

Highway Law Revision Studies: Wyoming

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• The subject of highway law revisions is of importance to all the States, because I am convinced that periodically we should review the type of law we are working with. If your State is like Wyoming you can stand a lot of revision. Our State is a neophyte in the matter of condemnation procedures. In the past we had a situation where most of the time people were very happy to give us right-of-way if we would build a road. But now our people are becoming educated in this matter of road-building, and are getting what we think are some outrageous verdicts in condemnation cases.

Back in 1888 our legislature saw fit to give the railroads a right-of-way across the State, and in so doing they set up a railroad eminent domain act. It was not until 1916 that the highway department was given the power of eminent domain to build roads, and at that time it was quite easy for the legislature to tell the highway department just to go ahead and acquire right-of-way in the same way the railways did. So when we looked at the law and saw it talked about a turntable, we said that is the same thing as an intersection; where they spoke of a waiting room or section house, we said that is where we could put up a maintenance depot; and so on. We floundered along for many years with that procedure.

Around 1937 or 1938 we acquired what was called a County Act of Condemnation. This then meant that we had two ways of acquiring right-of-way. One was through the old railroad right-of-way act, and the other was to go to the county attorney and ask him to acquire the right-of-way for us under his procedure. This latter method also had its handi-

caps, since it required a degree of cooperation between the State highway department and the county attorneys which often was missing.

One of the basic difficulties with the County Act was that it never said conclusively when a road had been established. Consequently, we have been queried about when and how some of our roads were established. If we could not establish the date under the county procedure, we had to fall back on the old railroad eminent domain act as the authority for acquiring the necessary land.

Although I have not enjoyed working with the railroad eminent domain act, I must say I think it is probably comparable to what is in effect in a number of States. For example, when we acquire right-of-way, we first attempt to negotiate and buy the land; if we cannot negotiate, we institute condemnation proceedings. We are required to have a necessity hearing. Prior to such hearing, however, the landowner is advised of the hearing and may appear. We present evidence as to the necessity, that we have the authority to condemn, and other jurisdictional matters, and then request a right of entry to the land. During this hearing we must have appointed three viewers, or appraisers, to set a value on the property who must later file a certification of award. If the highway department or the landowner does not like this award, they may file exceptions, and demand a jury trial of the matter.

When I first came over to the highway department, the attorney for the department was going over the files. We came to a case which I questioned, and the attorney said, "Don't bother about that. We've filed our exceptions, and in due course we will get new appraisers appointed and a

new award." Here is where we were mistaken, however, because the court overruled our exceptions and entered an award of \$40,000 against us. Since the time for jury demand had long gone, we could not get a jury trial, and the only thing we could do was appeal on the ground that the trial court had exceeded its authority. In this case the Supreme Court upheld our position, but it taught us not to rely on the filing of exceptions to the award to stop the proceedings. Today, we automatically file a demand for jury trial.

We have found that by going through the railroad eminent domain act we are doing two things. First, we are educating witnesses for the landowner, and second, we are also paying the landowner's witnesses, because, as has been mentioned elsewhere this week, the landowner never has any witnesses until the very last minute. Usually he hires some local neighbor who is willing to come in and do the landowner a favor by testifying to extreme values, and the court-appointed appraisers are no better.

All of this convinced us that our basic condemnation law needed to be revised. We contacted the Automotive Safety Foundation to help us study our laws, and they agreed to work on a preliminary investigation of the problem. In this early stage it became very clear that we should have a complete study of all our laws relating to highways.

With this in mind, we went to our 1961 Legislature and made a request. Like many such things, however, they said we did not need it. But we did a little more groundwork, explaining our problem to the Legislature, and before the session closed they did appoint a legislative research committee under the direction of the Senate and the House to undertake several studies, ours being one of them. This committee authorized us to work with the Automotive Safety Foundation on the full-scale study that we had in mind.

In the very beginning of our study it was realized that if we were to

have any success with the 1963 Legislature we would have to sell them the idea that this was not the work of the highway department or the Automotive Safety Foundation, but that it was the work of the legislative research committee, and that it was a combined effort of the State, the counties, and the cities. Also, we needed to make it clear that this was not merely a study of the condemnation law, but a study of all of the laws relating to highways. With this in mind we had several meetings at different levels in which we set forth our thinking to the people and the elective offices. As a result, we enjoyed fine cooperation.

