

Highway Laws Research

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• IN RECENT YEARS, much emphasis has been placed on research in connection with the Nation's greatly expanded highway building program. In fact, an enormous amount of research emphasis is presently being devoted to the over-all subject of transportation. However, only a limited amount of research has been conducted on the many direct and related problems pertaining to highway laws. It is, therefore, most encouraging to see this Workshop stress the rather limited legal research being carried on, affecting the many aspects of the highway program.

In looking over the list of subjects included in this Workshop program, and the capable and experienced speakers assigned to handle them, I feel that anything that I might say touching on legal research will be very thoroughly covered in the next few days. My remarks, therefore, will be very general. I shall refer to some Illinois cases and what was accomplished in an attempt to remedy them.

Much has been said and written concerning the Federal Interstate and Defense Highway Act since its enactment and the impact created in the areas through which the highways are being constructed. Even though approximately one-third of the construction work has been completed, much remains to be done to secure the rights-of-way necessary for the completion of the system.

It must be kept constantly in mind that rights-of-way, not only for the Interstate System, but also for all other highways, must be secured promptly in order that needed highway improvements can be completed on schedule. I am glad to see that a substantial portion of this conference

is devoted to the many phases of the right-of-way problem.

Usually, it is not too difficult to accomplish preliminary surveys and plans in accordance with predetermined schedules or dates. Even construction work can be accelerated with the modern equipment and contractor's ingenuity and techniques available today. However, we are well acquainted with the frustrations encountered in a hotly contested right-of-way acquisition problem. Therefore, the more information and knowledge that becomes available in this area, the more proficient we should all become in expediting this operation.

It is interesting to note from the report of the Bureau of Public Roads, Highway Statistics, that the disbursements for right-of-way acquisition for all State-administered highways during the year 1960 was more than \$750 million. Nearly \$3½ billion were spent for construction of the highways involved.

One of the most perplexing problems in connection with the acquisition of rights-of-way, especially for freeways, is the severance-damage appraisal of remaining parcels. I understand that this subject was given considerable attention during the Land Economic Studies Committee session of the American Right of Way Association's recent seminar at Minneapolis.

The Manual for Highway Severance Damage Studies prepared by the Highway and Land Administration Division of the Bureau of Public Roads has been called to my attention. It is noted in the memorandum of submittal to the AASHO Committee on Right of Way by its Secretary, David Levin, that over 80 percent of

the States are now engaged in studies of severance damages or have made some preparation for undertaking these studies. Also, that ultimately the data collected for individual cases are expected to form a "bank" from which individual States can draw information on comparable cases.

It is noted that for the Interstate System alone some $\frac{3}{4}$ million parcels of land will be required and that over \$6 billion will be paid for approximately $1\frac{1}{2}$ million acres of land needed for that system. The Manual goes on to say that, of the total cost of highway rights-of-way, severance damages suffered by people whose property is partially taken have been found to constitute a significant portion. That information suggests that damage payments range up to as much as 70 percent of right-of-way costs. Whether these payments are justified and whether the damages claimed by property owners are in fact actually experienced when the highway facility is completed has been receiving increasing attention. A specific purpose of the Manual is to provide suggestions for obtaining maximum usefulness from the severance damage form which has been developed by the cooperative efforts of interested persons in the various States, the American Right of Way Association and the Bureau of Public Roads. This is most assuredly a great step forward in the process for the acquisition of rights-of-way.

Before the passage of the Interstate Act in 1956, the State of Illinois could acquire only the actual land needed as right-of-way for the construction of highways. During the 1957 session of the State legislature, a bill was enacted into law, to the effect that, when in the judgment of the acquiring agency it is more practical and economical to acquire the fee to the inaccessible remnants of the tracts of land from which rights-of-way are being acquired than to pay severance damages, said agency may do so by purchase but not by an eminent domain proceeding. This legislation has proved to be beneficial

as well as economical in the acquisition of rights-of-way for freeways. Doubtless, it would be much more so if it had authorized the State to acquire such parcels whether inaccessible or not and by condemnation proceedings as well as by purchase.

Courts and juries in eminent domain proceedings often award damages for such remnants in amounts approximately the full values thereof. When the "bank" of severance damage cases, previously referred to, has been assembled and brought to the attention of tribunals in condemnation proceedings, it doubtless will be very effective in bringing about more justifiable awards for severed parcels. Most assuredly, the result of these severance damage studies will be of great assistance to appraisers and negotiators in the acquisition of rights-of-way.

