wash.			N. Mex.	P. Rico
Iowa	N. H.[1]	W. Va.				
Kan.	N. J.	Wis.[1]				

[1] Statutory authority to abandon relocated sections. Courts of Quarter Sessions also given authority to vacate in Pennsylvania.
[2] Primary highways may not be eliminated.
[3] Judicial decision upheld authority of Department of Highways to delete.

abutting the old highway who desired to use it for ingress and egress. He claimed that since the old highway was a former county highway it could only be abandoned by the county in the manner prescribed by statute.[210]

The court held, however, that when the State took over the old highway in 1932, complete control was vested in the Department of Highways. The department could abandon the old highway without any formal action, and its intention to do so was evidenced by the construction of the new highway. The action of the Department of Highways, continued the court, coupled with the actions of the abutting property owners and the non-user by the public constituted a practical abandonment of the old highway.[211]

Prior to 1951 the Georgia State Highway Board had no statutory provisions applicable to the deletion of highways from the primary system. However, in 1948, the Supreme Court of the State tacitly held that the Board might eliminate a highway from the system by relocation of the route involved, even though it had no authority to close a public highway. The road in question had been taken over from the county, and in relocating a 3,000-foot section thereof, the State Highway Board proposed to "permanently close and abandon" the old road and the railroad grade crossing located thereon. The county's intention was to maintain the old road. The railroad sought to enjoin the County Commissioner's action, contending that the State Highway Board was authorized to close the road.

The court held that relocation of a road does not amount to the discontinuance or closing of the part left out of the new State highway, so far as the county or the public was concerned. In this particular case, the county had operated and maintained the highway for some 20 years prior to the time it was designated a State-aid road, without having acquired conveyances to the land. Since the county had only such rights in the road as were acquired by dedication or easement, the highway board became vested with no greater rights when it took over the highway. Thus, when the board relocated a portion of the road, the effect was to abandon only such rights as it had acquired from the county. The county had not forfeited its right to the old segment, but on the contrary was seeking to hold and maintain it as a part of its own public road system.

The Supreme Court thus upheld the lower court's action in refusing to grant an order restraining the County Commissioners from maintaining the old road.[212]

In 1951, the Georgia legislature added a new provision to its statutes providing, among other things, that the State Highway Board might abandon any or all of the

[210] KY. REV. STATS., §178.070.
[211] Williams v. Woodward, 240 S.W.2d 94 (Ky. 1951).
[212] Southern Ry. Co. v. Wages, 203 Ga. 502; 47 S.E.2d 501 (1948).

State highway system mileage in building new roads or bridges or in improving the State highway system, keeping in view only the control points as shown by the present State highway system.[213]

As indicated in Table 14 there are three States [214] in which existing legislation seems to indicate that once a road becomes a part of the primary highway system, it must remain as such, and the State highway department has no authority to delete such a road from the system. An Arkansas statutory provision definitely states that the State Highway Commission shall not have authority to eliminate any part of the highway system.[215]

The State primary highway system in Missouri was originally designated by the legislature, which body in so doing specified that the roads so designated should be "ever after maintained" as public roads.[216] This would seem to adhere to the old doctrine "once a highway, always a highway," and thereby prevent elimination of any part of the system. There is, however, a later statutory enactment authorizing the State Highway Commission to convey "any interest in land or any leasehold which has heretofore or may hereafter be acquired by the commission" if the advantageous use thereof has ceased.[217] Whether this section is applicable to land actually constituting a part of a primary highway, thereby permitting deletions from the system, is difficult to determine.

The State of Florida enacted legislation in 1955 providing for the designation and classification of all State roads, including the primary road system, specifying what roads were to be included therein.[218] Two new sections were added to this classification statute in 1957, one authorizing the State Road Board to make additions to the primary highway system,[219] and the other specifying that "any road heretofore maintained at any time as a primary road shall be maintained, constructed and reconstructed as a part of the primary road system," [220] which would appear to preclude any deletions from the system.

In 32 States the highway departments have definite statutory authority to abandon or vacate primary highways, including five jurisdictions in which the legislature itself retains this power except in the case of sections displaced by relocations.[221] The extent of this authority is discussed in the following sections.

BLANKET AUTHORITY

The highway departments of 11 States appear to have full authority to delete any State highways when considered appropriate or necessary.[222] (See Table 16.)

[213] GA. ACTS 1951, pp.31, 36, (CODE OF GA. ANN., §95-1610).
[214] Arkansas, Missouri, Florida.
[215] ARK. STATS. 1947, §76-501.
[216] MO. REV. STATS. 1949, §227.020.
[217] *Id.*, §227.090.
[218] FLA. STATS. 1955, §§335.01 *et seq.*
[219] FLA. LAWS 1957, ch. 57-407, §3(c).
[220] Id. §3(d).
[221] California, New York, Oregon, Pennsylvania, South Carolina.
[222] ARIZ. REV. STATS., §18-151; COLO. REV. STATS. 1953,

Table 16. Analysis of State Highway Department Authority to Delete Highways from Primary Highway System

Blanket Authority Granted		Consent of Local Government or Abutting Owners Required	Special Provisions Relating to Relocated Sections		Notice, Public Hearings Required	
Ariz.[1]	Md.	Conn.	Calif.[2]	N. Y.[3]	Del.	Neb.
Colo.	N. D.	Del.	Colo.	N. D.	Idaho	N. C.
Ind.	N. J.	Ga.	Iowa	Ore.[3]	Kan.	Ohio
Iowa	Tex.	Mass.	Md.	Pa.[3]	La.	Okla.
Me.	Wash.	Mont.	Miss.	S. C.[3]	Mich.	Va.[2]
	W. Va.	N. C.	N. H.	Wis.	Mont.	
			N. J.			

[1] Superior courts may review.
[2] On own action or on petition of landowner.
[3] Legislature also deletes.

Most of the provisions found in the statutes of these States either specify that any primary highway may be eliminated, or that such action may be taken if the route involved is not of sufficient importance to justify its continuance as a part of the system. Only two States in this group have statutory limitations of any kind. Such authority is limited to Federal-aid roads in Colorado, but since by statute practically the whole system is composed of such roads, this cannot be considered a real limitation on the State's authority. Arizona statutes specify that the State's action is subject to review of the superior courts by certiorari.

CONSENT OF LOCAL GOVERNMENT

Of the 32 States wherein the State highway department has authority to delete State highways, in only six is the consent of the county or town in which the highway is located required.[223]

In Massachusetts, the Department of Public Works may "discontinue a section of State highway with the concurrence of the county commissioners." The highway so discontinued becomes a town way. Abandonment of a section of trunk line highway by the Connecticut State Highway Commission must have the consent of the town in which such highway is located. In Montana no State highway may be "abandoned" except on the joint order of the Board of County Commissioners and the State Highway Commission. Public highways once established must continue as such until abandoned by operation of law, by judgment of a court of competent jurisdiction, or by order of the board of county commissioners of the county in which the highway is located.

There are several sections in the statutes of North Carolina which pertain to changes in State highways, the sense of which appear to be that the consent of the county is necessary before a State highway may be "abandoned." One section includes a proviso to the effect that no road may be abandoned so as to disconnect county seats and principal towns.

Although Georgia does not require local consent, as such, it has been included because of a provision permitting the State Highway Board to abandon any or all of the State highway system mileage, within the established control points, after conferring with the county commissioners concerned, and giving due consideration to their wishes. Under this provision, however, in case of disagreement between the county and the State Highway Board, the judgment of the latter prevails.

The Delaware approach is slightly different, inasmuch as the State Highway Department may "close" any public road in the State running parallel to an improved road, provided that all abutting property owners along the public road consent to the vacating thereof, signifying their consent in writing.

NOTICE AND HEARING

The legislatures of at least 11 States have apparently considered it desirable that notice of the highway department's intention to abandon or close a State highway be given by the locality in which the road lies.[224] All but Louisiana require a public hearing. The Louisiana statute merely states that when the Director of Highways determines that certain sections of the State highway system should be abandoned, he must notify the governing authorities of the parishes through which it passes of his intention.

In Kansas, Montana, Ohio and Virginia, statutory provisions simply require that no part of the State highway system shall be abandoned or removed without notice and a public hearing. In North Carolina, a public hearing is required if the county objects to the abandonment of a section of State highway. In Idaho, a highway serving or traversing any city or village, or the

ch. 120, art. 13, §1; BURNS' IND. STATS. ANN., §36-117; CODE OF IOWA, §313.2; REV. STATS. OF ME. 1954, ch. 23, §19; ANN. CODE OF MD., 1951, art. 89B, §6; N.J. S. A., §27: 7-21(f); N.D. REV. CODE OF 1943, §24-0128; VERNON'S TEX. CIV. STATS. 1948, art. 6674q-9; REV. CODE OF WASH., §36.75.090; W.VA. CODE OF 1955, §1460(12).

[223] GEN. STATS. OF CONN. 1949, §968c; DEL. CODE ANN., tit. 17, §1312(a); CODE OF GA. ANN., §95-1610; ANN. LAWS OF MASS., ch. 81, §12; REV. CODES OF MONT. 1947, §32-105; GEN. STATS. OF N.C., §§136-54, 136-55, 136-57, 136-60.

[224] DEL. CODE ANN., tit. 17, §1311; IDAHO CODE, §40-121; GEN. STATS. OF KAN. 1949, §68-406; LA. REV. STATS. 1950, §48: 224; COMP. LAWS OF MICH. 1948, §§250.114; REV. CODES OF MONT. 1947, §32-105; REV. STATS. OF NEB. 1943, §§39-1313, 39-1314; GEN. STATS. OF N.C., §136-54; BALDWIN'S OHIO REV. CODE, §5511.01; OKLA. STATS, tit. 69, §62; CODE OF VA. 1950, §33-76.2.

area in which such city or village is located, may not be abandoned without notice and a public hearing. Before abandoning any highway, however, the Board of Highways must find and determine that the benefits to the State are greater than the economic loss and damage to the city or village affected.

Nebraska must extend an opportunity for a public hearing to political or governmental subdivisions or public corporations wherein any portion of the State highway system is to be abandoned or relinquished. Approval of the Governor is necessary before a highway may be abandoned, and the State Highway Department must first offer to relinquish such highway or section thereof to the political or governmental subdivisions or public corporations wherein it lies.

In Oklahoma, no State highway may be removed from the State system until notice of intention to do so has been given to the State senators and State representatives of the respective districts which may be affected, thereby fixing a time for a public hearing.

Abandonment or vacation of a public road in Delaware by the State Highway Department requires a hearing of interested persons. Before abandoning any portion of a trunkline highway in Michigan the State Administrative Board must hear the objection of any county road commissioners or the governing body of any township, city, or village to whose jurisdiction such portion of the system would revert.

DELETION OF RELOCATED SECTIONS

In addition to the provisions already discussed, which pertained to abandonment of primary highways generally, in 13 States the State highway department has been given authority to abandon portions of primary highways displaced by relocations of the route in which they are included [225] (see Table 16). It will be noted that in five of these States (Colorado, Iowa, Maryland, New Jersey and North Dakota) provisions were found providing for deletion of primary highways generally. In the remaining States, the highway department may apparently abandon only relocated sections. It might be further pointed out that in six of these States—California, Mississippi, New York, Oregon, Pennsylvania, and South Carolina—deletions from the system, generally, are made by the legislature itself.

DISPOSAL OF HIGHWAYS DELETED FROM PRIMARY SYSTEM

What becomes of the primary highways or portions thereof which the State highway department determines are no longer necessary to the primary system? No clue is given by the actual wording used in the enabling statutes under which the States make these determinations. In other words, abandon, vacate, eliminate, remove, discontinue, etc., are seemingly used interchangeably in most instances. And so, if the legislature has not made specific provision as to what to do with the old road, it is almost impossible to tell whether it ceases to be a public road, becomes a part of a lesser system, or reverts to the former owners of the land encompassed by the highway.