Following this, we started to work on certain of the general laws. Our ground rule with the legislative research committee was that there should be no substantial changes in the existing law. We would entertain suggestions and recommendations as to hidden defects in the law, but essentially our intention was to study and organize the law so we could see what we had. For example, we found that our law called for white centerline stripes on Interstate System highways, and yellow stripes for the centerlines of other highways in the system. This was clearly a situation calculated to confuse the highway user, and so it was recommended that a uniform centerline stripe be adopted.

I will not go into the details of what we did, but I will note that it was important initially to have agreement on certain ground rules that the Automotive Safety Foundation should follow in its participation. Our contract with them called for the Foundation to conduct a study and codification of existing highway laws in Wyoming. The study would include a comprehensive analysis of all the highway laws of the State. This should consist of an analysis of the fundamental laws affecting highways in Wyoming, consideration being given to the following categories:

Legislative intent
Definitions

- Highway administration
- System classification
- Planning and research
- Programming
- Intergovernmental relations
- Traffic engineering
- Bridges and drainage
- Land acquisition
- Control of access
- Location and design
- Contracts
- Construction and maintenance
- Public utilities
- Financing
- Federal-aid
- Penalties

This study was financed by the Federal-aid Highway Planning Studies Funds. These are the so-called "1½ percent funds."

The next question that arose was who should handle this study? In the Wyoming highway department we have a planning and research section which has been given the responsibility of handling this study. Of course, their work involves many things that require legal interpretations. So, in the course of the study, our attorneys have had to work closely with the planning people.

Based on this experience, some of the things that the highway attorney should be prepared to do in connection with such a study include the following: First, comply with all requests from the Foundation for citations to your State's supreme court cases applicable to highway laws; also, the researchers need copies of all Attorney General's opinions and any briefs or memoranda on the interpretation of highway laws. Second, be prepared to sit in on any meetings between the researchers and the administrative officials of the highway department. Here you may have to defend your laws and procedures, or you may have your best opportunity to explain why some parts of your law should be revised. A great deal can be accomplished in this type of get-together with a free exchange of ideas.

The 1961 Legislature saddled us with the responsibility to construct

and maintain all streets that are designated as part of the State highway system through cities. That is quite a problem because no details were included. They failed to mention where we were going to get the extra money to do it; they did not define our relationship to the local governmental units; in short, they left it to us to draw up our own set of ground rules. This was another aspect of our law which was aided immensely by the study given it by our researchers. There are a vast number of small, but difficult, problems that can arise in such a situation. For example, a utility company wants to tear up the street and repair its mains. We do not know who has the responsibility over this work. Another aspect is parking. How do you instruct people to park? Parallel or diagonal? And who decides which rule will be followed?

Throughout this process we made it a rule to always work closely with our legislative committee. We kept them informed and prepared our reports in a form that would be easily and quickly understood. We used loose-leaf binders, and on each page we showed each section of the law with comments on the suggested changes shown in another column beside it. As we discussed these proposed changes with the committee, we heard their views and were able to go back and do more work where it was needed. Eventually, we developed a more formal draft showing in parallel columns the old law, the new proposed changes as they would read, and the explanations of what was done.

As each of these steps was taken the legislative committee met and discussed it. We felt that if we could get this committee sold on the revision, we would have a solid foundation of support when the final product was sent to the legislature for enactment. We think that this close liaison with the legislature's own committee is essential.

As we worked with the committee we formulated the general ideas for

a new eminent domain law to be incorporated into this revision. The new law that we proposed patterns after the Federal condemnation procedure. It also is patterned after the law of the majority of States as shown in the Highway Research Board's studies. One thing that we wanted to do was to eliminate the necessity of having a hearing, and to be able to stop large interest amounts accruing by paying into court our estimated damages, even though it goes up to the supreme

court before it becomes final. Also, we are a large State and it often takes three days to go out and hold a hearing. So we need a quick-taking provision in our law.

We are hopeful the 1963 Legislature will accept our recodification. It represents much time, thinking, and effort on the part of many levels of State government and members of the Automotive Safety Foundation. As highway attorneys, it gives us better tools to work with and ultimately can save the taxpayer much money.