

# HIGHWAY RESEARCH CIRCULAR



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## COMMITTEE ACTIVITY

Committee on Condemnation and Land Use Control, LS-1  
Department of Legal Studies, Highway Research Board

LAND ACQUISITION  
MEMORANDUM 205

205-1 1969 REPORT OF COMMITTEE ON CONDEMNATION AND CONDEMNATION  
PROCEDURE OF THE SECTION OF LOCAL GOVERNMENT LAW OF THE  
AMERICAN BAR ASSOCIATION.

Part I of this annual report of the ABA Committee on Condemnation and Condemnation Procedure covers the review made during the year of the appellate court decisions involving the condemnation of property for public purposes found in the National Reporter System which were published subsequent to the cases reviewed in the previous annual report. Each recent year has seen the amount of litigation in this field grow, and last year was no exception with 796 reported cases. Much of the stepped-up tempo of litigation in the condemnation field assumedly arises from the increased amount of public construction now underway, particularly in the highway and urban renewal fields. There were 587 of these cases reviewed in the 1967 report; and the 1968 report covered 787 cases.

As the cases illustrate, the concept of "public purpose" - the necessary precondition to a valid taking - continues to be expanded by the courts against claims of condemnees of taking more land than is necessary, that the taking is for future purposes or that it is for the benefit of private persons rather than the public generally. In this vein, courts upheld as sufficient public uses the taking of land for a buffer zone around a naval ammunition loading facility, and the taking of land to make a police substation visible from the highway even though in neither case was there any contemplated construction.

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Probably the most significant development in condemnation procedure is the increasing liberalization of discovery rules. Illustrative is a New York case which required the State to turn over all of its expert appraisals to condemnees even where the particular appraisals were not going to be used by the State at trial. In so ruling, the court rejected the State's contention that this would be tantamount to compelling the State to have one of its experts testify against his own higher appraisal.

Part II of this report is a summary of the 1969 annual report on highway relocation assistance. The Federal-Aid Highway Act of 1968 requires this report, showing how the revised and enlarged highway relocation assistance program is being put into effect; what special problems are emerging from its administration; what results are being achieved; and how the program might be improved.

Part III is a discussion of damages recoverable in a partial taking--the acquisition by condemnation of the entire title to a tangible and physically separable portion of a privately owned tract or parcel of real estate, leaving the remaining portion in its previous ownership.

Part IV is a pretrial conference checklist of factors affecting valuation. This tabulation provides appraisers, attorneys, and others who may be interested, with a means for isolating the areas of divergence intended to help where there is a wide divergence of opinion of value in an appraisal. It may also show the need for stipulations or legal rulings on the compensability of various items of damages.

Part V is a bibliography of selected materials on highway law and administration. The underlying intent was to compile for research use a selection of the writings in legal periodical literature and the proceedings and publications of various special conferences dealing with legal aspects of highway transportation. There are included among the sources used many that are not customarily covered in the indexes normally available in libraries. Thus, this single bibliography contains a collection of references that otherwise must be searched out from a wide range of indexes.

Part VI is a discussion of inequities and injustices of condemnation acquisitions. This paper reviews some important changes and corrections resulting from legislative acts and judicial fiat, and notes that the rules dealing with noncompensable incidental losses have been partially reshaped. Though important developments have