In seven States having statutes authorizing deletion by their respective highway departments, no provisions at all were found which pertained to disposition.[226] The same is true of three States in which deletions are accomplished by law.[227] In eight others, disposition was provided for only in the case of sections superseded by relocations.[228] (See Tables 17 and 18.) With the exception of Iowa, Montana, and South Dakota, a fee simple title may be taken by these States in acquiring right-of-way for highway purposes, in which case it would presumably be possible, even without specific statutory authority, for the State highway department to close the highway and dispose of the land formerly used therefor, if not considered necessary as part of one of the lesser systems. In Montana, only an

[225] DEERING'S CALIF. CODES, Streets and Highways, §73; COLO. REV. STATS. 1953, § 120-13-6; CODE OF IOWA, §313.2; ANN. CODE OF MD. 1951, art. 89B, §6; MISS. CODE 1942, §8033; N.H. REV. STATS. ANN., ch. 237, §1 *et seq.*; N.J. S. A., §27:7-6; MCKINNEY'S CONSOL. LAWS OF N.Y. ANN., Book 24, art. 3, §63; N.D. REV. CODE 1943, §24-0106; ORE. REV. STATS., §366.300; PURDON'S PA. STATS. ANN., tit. 36, §670-210; CODE OF LAWS OF S.C. 1952, §33-110; WIS. STATS. 1955, §§84.02(3), 84.025(3).

[226] Arizona, Georgia, Idaho, Montana, North Carolina, West Virginia, Wisconsin.

[227] Minnesota, Nevada, South Dakota.

[228] Colorado, Iowa, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, South Carolina.

Table 17. Statutory Provisions Pertaining to Disposition of Deleted Primary Highways Generally

Revert to Local Jurisdiction	Road Ceases to Be Public Highway		No Provision
	Reverts to Landowners	State May Dispose of	
Calif. Mich.	Del.	La.[1]	Ariz. Minn. Okla.
Conn.[2] Miss.	Kan.[3]	Md.	Colo. Mont. S. D.
Ind. Ohio	N. D.[1]	Neb.[4]	Ga. Nev. Utah
Me. Tex.		Va.[1]	Idaho N. J. W. Va.
Mass. Wash.			Iowa N. C.

[1] Or may be taken over by county.
[2] To town unless legally abandoned by it.
[3] Or land may be exchanged for other right-of-way.
[4] After offer to relinquish to political subdivision.

easement for highway purposes may be taken. This being the case, land encompassed by the former highway would probably revert to the fee owner, under similar circumstances. The statutes of the remaining States—Iowa and South Dakota—do not indicate whether the State takes a fee or an easement when acquiring right-of-way.[229]

For purposes of discussion statutory provisions pertaining to deletion of any highway from the primary system have been separated from those relating only to sections superseded by relocation. As indicated in Table 17, in ten States the deleted section of road reverts to local jurisdictions.[230] This may be the county in Texas and Washington, the town in Connecticut and Massachusetts, the town or county in Maine and Ohio, the county or city in California and Indiana, or the county, township, city or village in Michigan. All these statutes (except those of Texas) make reversion to the local jurisdiction mandatory. In Texas, the statute specifies that the county shall *have the right* to assume jurisdiction, indicating that the State has the authority to actually close the highway if the county prefers not to assume jurisdiction.

The statutes of seven other States indicate that an abandoned primary highway may cease to be a public highway.[231] In Delaware, Kansas, and North Dakota, the right-of-way abandoned reverts to the present owners of the land. The Kansas State Highway Commission actually has authority to dispose of said right-of-way or exchange the same for new or other right-of-way, with the proviso that if not so disposed of, it shall revert to the present owners of

[229] For a discussion of this subject, the legal interest which may be taken, see "Condemnation of Property for Highway Purposes," Part I(3), Highway Research Board Special Report 32, 1958.

Table 18. Statutory Provisions Pertaining to Disposition of Primary Highways Superseded by Relocations.

Reverts to Local Jurisdiction	Road May Be Closed		No Provision
	Reverts to Landowner	State May Dispose of	
Calif.	Colo.[1]	Md.	Wis.
Iowa	Ind.[1]	N. D.[1]	
Miss.	Ore.[2]	Wash.	
N. H.	Pa.[3]		
N. J.			
N. Y.			
Okla.[4]			
S. C.[5]			
Utah[5]			

[1] If not considered necessary as county or town highway.
[2] Or may be maintained by State or county.
[3] Presumably since State takes only an easement for highway purposes.
[4] By judicial decision.
[5] Or may be abandoned as public way.

[230] DEERING'S CALIF. CODES, Streets and Highways, §73; GEN. STATS. OF CONN. 1949, §968(c); BURNS' IND. STATS. ANN., §36-117; REV. STATS. OF ME. 1954, ch. 23, §19; ANN. LAWS OF MASS., ch. 81, §12; COMP. LAWS OF MICH. 1948, §250.114; MISS. CODE 1942, §8033; BALDWIN'S OHIO REV. CODE, §5511.01; VERNON'S TEX. CIV. STATS., art. 6674q-9; REV. CODE OF WASH., §36.75.090.

[231] DEL. CODE ANN., tit. 17, §1311; GEN. STATS. KAN. 1949, §68-413; LA. REV. STATS. 1950, §48:224; ANN. CODE OF MD. 1951, art. 89B, §6; REV. STATS. OF NEB. 1943, §39-1313; N.D. REV. CODE 1943, §24-0128; CODE OF VA. 1950, §33-76.2.

the land of which it was originally a part. In North Dakota, the road may become a county highway by agreement with the county.

The highway departments of Louisiana, Maryland, Nebraska, and Virginia may also dispose of land occupied by an abandoned primary highway. In Louisiana, Nebraska and Virginia, however, the parish or county is apparently given the opportunity to take over such highways. In Louisiana, if the land is sold, the original vendor is to have the first right to repurchase.

It is concluded that of all the States wherein authority to abandon any primary highway exists, in only six does the highway department have explicit authority to actually close the road, and in all but one—Maryland—the local jurisdiction must be given the opportunity to assume jurisdiction thereof. It would seem logical for those States taking a fee simple title to land acquired for primary highway purposes to be given such authority, particularly if the local jurisdictions are permitted to take over the highway if they so desire. It may be that this is actually the situation, but it is not clear from a reading of existing statutes. Clarification seems desirable.

DISPOSITION OF RELOCATED SECTIONS

As indicated by Table 18, in 9 States, superseded sections revert to local jurisdictions.[232] In one of the nine—Iowa—the displaced route becomes a part of the secondary system. In Mississippi, New Jersey, and Oklahoma the county may take over the deleted section. Actually, there is no statutory provision in Oklahoma, but a 1939 court decision held that a section of a primary highway which had been taken over from the county, reverted to that status when superseded by a relocation.[233] In the aforementioned case the State Highway Commission had taken over a county highway as a part of the State system. The highway was subsequently relocated to eliminate a curve. The new highway served the same points as the old and the State Highway Commission adopted a resolution declaring the aforesaid curve abandoned as a State highway. The old highway extended across the defendant's land and he proceeded to plow the portion on his premises, claiming that the road had been vacated and abandoned as a road. Hillsdale County sought to enjoin obstruction of the old road.

Pointing out that the statutes did not specifically authorize the State Highway Commission to vacate public roads, the court held for the plaintiff county in enjoining obstruction of the highway. When the road is taken over by the State, said the court, it no longer remains a county highway, but when it is abandoned by the State the highway resumes its status as a county highway and final abandonment would lie with the local authorities, which in this case would be the county.

Superseded sections revert to the town in New Hampshire, to the town or county in New York, and to the county or city in California.

The South Carolina and Utah laws authorizing the State Highway Department to abandon any section of a State highway which may be relocated specifically directs that the abandoned section shall revert to the jurisdiction of the respective appropriate local authorities involved *or be abandoned as a public way*. A recent decision of the South Carolina Supreme Court, however, seems to contradict this provision insofar as abandonment as a public way is concerned.

In a suit by abutting property owners to prevent obstruction of a section of the road displaced by a relocation of the State highway, the Supreme Court of South Carolina held that where the old road was not vacated, it was still a part of the public roadway system of the county and could not be closed without the consent of the persons whose property fronted thereon or over whose land it passed.[234]

The new road ran a short distance out of the bed of the original road and then came back into the old road where the two became practically identical. The highway

[232] DEERING'S CALIF. CODES, Streets and Highways, §73; CODE OF IOWA, §313.2; MISS. CODE 1942, §8033; N.H. REV. STATS. §§1, 2, 3; N.J. S. A., §27-7-6; MCKINNEY'S CONSOL. LAWS OF N.Y. ANN., Book 24, art. 3, §62; OKLA. (by judicial decision); CODE OF LAWS OF S.C. 1952, §33-110; UTAH CODE ANN. 1953, §27-6-1.

[233] Hillsdale Co. v. Zorn, 187 Okla. 38, 100 P.2d 436 (1939).

[234] Wessinger v. Goza, 99 S.E.2d 395 (S.C. 1957).

department placed several entrances along the new road to go across to the old road, to permit the persons on the old road to come across and join the new road, but these entrances were not to each and every house on the old road. The protesting landowners wished to use the old road which was more convenient for them, and requested the court to order the old road kept open.

The court, in holding for the landowners, stated that the principle of the common law that where there is once a highway there is always a highway, although subject to certain limitations and exceptions, would govern any case in which the highway department or any other authority sought to abandon an existing highway. It is axiomatic, said the court, that a public highway is not abandoned simply because a new highway is built.

The court remarked that if all of the property owners abutting the highway agreed to an abandonment of the same, then the public might have no rights in the highway. But as long as the various adjoining property owners did not agree, then the existing road or highway must remain open and must be maintained by the proper authority for use of such owners.

Any action taken by the Utah State Roads Commission—whether abandonment or return to the appropriate local jurisdiction—is subject to approval by the legislature.

The New York law specifically states that when a State highway is relocated, the old section reverts to the town or county in which it is located if it had been a town or county highway before being taken over by the State. Such transfer becomes effective upon the mailing of a certified copy of the official order of discontinuance to the town or county, as the case may be. Prior to enactment of this provision, the State had occasion to relocate a section of highway in Ontario county to eliminate a dangerous curve. In a suit for damages for injuries allegedly sustained due to defects in the old highway, the Court of Appeals of New York held in 1955 that inasmuch as this was a county highway before its accession to the State system, in point of law, it reverted to Ontario County after being discontinued in 1926, notwithstanding the absence of any specific clause to that effect in the statute then in force. However, since the State had failed to notify the governmental unit to which the duty of maintenance was being transferred, it could not be relieved of all responsibility. The court held that the State remained liable for injuries resulting from the state of nonrepair.[235]

In at least six States, statutory provisions seem to indicate that superseded sections of primary highways may be actually closed or, in other words, cease to be public highways.[236] (See Table 18.) In all but Maryland, the abandoned right-of-way reverts to the former landowner or his successor in title. Maryland has full power to dispose of the former right-of-way. If the property is sold, the proceeds are to be used for the construction, reconstruction, maintenance, and repair of the State highway system.

Deleted sections in Colorado revert to the landowners through whose property they may lie, if no longer necessary as a State highway and if the county or city does not desire to take it over. In Indiana, such deleted sections may be maintained "as other town or city streets and county highways are now maintained by the respective governmental unit in which such abandoned portion of said highway is located," or if not required for this purpose, shall cease to be a public highway and revert to the person or persons lawfully entitled to the same. This Indiana statute has a further proviso to the effect that if the highway right-of-way was obtained by the State by purchase, the State Highway Commission, by agreement with the person to whom the property would revert, may "accept a consideration in money from such person or persons for such release." The amount so agreed upon is to be allocated to the fund from which the consideration was paid by the commission in purchase of the right-of-way.

In Oregon if superseded sections are no longer needed for right-of-way purposes, the abandoned sections may revert to the abut-

[235] Geraghty v. State, 309 N.Y. 188, 128 N.E.2d 302 (1955).