For generations the Illinois Division of Highways struggled with the provision of the State Constitution which prohibited the taking of private property for public use until final just compensation has been ascertained and paid. The 1957 session of the Legislature passed a law that authorizes the State to acquire lands needed as rights-of-way by a "quick taking" procedure. However, this is more or less an emergency proceeding, and it must be shown, among other things, that it is urgent that the lands be acquired promptly for a particular highway project programmed for construction. The State has made use of this law in many instances and it has enabled the Division of Highways to get projects under construction much earlier than previously.

During its fall term of 1961, the Illinois Supreme Court ruled that the General Assembly had not authorized the Department of Public Works and Buildings to condemn property already devoted to public use. Therefore, unless and until the Legislature passes a law granting such power, the Division of Highways must either purchase needed public property or confine its improvements to existing rights-of-way or those that can be acquired.

Also in 1957, the Illinois General Assembly amended the Freeway Act by authorizing the closing of roads that join or intersect the Interstate highways. Prior to the order of closing, a hearing must be held in the county where the crossing is situated. No crossing may be eliminated which shall unduly discommode or interfere with local traffic, or destroy reasonable access to schools, churches, markets, trade or community centers. Needless to say, much use has been made of this legislation in connection with Interstate highway construction.

Recently, the Bureau of Public Roads, through the division engineer, called attention to the fact that severance damages caused by a property being relocated on a frontage road, whether identified as "circuitry of travel" or "impairment of access" are generally non-compensable in eminent domain and therefore non-federal participating. The information, apparently, stemmed from an inquiry of the State of Indiana concerning a particular project. It is noted that this question has been passed on by the courts of 10 States. Five of them have taken the position that the owner has not suffered compensable damage to the remainder of his property for impairment of access so long as he has been provided with a frontage road giving him access to the public highway system. The other five States take the contrary view that the owner has suffered compensable damage because he no longer abuts the same highway, the same flow of traffic, as before the taking. Apparently the question has not been decided by the Supreme Court of Indiana. The question of compensability under Illinois State law has not been directly ruled on by the Supreme Court. It will be interesting to pursue this matter as it comes up for decision by the high courts of other States.

I reviewed this legislation on right-of-way matters with the hope that it might prove useful to others in their endeavors to obtain enabling acts to help solve their problems. We are

always very happy to be the recipients of advice and suggestions from others which would tend to strengthen our highway laws.

There are of course many other related problems in addition to right-of-way and I am glad to see that time is allotted for them in this workshop. I am sure you are all aware that AASHO is providing for a continuous research program (through the participating member States) to be administered by the Highway Research Board. One of the six original study areas chosen is to investigate the reliability of the presently accepted methods for determination of benefits, both user and non-user, from highway improvements. The discussions of this workshop conference could very well outline other highway law areas in which definite research could be activated and conducted by this established and financed medium.

Lawyers and engineers having the responsibility of high-level supervision of personnel engaged in the numerous and complicated functions of highway building have many interests in common as administrators. They stand in the middle of the bridge of communication, between the public and the agencies they head.

Recently the subject of my remarks before the Western Association of State Highway Officials was "Today's Research — Tomorrow's Practice." I stated that in no field of activity has the effect of change through research and development had a more immediate impact on everyday life than in transportation — particularly the concept of individual transportation as provided by the motorcar-highway combination.

The new issue of *Highway Research Review* of the Highway Research Board contains a description of some 2,000 research projects now under way or completed during the past four years. These projects are spread over the whole field of highway engineering, highway planning, other highway related projects, and highway laws.

In the matter of highway laws,

engineer administrators must rely on the advice and counsel of legal advisors. Together we must be sure that the public understands and accepts what we are attempting to accomplish. The communication with the public, even as it relates to research, must be efficiently maintained. Since all of our activities, including research, are supported from tax funds, public acceptance is a most essential ingredient.

It is most important that those shouldering the administrative responsibility of the huge highway transportation program, both engineers and lawyers, recognize that they can participate to only a very limited extent in the actual details of

research needed to provide the best results. Their principal task is to enlist public support and understanding for research and needed legislation, and to provide the personnel, facilities, and intellectual climate for such undertakings within their own agencies. And then—most important—make sure that the results of the research work are used and implemented to produce a better product or end result.

In conclusion, your discussions on highway laws at this workshop—including perhaps a review of needed research, as well as a review of accomplished research in this field—are most urgent and essential at this time.