[236] COLO. REV. STATS. 1953, §120-13-6; BURNS' IND. STATS. ANN., §36-117; ANN. CODE OF MD. 1951, art. 89B, §6; N.D. REV. CODE 1943, §§24-0106, 24-0128; ORE. REV. STATS. 1953, §366.300: PURDON'S PA. STATS. ANN., tit. 36, §670-210.

ting owner. However, if the eliminated section is needed for the service of persons living thereon or for a community served thereby, it is to be maintained by the commission at State expense, or by the county, or the State and county on such terms and conditions as may be agreed upon.

The Pennsylvania provision is somewhat more restricted in that it applies only to superseded sections not over two miles in length in townships, boroughs, or incorporated towns. Such superseded sections may be closed if not necessary for public travel, "having due regard to the convenience of access to the new highway" by abutting owners. Furthermore, the proposed change and order of vacation must be approved by the Governor of the State.

In 1953 the Pennsylvania courts held that the Secretary was without power to abandon or vacate "State roads." [237] The court noted that Section 670-215 of the statutes empowered Courts of Quarter Sessions to vacate parts of any former State road which had been adopted as a State highway, and which by reason of a relocation or change no longer formed a part of such State highways.[238] A landowner petitioned the Court of Quarter Session to vacate a part of a road in the Borough of Shenandoah which crossed his premises. This road was originally a State road and was subsequently incorporated into the State primary highway system. In 1949 the road was relocated by the State and as a result this part of the road was no longer used as a State highway.

The court held that the legislature intended to preserve "State roads" as a separate category and distinct from "State highways" by enacting Section 670-215. Thus, the Courts of Quarter Sessions possessed exclusive jurisdiction to vacate "State roads" when such roads no longer formed a part of the "State highway." The court did not, however, rule on the question of the highway department's authority to abandon or vacate a portion of a State highway established on a new right-of-way. Since the State takes only an easement for highway purposes, however, it is assumed that the land in question reverts to the fee owner.

When a State highway is relocated in Wisconsin, the pre-existing route continues to be a State trunk highway unless the county board in which any part of the relocation lies and the State Highway Commission mutually agree to its discontinuance as a State trunk highway. If no agreement can be reached, the commission must report the problem to the next ensuing session of the legislature for determination.[239] Nothing is said concerning the status of the relocated section if it is not "discontinued," but it is presumed that it remains a part of the trunk highway system.

A 1953 revision of the North Dakota highway law authorizes the State Highway Commissioner to abandon sections of routes on the State highway system when such abandoned sections are substantially replaced by improvements on new locations serving the area. The law specifically states that such abandonment may be made even though the highway is not placed on any other road system.[240]

In 1949, prior to enactment of this provision, the highway department had relocated a section of State highway in Burleigh County, after which it completely obliterated the old road. In an action to quiet title to land included in the right-of-way of the old road, the court held that the State Highway Department had no power to vacate a highway which had been established, and over which the public had acquired a right of passage. The only effect which the relocation of a highway by the department could have, continued the court, was to detach the old highway from the State highway system. The old highway remained as a public way within the control of the governing board of the territory in which it lay.[241]

In Maryland and in Washington, the State Highway Department may dispose of sections superseded by relocation.[242] In

[237] Petition of Turkey Run Fuels, Inc., 173 Pa. Super. 76, 95 A.2d 370 (1953).
[238] PURDON'S PA. STATS. ANN., §670-215.
[239] WIS. STATS. 1955, §84.02(3).
[240] N.D. REV. CODE OF 1943, §24-0106.
[241] Casey v. Corwin, 71 N.W.2d 553 (N.D. 1955).
[242] ANN. CODE OF MD. 1951, art. 89B, §6; REV. CODE OF WASH., §§47.12.060, 47.12.080, 47.12.090.

Washington, such superseded right-of-way may be conveyed to the abutting landowner as payment for property rights taken, or may be sold at public auction.

SUMMARY

From the foregoing discussion it is obvious that legal authority with regard to abandonment or vacation of State highways is not too well defined, in many instances.

In the first place, no statutory provisions pertaining to abandonment of primary highways were found in 10 jurisdictions, as previously mentioned. In three States, legislation seems to imply that State highways may not be abandoned, while in others, the courts have attempted to clarify the highway department's authority in this respect. However, it would be more desirable to have specific authority included in the statutes.

In the second place, there is confusion as to the meaning of the terms used. In some States "abandon" and "vacate," for example, appear to be synonymous. In others there is apparently a distinction. This makes it difficult to determine whether an "abandoned" highway may cease to become a public road if not transferred to another jurisdiction. What is a "vacated" highway? One might think that vacate and close would be synonymous, but this does not always appear to be the case. In this connection, Nebraska has set forth the meaning of the terms used in its statutes. Thus, "abandon" means to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the State highway system. "Relinquish" means to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the State highway system to a political or governmental subdivision or public corporation of Nebraska.[243]

North Dakota statutes define "abandonment" as meaning cessation of use of right-of-way or activity thereon with no intention to reclaim or use again for highway purposes.[244] Abandonment, then, in these two States does not necessarily mean the same thing since the Nebraska statute seems to imply rejection only on the part of the State Highway Department, while in North Dakota the term apparently means to close a road.

Consequently, in those States where no definition is included, and actual disposition is not spelled out in the statute, it is impossible to tell just what the situation is.

In general, provisions pertaining to the disposition of the road or section to be abandoned are vague, and in numerous instances have required interpretation by the courts. Perhaps a logical procedure would be to permit the taking over of an abandoned highway by the town or county if there appeared to be a need therefor, this to be determined by the town or county. If not considered necessary in this respect, the road would cease to be a public road, in which case the land encompassed therein would return to the abutting owners if only an easement for highway purposes had been acquired by the State, or be otherwise disposed of, by sale or exchange, if title to the land were in fee.

A statutory provision pertaining to abandonment should, then, include at least three elements, with ramifications as discussed above: (1) Definition of terms used in the provision; (2) specific authority to abandon; and (3) the disposition to be made of the abandoned road.

[243] REV. STATS. OF NEB. 1943, § 39-1302(1)(18).
[244] N.D. REV. CODE 1943, §24-A0102(1).

MUNICIPAL EXTENSIONS OF PRIMARY HIGHWAYS

State highway systems as originally conceived were predominantly rural in character and did not necessarily extend into municipalities. Roads comprising the system could often be improved by the State highway department only to the city limits, resuming again at the opposite end of town. Municipal governments were often unable, with the resources available to them, to provide adequate connecting links. Naturally enough there were instances where the municipality preferred to use what funds were available in the construction of other improvements, of supposedly greater benefit to the inhabitants. Finally, there was frequently disagreement as to the routing of the connecting link, the municipalities zealously guarding their authority over control of the streets within their corporate limits.

As discussed earlier, the original intent of the primary highway system was, for the most part, to provide a means for connecting county seats, important municipalities, and other definite points in the State. But with the increase in motor travel, the system became more and more State-wide in character and it became necessary to provide a more efficient way of passing through the various municipalities for those whose objective was not the closest city, but one perhaps half way across the State.

As a result, more and more State highway departments sought, and for the most part obtained, authority over these very necessary connecting links, including power to designate the routes to be used, often assuming the burden of constructing and maintaining the route selected.

Possibly the municipalities have come to welcome this financial assistance, considering that these connecting links are used to such a great extent by travelers who contribute little to the city's economy. But even today there are several States where the highway department's authority over municipal connecting links is confined to the smaller cities and towns, as will be discussed in this section. In other States, the highway department must obtain the approval of the municipal authorities before designating a connecting link, or such designation must be a cooperative endeavor on the part of the State and the municipality.

Statutory provisions pertaining to the designation of urban extensions of primary highways were found in all but nine jurisdictions. (See Table 19 and Figure 9.) In these nine jurisdictions, the highway department is authorized to designate the system, and it might be assumed that this authority extends to municipal connecting links.[245]

[245] Arkansas, Iowa, Maryland, Montana, New Mexico, Vermont, Wyoming, Alaska, and Hawaii.

Table 19. Legal Authority to Designate Municipal Connecting Links of Primary Highway System

State Highway Department				Legislature	Constitution	No Specific Provision
Ala.	Ind.	Nev.	S. D.	Calif.	Minn.	Ark.
Ariz.	Kan.	N. H.	Tenn.	Mich.		Iowa
Colo.	Ky.	N. C.	Tex.	N. J.		Md.
Conn.	La.	N. D.	Va.	N. Y.[1]		Mont.
Del.	Me.	Ohio	Wash.	Pa.		N. Mex.[2]
Fla.	Mass.	Okla.	W. Va.	Utah		Vt.
Ga.	Miss.	Ore.	Wis.			Wyo.
Idaho	Mo.	R. I.	P. Rico			Alaska
Ill.	Neb.	S. C.				Hawaii

[1] Superintendent of Public Works is authorized to construct highway through a village to form continuous highway on State system, and in this connection may take over and improve village street to State system requirements. (McKinney's Consol. Laws of New York Ann., Book 24, art. 3, §46.)

[2] 1934 judicial decision held State Highway Commission has such authority.

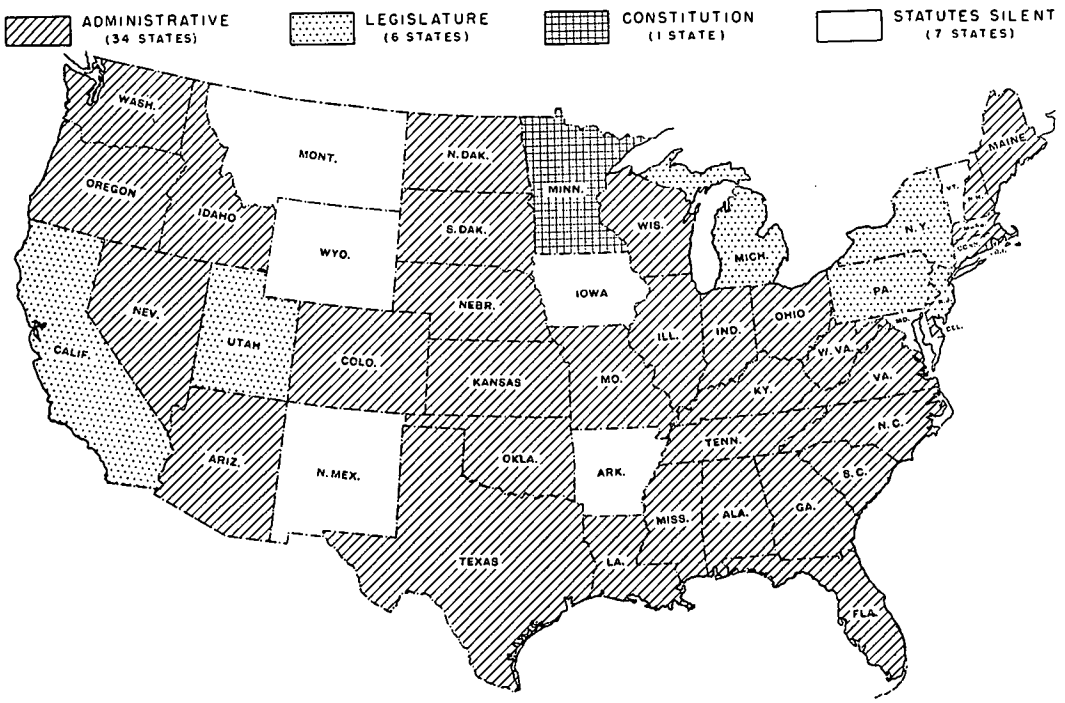

FIGURE 9

Who designates municipal connecting links.

Although New Mexico does not have explicit legislation relating to the designation of State highways within municipalities, a 1934 judicial decision held that the State Highway Commission had such authority.[246] In this case the court held that, notwithstanding the fact that the municipalities had authority to lay out streets within their borders, the State Highway Commission could lay out State highways through counties and municipalities without the consent of those bodies. If the Commission had the power to designate, lay out, construct, and maintain State highways outside of a municipality, asked the court, wherein was it prohibited from doing so within a municipality?

The legislature had designated the State Highway Commission as the body which had control over State highways. As such body, said the court, it had power to acquire rights-of-way and the power to designate and lay out State highways. To prohibit the commission from so doing, continued the court, would result in the State's constructing State highways up to the municipal limits and beginning again on the other side of the municipality, thus bringing traffic into the municipality and leaving construction within the city to the discretion of the city fathers who might or might not improve its streets, and who might insist that travel be over and upon a street where dangerous curves and railroad crossings were located.

LEGISLATIVE DESIGNATION

In six of the remaining jurisdictions, the legislature itself designates the primary highway system, including urban extensions.[247] In California, however, if the municipal connection is not specifically described by law, the State Highway Commission may determine the location of the connecting portion, which may be either through or around the city, depending upon which will be of greater value to through traffic.[248] The New York legislature has specifically designated and named public streets in certain cities as "arterial high-

[246] Gallegos v. Conroy, 29 P.2d 334 (N. Mex. 1934).

[247] California, Michigan, New Jersey, New York, Pennsylvania, and Utah.

[248] DEERING'S CALIF. CODES, Streets and Highways, §111.

Table 20. Restrictions on State Highway Department Authority to Designate Municipal Connecting Links in Primary Highway System

Provisions Requiring Cooperation with Municipality			Population Limitations	No Restrictions			
Ala.	Mass.	Okla.	N. H.	Colo.	Ill.	Mo.	Tenn.
Ariz.	Neb.[1]	R. I.	Va.	Conn.	Ind.	Ohio	W. Va.
Ga.	Nev.	Tex.	Wis.	Del.	Kan.	Ore.	P. Rico
La.[1]	N. C.	Va.		Fla.	Ky.	S. C.	
Me.	N. D.	Wash.		Idaho	Miss.	S. D.	

[1] In municipalities of over 5,000 population in Louisiana and North Dakota, and cities of first class in Nebraska.

ways," to be constructed as part of the State highway system. Additionally, the Superintendent of Public Works is authorized to construct highways through villages to form continuous highways on the State system and in this connection may take over and improve village streets to State system requirements.[249]

The State legislature designates municipal connecting links in Pennsylvania, but has specifically authorized the Secretary of Highways to add such connecting highways under certain circumstances. Under these provisions, the Secretary is authorized to join two or more State highway routes in cities of the second class, second class A, and third class, boroughs, incorporated towns, or townships, by a connecting road not more than one mile in length, whenever such connecting road would lessen the distance between two points on separate routes or provide a better alignment or grade.[250] Again, when a State highway route is considered inadequate for present or anticipated traffic, and the cost of securing right-of-way for a highway of adequate design on the existing location is considered unwarranted, or widening is impractical for other reasons, the Secretary may establish, construct and maintain a parallel highway as a State highway in any township, borough, or incorporated town or city, retaining the existing highway as a part of the primary system.[251] Or, the Secretary may take over existing parallel streets in cities, boroughs, and townships as State highways.[252]

In Michigan, New Jersey and Utah, routes designated by the State legislatures were found to extend into municipalities.

Minnesota is the only State which lists its primary highways, (including municipal extensions) in its constitution.

Municipal extensions are designated by the State in the remaining 35 jurisdictions, as indicated in Table 19. A number of these jurisdictions have what amounts to blanket authority with respect to such designation, while others must have the co-operation of local authorities. The authority in several is limited to municipalities under prescribed population limits. In a number of States the highway department may relocate and, in some instances, abandon these municipal extensions. These ramifications of the States' authority are discussed in the following sections.

BLANKET AUTHORITY

The laws of 18 jurisdictions indicate that the highway authorities have unlimited authority to designate municipal connecting links.[253] (See Table 20.)

Of interest in this category is a declaration of policy in the Kentucky statute, which reads as follows:

> It is hereby declared that city streets or portions thereof, including viaducts and bridges, over which State and Federal highways are routed or which serve as connect-

[249] MCKINNEY'S CONS. LAWS OF N.Y., Book 24, art. 3, §46; art. 12-B, §§349B and E.
[250] PURDON'S PA. STATS. ANN., tit. 36, §670-217.
[251] *Id.*, §670-220.
[252] *Id.*, §670-221.

[253] COLO. REV. STATS. 1953, §120-3-17; GEN. STATS. OF CONN. 1949, §2240: DEL. CODE ANN., tit. 17, ch. 1, §134b; FLA. STATS. 1955, §335.04(3); IDAHO CODE, §40.121; SMITH-HURD ILL. ANN. STATS. ch. 121, §296a; BURNS' IND. STATS. ANN., tit. 36, §36-116; GEN. STATS. OF KAN. 1949, §68-406; KY. REV. STATS., §177.042; MISS. CODE 1942, §8037; CONST. OF MO. 1949, art. IV, §30(3)(e); BALDWIN'S OHIO REV. CODE, §5501.02; ORE. REV. STATS., §373.010; CODE OF LAWS OF S.C. 1952, §33-112; S.D. LAWS OF 1953, ch. 139; TENN. CODE ANN., §54-535; W.VA. CODE OF 1955, §1474(9); LAWS OF P.R., tit. 9, §13.

PLATE G

Bruckner Boulevard (State Route 1-a) looking east from Bronx River Parkway overpass in New York. Cooperation between State and local governmental units aids the proper planning of municipal connecting links.

> ing links to State and Federal highways passing through cities are a necessary and integral part of the State highway system of roads and that said streets serve a State purpose and are for the general benefit of the State, and that the maintenance of said streets is a proper and legitimate State function.[254]

In one of these States (Connecticut) the pertinent statute provides that one route extending approximately north and south, and one extending approximately east and west through each city and town shall be included in the trunk line system of highways.[255]

LOCAL COOPERATION

Although a reading of the statutes in the States included in the previous category does not indicate that local authorities are consulted or notified of the State's action in designating municipal connecting links, it may be assumed that the State does not act without consultation with said authorities even though the State undoubtedly has the final say if no agreement can be reached.

There is another group of States—15 in all—wherein some degree of cooperation is specifically provided for.[256] (See Table 20.) This cooperation ranges all the way from notice to the city of the State's action in designating municipal connecting links in Alabama, Georgia and Washington, to municipal approval in Nevada and Virginia.

The Virginia provision, incidentally, applies only to incorporated towns and cities of less than 3500 inhabitants, and requires the approval of the Governor as well as the governing body of the incorporated town or city.

As a matter of fact the only provisions in Maine and Massachusetts seem to imply that the State has even less authority in this respect, since the State highway department acts only on the petition of the municipal officers in designating State highways in municipalities. However, there is some doubt as to the validity of this assumption as far as Massachusetts is concerned, since the highway department does have specific authority to alter a highway in a city or town.[257] Apparently, the State's authority to "lay out or take charge of a highway"

[254] KY. REV. STATS., §177.041.
[255] GEN. STATS. OF CONN. 1949, §2240.
[256] CODE OF ALA. 1940, tit. 23, §78(20); ARIZ. REV. STATS., §18-156; CODE OF GA. ANN., §§95-1726, 95-1728; LA. ACTS OF 1955, Act No. 40, §193; REV. STATS. OF ME. 1954, ch. 23, §19; ANN. LAWS OF MASS., ch. 81, §4; REV. STATS. OF NEB., §39-1312; NEV. LAWS OF 1957, ch. 370, §185; GEN. STATS. OF N.C., §136-47; N.D. REV. CODE 1943, §24-0104; OKLA. STATS. 1950, tit. 69, §§49 and 50; GEN. LAWS OF R.I. 1938, ch. 74, §23; VERNON'S TEX. CIV. STATS. 1948, art. 6673-b; CODE OF VA. 1950, §33-113.1; REV. CODE OF WASH., §47.-24.010.
[257] ANN. LAWS OF MASS., ch. 81, §6.

as a State highway includes municipal connections, or "connecting ways." [258]

The statutes of North Carolina specify that the city must be given an opportunity for a hearing if there are any objections to the designation of a State highway within its borders.

In four states—Arizona, Oklahoma, Rhode Island, and Texas—the location of municipal connections of primary highways is determined by agreement between the city and the State highway department.

An outstanding example of cooperation between municipalities and the State highway departments is found in the statutes of Louisiana, Nebraska and North Dakota. In all of these States, governing bodies of certain cities (over 5,000 population in Louisiana and North Dakota, and cities of the first class, or having a population greater than that required for such a city, in Nebraska) are directed to prepare and adopt, in cooperation with the State highway department, a master plan to insure the proper location and integration of the State highway connections in the total city street plan. The purpose of this cooperative venture is further elaborated in the statutes of Nebraska and North Dakota in the following language:

> In selecting and designating the master street plan, the cooperating officials shall take into account the more important principal streets that connect the residential areas with the business areas, and the streets that carry the important rural traffic into and across the city to insure a system of streets upon which traffic can be controlled and protected, in such a manner as to provide safe and efficient movement of traffic within a municipality.

The master plan thus adopted is subject to revision in Louisiana as traffic conditions may require.

POPULATION LIMITATIONS

Statutory limitations as to the size of municipalities in which the State highway department may designate municipal connecting links still exist in at least three States, as indicated in Table 20.[259] In New Hampshire, "Class I highways" do not include portions of such highways within the compact sections of cities or towns of 2,500 inhabitants and over. The Wisconsin statute specifies that the State trunk highway system shall not include the marked routes thereof over the streets or highways in cities and villages having a population of 2,500 or more, except those portions extending inward from, or along, corporate limits determined by the State Highway Commission as being comparatively rural or suburban in character. The portions so excluded as State trunk highways, but marked as such, are designated connecting streets. The State trunk system, however, does include routes in or through cities and villages having a population of less than 2,500. It is difficult to tell whether these distinctions are made to guarantee local control of city streets, or to pinpoint responsibility for maintenance of these connecting links.

More complicated provisions in Virginia specify that the State Highway Commission may, with the consent of the Governor and the governing body, designate connecting links in incorporated towns and cities having a population of 3,500 or under. The situation is more complicated in cities and towns with more than 3,500 inhabitants. The State Highway Commissioner may select such streets and roads as may in his judgment be best for the handling of traffic from or to any road in the State highway system in the following cities and towns:

1. Incorporated towns and cities having more than 3,500 inhabitants.
2. All towns situated within one mile of the corporate limits of a city of the first class and having a population in excess of 3,500.
3. All cities operating under a charter designating them as cities notwithstanding the number of inhabitants.
4. All towns having a population in excess of 3,500 through which passes any primary road in the State highway system directly connecting and over which moves a substantial portion of the traffic between two cities of the State each of which has a population in excess of 40,000.

Without a knowledge of the governmental setup in Virginia, it would be difficult to

[258] *Id.*, §5.
[259] N.H. REV. STATS. ANN., ch. 230, §4; CODE OF VA. 1950, §33-113.1; WIS. STATS. 1955, §84.02(11).

Table 21. Additional Authority of State Highway Departments Relating to Municipal Connecting Links in Primary Highway System

Authority to Construct Bypasses or Belt Lines	Authority to Revise	Authority to Delete
Calif. Va. Ill. Wash. Miss. Wis. S. C. Wyo. Utah	Idaho Mo. Tex. Ill. Nev. Va. Ind. N. C. Wash. La. Ohio W. Va. Mass. Ore. Miss. Pa.	Idaho Ind. Miss. N. C. Pa. Va.

say just what limitations this imposes on the highway department's authority.

Although no specific authority to designate municipal connecting links was found in the Vermont statutes, a 1957 law authorizing the State Highway Board to take over State-aid highways under certain conditions includes a proviso to the effect that in towns having a population of 1,500 or over, such State highways may not include streets and highways where, for the space of one-half mile thereon, the houses average to stand 100 feet or less apart. Such portions of the highway may, with the consent of the Governor, be turned over to the town.

BYPASSES AND BELTLINES

Several of the States have specifically mentioned bypasses and/or beltlines in legislation pertaining to the State's authority to designate municipal connecting links.[260] (See Table 21.)

In California and Utah, primary routes are designated by the legislature, but the California State Highway Commission may determine the location of connecting portions if not specifically described by law, and the route may be either through or around the city, depending on the Commission's determination as to which location will be of the greatest benefit to through traffic on the State highway. In Utah, if the State plans to bypass or provide an alternate route through or outside the city the State Road Commission must notify the governing officials of the affected city or town and hold a public hearing before making its decision final.

The State highway authorities may determine whether connecting links are to run through or around any municipality in Mississippi and Washington, and in cities and incorporated towns in Virginia.

Whenever local traffic conditions in a city, town, or village, through which a primary State highway is located, are such as to interfere with or impede through traffic, the Illinois Department of Highways may construct a durable hard-surfaced road in the nature of a beltline to connect State highway routes entering the municipality. The Wisconsin provision actually applies to alternate rather than bypass routes, and specifies that where a State trunk highway passes near but not through the central or business portion of a city or village, the State Highway Commission may, upon petition of the city or village, designate an alternate route through this area if the Commission finds that public travel will be benefited.

The Wyoming legislature has approached the bypass problem from a different angle by enacting a law declaring it to be the public policy of the State that no State highway traversing or bypassing any incorporated city or town with a population of 20,000 inhabitants or less shall be so moved or relocated as to divert the present route of the same nor to bypass such city or town without the express approval of the people thereof.

Although Oklahoma has no specific legislation authorizing the State Highway Commission to bypass a municipality, a decision

[260] DEERING'S CALIF. CODES, Streets and Highways, §111; SMITH-HURD ILL. ANN. STATS., ch. 121, §296f; MISS. CODE 1942, §8037; CODE OF LAWS S.C. 1952, §33-106; UTAH CODE ANN. 1953, §27-2-4; CODE OF VA. 1950, §33-35; REV. CODE. OF WASH., §47.28.010; WIS. STATS. 1953, §84.02(1); WYO. COMP. STATS., 1945, §48-122.

PLATE H

A municipal extension of State Highway 26 in New Jersey.

handed down by the courts of the State held that the highway department could reroute the highway so as to bypass the city and build a cutoff instead.[261]

In the aforementioned State, an action in mandamus was brought to force the State Highway Commission to carry out a contract entered into by the State Highway Department and a county to construct a State highway through a city. The court held that the department could subsequently change its mind and reroute the highway. The contract, said the court, was against public policy and therefore void. The paramount duty of the highway officials in determining the location of routes of State highways, explained the court, was to consider the primary interest of the State at large and not that of any particular locality.

As previously mentioned, the South Carolina State Highway Commission may establish such beltlines or spurs as it deems proper, but not to exceed two miles in length.[262]

There are only nine States wherein specific authority pertaining to bypasses or beltlines was found, and of these only two—Utah and Wyoming—provide for a public hearing or approval of the area bypassed. However, in view of the fact that the Federal-Aid Highway Act of 1956 includes a requirement that plans submitted by any State involving the bypassing of any city, town, or village, either incorporated or unincorporated, must be accompanied by certification to the effect that public hearings have taken place, or that an opportunity had been afforded for such hearings, and that the economic effects of such a location have been considered, such hearings will presumably become a necessary part of the procedure in connection with highway improvements on which Federal funds are to be used.[263]

RELOCATION OF MUNICIPAL EXTENSIONS

Sixteen States in all were found to have authorized the State highway department to relocate municipal connecting links of primary State highways.[264] (See Table 21.) Since the highway departments of some 46 jurisdictions have been given authority to relocate primary highways generally, as in-

[261] Board of Com'rs v. State Highway Commission, 176 Okla. 207, 55 P.2d 106 (1936).

[262] CODE OF LAWS OF S.C. 1952, §33-106.

[263] 23 U.S.C., §128.

[264] IDAHO CODE, §40-121; SMITH-HURD ILL. ANN. STATS., ch. 121, §296(c); BURNS' IND. STATS. ANN., tit. 36, §36-2902; LA. ACTS OF 1955, No. 40, §193; ANN. LAWS OF MASS., ch. 81, §6; MISS. CODE 1942, §8037(c); CONST. OF MO. 1949, art. IV, §30(3)(e); NEV. LAWS OF 1957, ch. 370, §185; GEN. STATS. OF N.C., §136-55; BALDWIN'S OHIO REV. CODE, §5511.01; ORE. REV. STATS., §373.010; PURDON'S PA. STATS. ANN., tit. 36, §§ 670-210, 220 and 545; VERNON'S TEX. CIV. STATS. 1948, art. 6673-b; CODE OF VA. 1950, §33-113; REV. CODE OF WASH., §47.24.010; W.VA. CODE OF 1955, §1474(8).

dicated earlier in this report, it can be assumed that this authority extends to municipal connecting links in some, if not all, of the States wherein no particular mention is made of such links. This section will concern itself only with those States in which specific authority has been delegated to the highway department to relocate or alter primary highways in municipalities.

In approximately half of the States included in this category, the municipality concerned plays some part in the procedure, at least to the extent of being notified of the accomplished fact, as in Massachusetts. In that State, the Department of Public Works may alter the location of a State highway in a city or town by filing a plan thereof and a certificate that the department has laid out and taken charge of said State highway as altered in accordance with the plan in the office of the county commissioners, and by filing a copy of the plan of location as altered in the office of the clerk of the city or town.

Public hearings must be held in three States—Idaho, North Carolina, and Ohio—before the municipal connecting link may be altered. Relocations are made by the State Highway Department under agreement with the city affected in Texas, and the approval of the city itself is necessary in Pennsylvania, Washington, and West Virginia. The Pennsylvania provision pertains to cities of the first class, second class, second class A, and third class. Approval of the Governor is also required before any alterations may be made.

DELETION OF MUNICIPAL CONNECTING LINKS

An even smaller number of State highway departments have specific statutory authority to abandon municipal connecting links of the primary highway systems. Applicable provisions were found in only six States.[265] (See Table 21.) In four of these States—Idaho, Indiana, Mississippi, and North Carolina—the provisions apply to municipal extensions generally, while in Pennsylvania, only such connections in townships, boroughs and incorporated towns are mentioned; in Virginia, only incorporated towns or cities with 3,500 or less inhabitants.

In Pennsylvania such deletions from the system are subject to the approval of the Governor. The Idaho provision specifies that a public hearing must take place, and in North Carolina, protests of the local governing body must be heard before a route may be abandoned.

The 1957 amendment of an Indiana law pertaining to relocation of State highways generally, and abandonment of the old section, includes town or city streets, specifying that the abandoned sections are to be maintained as are other town or city streets.

SUMMARY

The authority of State highway departments in connection with urban extensions is not too clear-cut, in many instances. Some jurisdictions have no specific applicable provisions. Such provisions as are found in others are scanty. A happy assumption would be that a working agreement has been reached in the several jurisdictions between the State and local authorities, and that no difficulties are encountered in this field. However, in view of the fact that municipalities are generally endowed with authority over their own street systems, conflict with regard to these municipal extensions must sometimes arise. Granted the State highway department should have the final say as to the location of connecting links in the primary highway system, cognizance of the municipality's views on the subject of location might be desirable. As previously stated, actual procedure in most instances probably includes consultation with the municipality before definite action is taken by the State highway authorities. However, there is nothing in the statutes of many jurisdictions to make such cooperation mandatory. At the very least, it might be desirable to include in the statutes a provision making it mandatory for the State highway department to extend an opportunity for a hearing on its decision to the local authorities. To avoid unnecessary delays, such a provision could include a time

[265] IDAHO CODE, §40-121; BURNS' IND. STATS. ANN., §36-117; MISS. CODE 1942, §8037(c); GEN. STATS. OF N.C., §136-55; PURDON'S PA. STATS. ANN., tit. 36, §670-210; CODE OF VA. 1950, §33-113.1.

limit for filing requests for such a hearing after notice by the State of its intention.

Some thought might be given to the inclusion of provisions such as those of comparatively recent origin in Louisiana, Nebraska, and North Dakota, directing adoption of a master plan, prepared in cooperation with the State highway department, to insure proper location and integration of urban extensions. Great benefit might result from cooperative efforts of this type, not only from a public relations standpoint but in fitting the urban extensions into the city with a maximum of efficiency for the motorist and a minimum of disturbance to the city itself.

APPENDIX A

SUMMARY OF LAW PERTAINING TO PRIMARY HIGHWAY CLASSIFICATION, BY STATE

ALABAMA

Statutes

Primary system connecting all county seats designated by State Highway Department, with due regard to public welfare. Additions and relocation made by State Highway Department to conform to requirements of Federal-aid law. No provision for deletions. State Highway Department may designate municipal connecting links after a public hearing.

ARIZONA

Statutes

State Highway Department designated system. No definition or criteria indicated. May add routes, but county board may demand hearing. May also take over roads from other jurisdictions. May relocate if in public interest. May delete portions from system—no restrictions indicated, and no provision for disposition of deleted or relocated sections. May designate municipal connecting links—public notice required.

Judicial Decisions

Rowland v. *McBride,* 35 Ariz. 511, 291 P. 207 (1929), upheld right of State highway authorities to determine which highways shall be added to State primary highway system.

State v. *Carrow,* 57 Ariz. 434, 114 P. 2d 896 (1941), held that Superior Courts may review determination of State Highway Commission to alter primary highways.

ARKANSAS

Statutes

State Highway Commission designated system. No definition or criteria indicated. No restrictions on authority to add routes. Any necessary consent of Federal authorities must be obtained before relocating highways. Highways may not be deleted from system. No specific provisions relative to designation of municipal connecting links.

Judicial Decision

Woollard v. *State Highway Commission,* 220 Ark. 731, 249 S.W. 2d 564 (1952), upheld the authority of the State Highway Commission to relocate primary highway.

CALIFORNIA

Statutes

Legislature designated system. No definition or criteria indicated. Additions made by Legislature, but Division of Highways determines location. Relocations made by Legislature but Division of Highways may relocate if in the public interest. Deletions are made by Legislature but Division may delete relocated sections which revert to local jurisdiction. Municipal connecting links are designated by Legislature but Division of Highways may determine location if not specifically spelled out in law, and route may be either through or around city.

Judicial Decision

Holloway v. *Purcell,* 35 Cal. 2d 220, 217 P. 2d 665 (1950), upheld authority of Division of Highways to relocate State highway.

COLORADO

Statutes

Department of Highways designated system, which is to include Federal-aid primary and secondary roads. Federal-aid primary and secondary roads may be added by Department as need develops. The Department may also transfer roads from other systems to the primary system. Department may relocate highways in the public interest. No restrictions are placed on the Department's authority to delete highways from the system. No provision for disposition of deleted sections. No restrictions on

Department's authority to designate municipal connecting links.

CONNECTICUT

Statutes

State Highway Department designates system. No definition or criteria indicated. Department may add routes to system after public hearing. May also take over roads from other systems. Department may relocate routes for the safety of the traveling public. Department may delete routes with the consent of the local governmental unit to which the deleted sections revert. No restrictions on Department's authority to designate municipal extensions. However, only one route extending approximately north and south and one extending approximately east and west through a city may be included in the trunk line system of highways.

DELAWARE

Statutes

State Highway Department designates system, described as an integrated system, taking the public welfare into account. No restrictions on Department's authority to add or relocate routes. Department may delete routes after public hearing. Deleted sections revert to present owners. No restrictions on Department's authority to designate municipal extensions.

FLORIDA

Statutes

State Road Department designates system, composed of arterial highways and other Federal numbered highways, which is to interconnect counties and urban areas over 10,000 population. Department may add routes to system after public hearing. No specific provision pertaining to relocations. Existing routes may not be deleted. No restrictions on Department's authority to add municipal connecting links.

GEORGIA

Statutes

System composed of roads designated by State Highway Department, which are to interconnect counties and market centers. Department may add routes when 90 percent of system is paved. Department may relocate routes after public hearing. May delete routes with consent of local government. May add municipal connections after notice to city.

Judicial Decisions

Jackson v. *State Highway Department,* 164 Ga. 434, 138 S.E. 847 (1927), held that between two main trunk line routes, both serving a large territory, one presenting the fewer topographic and construction difficulties should be selected as part of system.

Murph v. *Macon County,* 167 Ga. 859, 146 S.E. 845 (1929), upheld State Highway Department authority to relocate primary road, provided there was no material change in general direction and location other than those dictated by public interest, taking into consideration distance, cost of construction, topographic and construction difficulties and expense of maintenance.

Southern Ry. Co. v. *Wages,* 203 Ga. 502, 37 S.E. 2d 501 (1948), held that relocation of a road by State Highway Board did not amount to discontinuance or closing of part left off new State highway so far as county or public was concerned. County from whom highway had been acquired was entitled to maintain road.

IDAHO

Statutes

Department of Highways designated system, consisting of an integrated system, including primary road to every county seat and principal highway arteries, with due consideration given to the development of State and traffic needs. No restrictions on Department's authority to add routes. Department may relocate routes after a public hearing if the public interest or convenience will be served. Department may delete routes after public hearing. No restrictions on Department's authority to designate municipal connecting links. Department may relocate or delete municipal connecting links after public hearing.

ILLINOIS

Statutes

Legislature designates system, consisting of an integrated system of Federal-aid primary roads and arterials, connecting county seats and principal municipalities, and serving the largest volume of traffic. Department of Public Works and Buildings authorized to classify all roads in State. No restrictions on Department's authority to add or relocate routes. No provision for deleting routes. No restrictions on Department's authority to designate municipal connecting links, including beltlines. Department may relocate such connecting links.

Judicial Decisions

Hitt v. *Dept. of Public Works & Bldgs.*, 336 Ill. 306, 168 N.E. 337 (1929), held that safety, economy and convenience are factors to be considered in selection of routes in primary system; also upheld authority of Department of Public Works & Buildings to make minor changes in routes designated by Legislature.

Wiley v. *Dept. of Public Works & Bldgs.*, 330 Ill. 312, 161 N.E. 783 (1928), held that routes selected for inclusion in primary system should serve State at large and not a particular locality.

N.S. & M.R. Co. v. *Ill. Commerce Commission,* 354 Ill. 58, 188 N.E. 177 (1933), held that factors to be considered in system designation included relationship of road in question to other roads on the statewide system.

Dept. of Public Works & Bldgs. v. *Pittman,* 355 Ill. 482, 189 N.E. 491 (1934), held that expense of future maintenance, future traffic, and convenience of local residents, as well as transient traffic, should be taken into consideration when selecting routes for inclusion in system; also upheld authority of Department of Public Works & Buildings to make minor changes in routes designated by Legislature.

Flatt v. *Dept. of Public Works & Bldgs.*, 335 Ill. 558, 167 N.E. 772 (1929), held that Department might relocate highway to eliminate dangerous conditions and to provide for safe operation of traffic.

Weber v. *Dept. of Public Works & Bldgs.*, 360 Ill. 11, 195 N.E. 427 (1935), held that, in selecting route for primary highway, the fact that one route proposed had been principal and accepted means of travel between two points for 45 years raised presumption that it was the most direct and most feasible route.

Dept. of Public Works & Bldgs. v. *Spanogle,* 327 Ill. 122, 158 N.E. 526 (1927), upheld authority of Department of Public Works & Buildings to make minor changes in routes designated by Legislature.

INDIANA

Statutes

State Highway Department designates system. No definition, description or criteria indicated. Department may make additions to afford connections with other highways; may take over roads from other system; may classify system into two or more classes and may change such classification when necessary. Department may relocate sections of highways to promote public convenience and safety. No restrictions on Department's authority to delete highways from system. Sections deleted from system revert to the county or city. Sections superseded by relocations revert to landowners if not considered necessary as county or town highway. Department may designate municipal connecting links, without restriction; may also relocate or delete such connecting links.

IOWA

Statutes

State Highway Commission designates system which is to connect county seats and market centers. Commission may add routes to afford connections with other highways. No restrictions on Commission's authority to relocate or delete portions of the system. Sections superseded by relocations revert to local jurisdiction.

KANSAS

Statutes

State Highway Commission designates system which must extend into all counties

and connect principal municipalities. System mileage limited to 10,000 miles. Commission may make additions but total mileage not to be extended except by Legislature; may make such classifications and reclassifications as are found necessary. Commission may revise system when public safety or convenience require. Routes may be deleted by Commission after public hearing. Deleted sections revert to landowners or land may be exchanged. No restrictions on Commission's authority to designate municipal connections.

Judicial Decisions

State ex rel. Arn, Att. Gen. v. *State Commission of Revenue and Taxation,* 163 Kan. 240, 181 P. 2d 552 (1947), constitutional article providing for "State system of highways" held broad enough to authorize classification by State of all highways in State.

Bobbitt v. *State Highway Commission of Kansas,* 138 Kan. 487, 26 P. 2d 1115 (1933), upheld State Highway Commission's authority to relocate route in the interest of public safety.

KENTUCKY

Statutes

System defined as roads designated by State Department of Highways. No specific provision authorizing additions. No restrictions on Department's authority to revise routes of system. No provision for deletions. No restrictions on Department's authority to designate municipal connecting links.

Judicial Decision

Williams v. *Woodward,* 240 S.W.2d 94 (Ky. 1951), upheld Department's authority to abandon superseded portion of primary highway.

LOUISIANA

Statutes

Legislature designates system which is limited to 4,200 miles. Legislature makes additions to system, but Department of Highways may also add routes to afford connections with other highways. Department may exchange routes with parish or municipality and may transfer State highway from one system to another. Department may make revisions in system to meet requirements of Federal-aid law. Department may delete sections of routes after notifying governing body of parish. Department may dispose of land occupied by deleted highway after giving parish opportunity to take over. Department of Highways and governing bodies of cities over 5,000 population to prepare and adopt master plan to insure proper location and integration of State highway connections in total street plan.

MAINE

Statutes

State Highway Commission designates what is defined as an "integrated system." Commission may add routes after interested parties given opportunity to be heard; may also amend classification of highways of State. Commission may make revisions in the public interest. No restrictions on Commission's authority to delete sections of system. Deleted sections revert to local jurisdiction. Commission may designate municipal connecting links on petition of municipal officers.

MARYLAND

Statutes

System composed of roads designated by State Roads Commission which are to extend into each county. No restrictions on Commission's authority to add, revise or delete routes. Commission may also take over county highways. Land occupied by abandoned highway may be disposed of by Commission. No specific provisions concerning municipal connecting links.

MASSACHUSETTS

Statutes

Department of Public Works designates system. No definitions or criteria indicated. Department may make additions after a public hearing and may take over county roads on petition of county. Department may make revisions in the system after fil-

ing copy of map or plan of revision in county. Department may delete sections of system with concurrence of county commissioners. Deleted sections revert to local jurisdiction. Department may designate municipal connecting links on petition of municipal officers; may relocate such connecting links upon notice to municipality.

Michigan

Statutes

System consists of roads designated by Legislature, including Federal-aid primary roads. State Highway Department has been given authority in several instances to designate not to exceed 500 miles of primary highways, subject to approval of State Administrative Board and State Highway Advisory Board. Additions are also made by Legislature. Department may revise system in the interests of safety and demands of public travel. Department may delete roads after public hearing of local officials. Deleted sections revert to local jurisdiction. Routes designated by Legislature extend through municipalities.

Judicial Decision

Luce v. *Rogers,* 181 Mich. 599, 148 N.W. 381 (1914), held that State Highway Department had no authority to add routes to primary system, but was merely authorized to determine location of routes designated by Legislature.

Minnesota

Statutes

System designated in Constitution, not to exceed 12,200 miles. Department of Highways to determine specific location. Additions made by Legislature, to be specifically located by Department. Legislature makes revisions in system, but Department may relocate sections in the interest of safety or public convenience. Public hearing necessary if requested by county. Deletions made by Legislature. Routes described in Constitution include municipal connecting links.

Mississippi

Statutes

System is designated by Legislature and is described as highways authorized by law, not to exceed 8,200 miles, and including Federal-aid highways. Additions made by Legislature but State Highway Department may take over county roads on petition of county. Legislature deletes routes. No restrictions on Department's authority to revise routes. Department may designate municipal connections, including bypasses, and may relocate and/or delete such routes.

Judicial Decisions

Trahan v. *State Highway Commission,* 169 Miss. 732, 151 So. 178 (1933); *Wilkinson County* v. *State Highway Commission,* 191 Miss. 750, 4 So.2d 298 (1941); *Wheeler* v. *State Highway Commission,* 212 Miss. 606, 55 So.2d 225 (1951), upheld authority of Department to relocate primary State highways.

Missouri

Statutes

Legislature designates system, an integrated system including roads to every county seat and connecting population centers. State Highway Department authorized to designate 1,500 miles connecting population centers. Department authorized to add supplementary highways, including additional highways outside corporate limits of cities of over 150,000 population, either in congested traffic areas or where needed to facilitate and expedite movement of through traffic. To be selected by mutual agreement of Department and local officials. Department may make revisions in these supplemental highways, and in other primary routes to meet requirements of Federal-aid laws. No provision pertaining to deletion of routes. No restrictions on Department's authority to designate municipal connecting links. Department may relocate such connecting links.

Judicial Decisions

Logan v. *Matthews,* 330 Mo. 1213, 52 S.W.2d 989 (1932), held that State High-

way Department might ignore control points established by Legislature, if necessary to obtain Federal aid.

Palmer v. *State Highway Commission,* 224 Mo. 1070, 69 S.W.2d 653 (1934), held that legislative specification that primary route run "south and west" was general direction which might be varied by State Highway Department to suit conditions existing at time highway was located.

State v. *Huff,* 330 Mo. 939, 51 S.W.2d 40 (1932), upheld authority of State Highway Department to acquire land for supplementary State highway. County had no other authority than to concur with Department in locating route.

Montana

Statutes

State Highway Commission designates system. Mileage limitation of 6,250 miles. Commission may make additions after public hearing. No restrictions on Commission's authority to make revisions in system. Commission may delete routes but agreement of county is necessary and public hearing must be held. No specific provision pertaining to municipal connecting links.

Nebraska

Statutes

System consists of roads shown on map prepared by Department of Roads and approved by Legislature. Mileage limitation of 10,000 miles. Department may add routes not exceeding 50 miles in one year. Revisions may be made by the Department, subject to approval of Governor, if public interest or convenience served, taking into consideration traffic, cost, and safety. Department may delete routes but opportunity for public hearing must be extended to local governmental unit. Department may dispose of land after offer to relinquish to political subdivision. Department designates municipal connecting links. In cities of first class, or having population in excess of that required for first class, Department and governing bodies to prepare and adopt master plan to insure proper location and integration of State highway connections in total street plan.

Nevada

Statutes

Legislature designates system. No definition or criteria indicated. Legislature designated additions. State Department of Highways may relocate sections, with the approval of the county, for safety of traveling public. May also relocate if the expense of improving the existing road is greater than improvement on a new legislation. Department may designate municipal connections with approval of the municipality. Deletions made by Legislature. Department may make necessary changes in municipal connecting links.

Judicial Decision

Crump et al. v. *Department of Highways,* No. 125460, Dept. No. 1, 1949, upheld authority of Department of Highways to relocate primary highways.

New Hampshire

Statutes

System is defined as roads shown on map prepared by the highway commissioner and filed in the office of the Secretary of State. Governor, with advice of council, approves additions and relocations proposed by Commissioner of Public Works. Commissioner may delete relocated sections. Superseded sections revert to local jurisdiction. Commissioner may designate Class I highways in compact sections of cities or towns of 2,500 inhabitants or over not included in primary system.

New Jersey

Statutes

Legislature designates primary system, described as highways authorized by law. Legislature adds routes to system, but State Highway Department may also add routes to afford connections with other highways, and may take over local roads as a part of the system. No restrictions on Department's authority to alter or delete routes. Relo-

cated sections revert to county. Routes designated by Legislature extend into municipalities.

Judicial Decision

Burnett v. *Abbott,* 14 N.J. 291, 102 A.2d 16, 1954, affirmed authority of State Highway Commissioner to select particular highways within reasonable limits on routes designated by statute.

NEW MEXICO

Statutes

State highways include any highways declared to be such by Legislature or by State Highway Engineer. Highways selected are to be those which will aid in development of natural resources and best serve traffic needs. No restrictions on authority of State Highway Engineer to add or alter routes.

Judicial Decision

Gallegos v. *Conroy,* 29 P.2d 334 (N. Mex. 1934), upheld authority of State Highway Engineer to designate routes in municipalities.

NEW YORK

Statutes

Legislature designates State highway system. Legislature makes additions to system but Superintendent of Public Works may add routes constructed under special law if determined to be of sufficient importance and properly constructed. Department of Public Works may alter routes to obtain shorter or more direct highway or lessened gradient without decreasing usefulness of highway. Legislature deletes highways from system, but Department of Public Works may delete relocated sections, and may abandon to counties mileage equal to that added by Legislature. Superseded sections revert to town or county, if a town or county highway before being taken over by State. Legislature designates municipal connecting links, but Superintendent of Public Works may improve highway in village to form continuous highway on State highway system.

Judicial Decision

Geraghty v. *State,* 309 N.Y. 188, 128 N.E. 2d 302 (1955), held that, in absence of specific legislation, section of primary highway which had originally been county highway reverted to county when superseded.

NORTH CAROLINA

Statutes

System designated by State Highway and Public Works Commission. Law specifies that there must be primary road to every county seat, principal municipalities must be connected, and routes must connect with State highways of adjoining States. Development of natural resources to be considered in selecting routes. No restrictions on Commission's authority to add routes. Commission may make revisions with approval of affected county; county seats and principal towns may not be disconnected. Commission may delete routes with consent of county, after public hearing. Commission designates municipal connecting links, but city must be given opportunity for hearing. Commission may alter connecting links after public hearing, and may delete routes, but protests of local government must be heard.

Judicial Decisions

Cameron v. *State Highway Commission,* 188 N.C. 84, 123 S.E. 465 (1924), held that principal towns which might not be disconnected by State Highway and Public Works Commission under statute were to be determined by Commission.

Town of Newton v. *State Highway Commission,* 192 N.C. 1, 133 S.E. 522 (1926), held that Commission might not disconnect a county seat in altering a primary highway.

Town of Newton v. *State Highway Commission,* 194 N.C. 159, 138 S.E. 601 (1927), held that Commission might lay out a new highway between two county seats, but old highway would have to be continued in the system.

North Dakota

Statutes

State Highway Commissioner designates system, consisting of main market, arterial and interstate public roads, and Federal-aid roads where practicable. Over-all mileage limited to 7,700 miles. Commissioner to take into consideration development of natural resources, existing and potential traffic volumes and the common welfare. Commissioner may add routes to the system up to 25 miles in one year. Provision for revisions or alterations implied. Commissioner may delete sections superseded by relocations. Sections may be abandoned even though highway is not placed on any other system. Commissioner and governing bodies of cities over 5,000 population to prepare and adopt master plan to insure proper location and integration of State highway connections in total street plan.

Judicial Decision

Casey v. *Corwin,* 32 N.D.C. 224, 71 N.W. 2d 553 (1955), held that State Highway Department had no power to vacate highway, and superseded section remained a public way under control of governmental unit in which it lay.

Ohio

Statutes

System established by law. Director of Highways may add highways to system after public hearing, but additions not to exceed 200 miles a year. Director may take over county or township roads upon petition of local jurisdiction. Director may alter State highways after a public hearing, but revisions may not increase over-all mileage more than 200 miles a year. Public hearing must be held before Director may delete routes from system. No restrictions on Director's authority to designate municipal connecting links. Municipal connecting links may be altered after public hearing.

Oklahoma

Statutes

Primary system composed of intercounty and interstate highways designated by State Department of Highways. Department may take over State roads as part of system if in best interests of State. Department may delete roads from system after notice to State senators and representatives affected, fixing time for public hearing. Municipal connecting links selected under agreement between city and Department.

Judicial Decisions

Board of Com'rs v. *Oklahoma State Highway Com'n.,* 163 Okla. 207, 23 P.2d 681 (1933), held State had authority to designate route as primary highway to comply with Federal requirements.

Hennen v. *State,* 131 Okla. 29, 267 P. 636 (1928), held State Highway Department had authority to make changes in primary routes.

Hillsdale Co. v. *Zorn,* 187 Okla. 38, 100 P.2d 436 (1939), held that section of primary highway which had been taken over from county reverted to that status when superseded by relocation.

Board of Com'rs v. *State Highway Commission,* 176 Okla. 207, 55 P.2d 106 (1936), held Commission might reroute municipal connecting link so as to bypass city.

Oregon

Statutes

System of State highways includes highways selected by State Highway Commission in addition to those designated in statutes. No restrictions on Commission's authority to add to system. Commission may classify and reclassify highways comprising State highway systems as primary and secondary highways. Commission may make changes in primary highways to afford more serviceable system. Deletions generally made by Legislature. Commission may delete sections superseded by relocation. Superseded sections may be maintained by State or county or may revert to landowner. No restrictions on Commission's authority to designate municipal connecting links. Commission may alter such links to better serve traveling public.

Judicial Decision

Harland v. *State Highway Commission,* 208 Ore. 167, 300 P.2d 412 (1956), held that State primary highway was one so classified by State Highway Commission; Commission authorized to reclassify section of secondary highway as primary route.

PENNSYLVANIA

Statutes

Primary highway system composed of main-traveled highways authorized by law, and connecting county seats and principal municipalities. Additions made by Legislature but Department of Highways may lengthen or shorten routes to provide connections with other State highways. Department may make revisions in the interest of safety and subject to approval of Governor. Deletions generally by Legislature but Department may delete sections superseded by relocation. Superseded sections not over 2.5 miles in length in townships, boroughs or incorporated towns may be closed if not necessary for public travel, subject to approval of Governor. Municipal connecting links designated by Legislature. Department may alter routes in cities of first class, second class, second class A and third class with approval of Governor. May delete routes, with approval of Governor, in townships, boroughs and incorporated towns.

Judicial Decision

Petition of Turkey Run Fuels, Inc., 173 Pa. Super. 76, 95 A.2d 370 (1953), held Court of Quarter Sessions might vacate "State roads" when they no longer form part of a "State highway."

RHODE ISLAND

Statutes

Primary system composed of highways authorized by law. Legislature designates additions. Town councils authorized to straighten or change location. Department of Public Works, by agreement with city, determines location of municipal connecting links.

SOUTH CAROLINA

Statutes

Primary system designated by State Highway Department, an integrated system connecting principal population centers. Department may make additions when necessary to afford connections with other primary highways, or to meet requirements of Federal-aid law. May also establish belt lines or spurs not over two miles in length. Legislature has also added routes from time to time. Department may transfer routes from secondary to primary system to better serve traveling public. Routes may be relocated by Department when necessary to conform to standards adopted for system. Department may delete sections superseded by relocation. Deleted sections revert to local jurisdiction or may be abandoned. No restrictions on Department's authority to designate municipal connecting links.

Judicial Decisions

Summer v. *State Highway Commission,* 143 S.C. 196, 141 S.E. 366 (1928), upheld authority of State Highway Commission to construct bypasses.

Boykin v. *State Highway Department,* 146 S.C. 187, 144 S.E. 227 (1928), held State Highway Department not authorized to relocate primary highway.

Fant v. *State Highway Department,* 164 S.C. 187, 162 S.E. 262 (1931), held State Highway Department authorized to relocate State highway within municipality.

Wessinger v. *Goza,* 99 S.E.2d 395 (S.C. 1957), held State might not abandon section of highway superseded by relocation unless all abutting property owners agreed to such action.

SOUTH DAKOTA

Statutes

State highway system composed of highways designated by statute. State Highway Commission may add routes to or revise existing routes to shorten distances between county seats and connected cities of 750 or more population, after a public hearing. Legislature also makes additions to system. Deletions made by Legislature. No restric-

tions on Commission's authority to designate municipal connecting links.

TENNESSEE

Statutes

Department of Highways and Public Works designates primary system, consisting of main-traveled roads connecting county seats. Additions presumably made by Department, although no specific provision noted. No restrictions on Department's authority to make revisions. Department has blanket authority to designate municipal connecting links.

TEXAS

Statutes

Primary system composed of highways included in plan prepared by State Highway Engineer and approved by Legislature. No restrictions on authority of State Highway Department to add to, make revisions in or delete routes from system. County has right to assume jurisdiction of sections deleted from primary system. Location of municipal connecting links determined by agreement between city and State Highway Department.

UTAH

Statutes

Legislature designates primary highway system, and additions thereto, including newly designated Federal-aid roads, acting on recommendation of State Road Commission. Revisions made by Legislature. Deletions from system must be approved by Legislature. Sections superseded by relocation may revert to local jurisdiction or may cease to be public road, subject to approval of Legislature. Routes designated by Legislature extend through municipalities. Commission may bypass any city or town, or provide alternate route through or outside of same, after public hearing.

VERMONT

Statutes

Primary system defined as highways shown on map filed with Secretary of State. (Routes were originally designated by Legislature.) Additions have been made by Legislature, but State Highway Board, upon petition of selectmen of town, and with Governor's approval, takes over State-aid highway as part of primary system, except in towns with more than 1,500 inhabitants where houses average to stand 100 feet or less for a distance of one-half mile. No restrictions on Board's authority to relocate or alter routes.

VIRGINIA

Statutes

Original primary system designated by Legislature. Department of Highways may add up to 50 miles a year, including transfers from secondary system. Department may delete routes after public hearing. Deleted sections may be disposed of by Department, after county is given opportunity to take jurisdiction. Department may designate municipal connecting links in cities of less than 3,500 inhabitants, subject to approval of Governor and governing body, and, in certain cities and towns of over 3,500 population, may select routes deemed best for handling traffic therein. Department may determine whether connecting links are to run through or around municipalities, may revise such routes when appropriate. May delete routes in towns and cities under 3,500 population.

Judicial Decision

McMinn v. *Anderson,* 189 Va. 289, 52 S.E.2d 67 (1949), upheld authority of Department of Highways to relocate primary highways.

WASHINGTON

Statutes

Legislature designates primary highway system and additions thereto. Revisions are made by Legislature upon advice of Department of Highways and Joint Fact Finding Committee. No restrictions on Department of Highways authority to delete routes. Deleted sections revert to local jurisdiction. Department may designate municipal connecting links after notice to city,

and may revise such routes subject to approval of municipality.

West Virginia

Statutes

State Road Commission designates primary system, which must connect county seats of adjoining counties. Commission has blanket authority to add, revise and delete routes from system, and may classify and reclassify highways comprising the primary and secondary systems. No restrictions on Commission's authority to designate municipal connecting links. City must approve proposed revisions therein.

Judicial Decision

Heavner v. *State Road Commission,* 118 W.Va. 630, 191 S.E. 574 (1937), upheld authority of State Road Commission to relocate primary State highways.

Wisconsin

Statutes

Legislature and State Highway Commission designate primary system, an integrated, statewide, interregional and intercommunity network of highways. Commission may make changes in system if public good will be served. If a new highway deviates from existing location more than 2.5 miles (or 5 miles if located on an arterial route), public hearing must be held and county must approve change. Changes over five miles constitute additions to system. Commission may take over county roads at petition of county or township. Pre-existing route remains on system unless county board and Commission agree to its discontinuance. Primary highway system does not include routes through cities and villages with population of 2,500 or more. In cities over 2,500, such routes are designated connecting streets. Commission may designate alternate route through business portion of city or village when primary route passes near.

Wyoming

Statutes

State Highway Department designates primary system. No restrictions on Department's authority to add routes to system. Department may take over county roads as part of system.

Alaska

Statutes

Primary system, a network of highways linking together cities and communities throughout Territory, is designated by Highway and Public Works Board, which is to contribute to development of commerce and industry, aid the extraction and utilization of resources, improve economic and general welfare of people. Board may add routes to system.

Hawaii

Statutes

Primary system designated by Territorial Highway Engineer and he may add or alter routes to meet requirements of Federal-aid law.

Puerto Rico

Statutes

Secretary of Public Works to classify each newly constructed road, bearing in mind probable traffic and importance of county through which road runs. Secretary may reconstruct any road to lighten grade, ease curvature, obtain easier or more direct route, etc. Secretary may include municipal connecting routes as parts of "Commonwealth roads."

APPENDIX B

STATUTES CITED

Alabama—Code of Ala. 1940, tit. 23, §§ 13, 30, 34, 78(20); Const., Amend. XI.

Arizona—Ariz. Rev. Stats., §§ 18-106, 18-106(1), 18-151, 18-153, 18-154, 18-156.

Arkansas—Ark. Stats. 1947 Ann. §§ 76-223, 76-501; Acts 1947, No. 345.

California—Deering's Calif. Codes, "Streets and Highways," §§ 5, 71, 73, 75(a), 75(c), 111, 302; Const. Art. IV, § 36.

Colorado—Colo. Rev. Stats. 1953, §§ 120-3-7, 120-3-8, 120-3-17, 120-7-11, 120-13-1, 120-13-6.

Connecticut—Gen. Stats. of Conn., Rev. 1949, §§ 968(c), 969(c), 2234-(a), 2240, 2255; Laws of 1957, P.A. 513.

Delaware—Del. Code Ann. tit. 17, ch. 1, §§ 117, 132(a), 132(b)(1), 132-(c)(3), 133, 134(b); ch. 13, §§ 1311, 1312(a).

Florida—Fla. Stats. 1955, §§ 334.24(1)(a), 335.01 *et seq.*, 335.02, 335.04(3), 335.04(3)(a), 335.04(3)(b), 335.04(3)(c), 335.15; Laws of 1957, ch. 57-407, §§ 3c, 3d.

Georgia—Ga. Code Ann., §§ 95-1504, 95-1608, 95-1610, 95-1706, 95-1707, 95-1708, 95-1711, 95-1726, 95-1728.

Idaho—Idaho Code 1947, §§ 40-109(a), 40-120(1-4), 40-121.

Illinois—Smith-Hurd Ill. Ann. Stats. 1936, ch. 121, §§ 274, 281i, 292, 294, 296a, 296(1a), 296c, 296f, 314a42, 344, 346, 350a, 352.

Indiana—Burns' Ind. Stats. Ann., §§ 36-107, 36-116, 36-117, 36-2901, 36-2902, 36-2913, 36-2914, 36-3219.

Iowa—Iowa Code Ann., §§ 306.2, 306.4, 313.2.

Kansas—Gen. Stats. of Kan., §§ 68-406, 68-413; Const., Art. XI, § 9.

Kentucky—Ky. Rev. Stats., §§ 176.050(f), 176.055(1), 177.020, 177.020(1), 177.020(3), 177.041, 177.042, 177.550, 178.070.

Louisiana—La. Rev. Stats. 1950, §§ 48:191, 48:224, 48:348; Laws 1955, Act 40, §§ 2, 191, 192(c), 192(d), 193; Const. Art. VI, § 19.

Maine—Rev. Stats. of Me. 1954, ch. 20, § 19; ch. 23, §§ 5, 19, 32, 38.

Maryland—Flack's Ann. Code of Md., Art. 89B, §§ 2(B), 3, 6, 7, 12, 53, 121, 126P.

Massachusetts—Ann. Laws of Mass., ch. 81, §§ 1, 4, 5, 6, 12.

Michigan—Comp. Laws of Mich. 1948, §§ 17.1, 17.3, 225.2(a), 247.651, 250.2, 250.101, 250.111, 250.112, 250.114, 250.121, 250.131, 250.-142, 250.151, 250.161, 250.171, 250.181; Pub. Acts 1957, No. 262, § 1(a); Const., Art. VIII, § 26.

Minnesota—Minn. Stats. Ann., §§ 160.66, 160.67; 161.03(4)(A), 161.03-(8); Laws of 1957, ch. 948, § 46; Const., Art. 16, § 2, adopted Nov. 6, 1956.

Mississippi—Miss. Code Ann. 1942, §§ 8021, 8023, 8033, 8037, 8037(c), 8038-(b), 8053; Const., Art. 6, § 170.

Missouri—Mo. Rev. Stats. 1949, §§ 227.010, 227.020, 227.090; Const. of 1949, Art. IV, § 30(3)(e).

Montana—Rev. Codes of Mont. 1947, §§ 32-105, 32-1606(2), 32-1614.

Nebraska—Rev. Stats. of Neb. 1943, Cum. Supp. 1955, §§ 39-1302(1)(18)-(25), 39-1309(2), 39-1310, 39-1312, 39-1313, 39-1314, 39-1315; Laws of 1957, Legis. Bill No. 442, Sec. 24.

Nevada—Nev. Rev. Stats., §§ 408.295 *et seq.*; Laws of 1957, ch. 370, §§ 38, 55(1), 58, 185.

New Hampshire—N. H. Rev. Stats. Ann. 1955, §§ 229.13, 230.2, 230.4, 230.4(1), 232.1, 233.1, 233.2,

237.1, 237.2, 237.3; Const. Pt. 2, Art. 60.

New Jersey—N. J. Stats. Ann., §§ 27:1-13, 27:6-1, 27:6-2, 27:7-4, 27:7-5, 27:7-6, 27:7-21(e)(f), 27:23-16.

New Mexico—N. M. Stats. Ann. 1953, §§ 55-1-4, 55-2-7(a), 55-2-18.

New York—McKinney's Consol. Laws of N. Y. Ann. 1950, Bk. 24, Art. 2, § 11(2); Art. 3, §§ 56, 62, 63; Art. 12, §§ 340, 343, 345; Art. 12(B), §§ 349(B) and (E).

North Carolina—Gen. Stats. of N. C., §§ 136-18(b), 136-45, 136-46, 136-47, 136-54, 136-55, 136-57, 136-60, 136-89.11(e), 136-89.27; 1957 Session Laws, S.B. No. 28, § 11.

North Dakota—N. D. Rev. Code, 1943, §§ 24-A0101, 24-0101, 24-A0102-(1), 24-0102, 24-A0102(42), 24-0104, 24-0106, 24-0107, 24-0128, 24-0211, 24-0402.

Ohio—Baldwin's Ohio Rev. Code Ann. 1953, §§ 149.17, 5501.02, 5511.01, 5512.02, 5535.01, 5535.06, 5537.-21.

Oklahoma—Okla. Stats. Ann., §§ 69-20.5, 69-20.7(f), 69-44, 69-46.1, 69-49, 69-50, 69-58, 69-62, 69-667.

Oregon—Ore. Rev. Stats. 1953, §§ 366.215, 366.220, 366.295, 366.300, 366.-475, 373.010; Ore. Laws 1957, ch. 123.

Pennsylvania—Purdon's Pa. Stats. Ann., tit. 36, §§ 652o, 652-18, 653q, 654q, 655-16, 658-18, 660-18, 666-18, 667-18, 668-18, 669-18, 670-102, 670-203, 670-210, 670-215, 670-217, 670-218, 670-220, 670-221, 670-545, 670-971, 670-1982, 670-1985, 971; Tit. 71, § 515e.

Rhode Island—Gen. Laws of R. I., 1938, ch. 72, § 28; ch. 74, § 23; ch. 309, § 21.

South Carolina—Code of Laws of S. C., 1952, §§ 33-101, 33-103, 33-105, 33-106, 33-109, 33-110, 33-112.

South Dakota—S. D. Code of 1939, §§ 28.0209-1, 28.0210; Laws of 1953, ch. 139; Laws of 1955, ch. 106, § 1(1).

Tennessee—Tenn. Code Ann., §§ 54-113, 54-501, 54-502, 54-510, 54-535.

Texas—Vernon's Tex. Civ. Stats., Arts. 6670, 6673-b, 6673-c, 6674-b, 6674-q4(c), 6674-q9, 6674-v.

Utah—Code of Utah Ann., 1953, §§ 27-2-4, 27-2-6, 27-6-1, 27-6-2.

Vermont—Vt. Stats. Rev. 1947, §§ 4971, 6255; Laws of 1957, H.B. 245, §§ 2, 5(a)(g), 11.

Virginia—Code of Va., 1950, §§ 10-124(a), 33-12(1), 33-17, 33-23, 33-26, 33-30, 33-35, 33-76.2, 33-113, 33-113.1, 33-255.16; Laws of 1918, ch. 10; Laws of 1919, ch. 31; Laws of 1922, ch. 316; Laws of 1938, ch. 172.

Washington—Rev. Code of Wash., §§ 36.-75.090, 47.04.020, 47.12.060, 47.-12.080, 47.12.090, 47.16.010, 47.-16.200, 47.24.010, 47.28.010; Laws of 1947, ch. 111; Laws of 1957, ch. 112, ch. 172, §§ 32, 33.

West Virginia—W. Va. Code of 1955 Ann., §§ 1434, 1460, 1460(12), 1474-(8), 1474(9), 1659(16)(17a); Const., Art. VIII, § 24; Const. Art. XIV; Laws of 1957, Senate Bill No. 4, § 8, Art. 2A.

Wisconsin—Wis. Stats. 1955, §§ 84.02(1), 84.02(3), 84.02(5), 84.02(7), 84.02(11), 84.02(12), 84.025, 86.18.

Wyoming—Wyo. Comp. Stats. 1945, §§ 48-105, 48-110, 48-122; Const., Art. 16, § 9.

Alaska—Laws of 1957, ch. 152, tit. 1, Art. I, § 2; Art. III, § 1.

Hawaii—Rev. Laws of 1945, ch. 89, § 4963-(1)(2); ch. 120, § 6121.

Puerto Rico—P. R. Laws Ann. 1954, tit. 9, §§ 1, 5, 8, 9, 13; tit. 23, § 11.

APPENDIX C

TABLE OF CASES CITED

THE NATIONAL ACADEMY OF SCIENCES—NATIONAL RESEARCH COUNCIL is a private, nonprofit organization of scientists, dedicated to the furtherance of science and to its use for the general welfare. The ACADEMY itself was established in 1863 under a congressional charter signed by President Lincoln. Empowered to provide for all activities appropriate to academies of science, it was also required by its charter to act as an adviser to the federal government in scientific matters. This provision accounts for the close ties that have always existed between the ACADEMY and the government, although the ACADEMY is not a governmental agency.

The NATIONAL RESEARCH COUNCIL was established by the ACADEMY in 1916, at the request of President Wilson, to enable scientists generally to associate their efforts with those of the limited membership of the ACADEMY in service to the nation, to society, and to science at home and abroad. Members of the NATIONAL RESEARCH COUNCIL receive their appointments from the president of the ACADEMY. They include representatives nominated by the major scientific and technical societies, representatives of the federal government, and a number of members at large. In addition, several thousand scientists and engineers take part in the activities of the research council through membership on its various boards and committees.

Receiving funds from both public and private sources, by contribution, grant, or contract, the ACADEMY and its RESEARCH COUNCIL thus work to stimulate research and its applications, to survey the broad possibilities of science, to promote effective utilization of the scientific and technical resources of the country, to serve the government, and to further the general interests of science.

The HIGHWAY RESEARCH BOARD was organized November 11, 1920, as an agency of the Division of Engineering and Industrial Research, one of the eight functional divisions of the NATIONAL RESEARCH COUNCIL. The BOARD is a cooperative organization of the highway technologists of America operating under the auspices of the ACADEMY-COUNCIL and with the support of the several highway departments, the Bureau of Public Roads, and many other organizations interested in the development of highway transportation. The purposes of the BOARD are to encourage research and to provide a national clearinghouse and correlation service for research activities and information on highway administration and technology.