



TRB'S LEGAL PROGRAM HITTING FULL STRIDE

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Although it is not widely recognized, a legal program has been part of the Transportation Research Board for more than 40 years. It began in 1952 as the Committee on Highway Law within TRB's Department of Economics, Finance, and Administration. Now the program involves nine committees composed of 150 lawyers, engineers, and planners from 40 states; its components are administered through the Technical Activities Division's Legal Resources Group Council and the Cooperative Research Programs Division's National Cooperative Highway Research Program (NCHRP) Project Committee for Continuing Research of Legal Problems Arising out of Highway Programs, and the Transit Cooperative Research Program (TCRP) Project Panel for Continuing Research of the Legal Aspects of Transit and Intermodal Transportation Law.

The program was initiated in response to legal problems associated with condemning land to construct the Interstate highway system. The initial objective was to compile a compendium of state laws pertaining to right of way and highway design. (Tort liability was not so much a concern to states and local governments as it is today because the courts and legisla-

tures had not yet begun the erosion of sovereign immunity, the legal doctrine shielding governments from such liability.)

The Highway Law Committee became part of the Technical Activities Division in 1963. Until then the Highway Law Committee had published 20 special reports on a wide variety of subjects including condemnation, outdoor advertising, and highway contracts. Subsequently, the scope of its activities was expanded.

Six years after the establishment of NCHRP in 1962, the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration approved a continuing Legal Research Program analyzing legal problems arising out of highway programs. After the creation of TCRP in March 1992, the Transit Oversight Project Committee approved a multiyear legal research program, Legal Aspects of Transit and Intermodal Transportation Law.

Today the TRB legal program comprises the [programs of the] Legal Resources Group Council and seven committees within the Technical Activities Division as well as the two continuing legal research programs. At a time when transportation programs have become legally entangled—and their opponents more litigious—government transportation lawyers are more than ever important partners in the success of transportation projects. This article will explain

what TRB's legal committees do and how they can and should complement the work of transportation professionals.

Annual Workshop on Transportation Law

For 32 consecutive summers, the Legal Resources Group Council has sponsored the Annual Workshop on Transportation Law. The 32nd Annual Workshop—held in Santa Fe, New Mexico, July 16–22, 1993—attracted 162 lawyers, engineers, and transportation planners. Workshop topics included “Implementing the Clean Air Act Amendments of 1990”; “Intermodalism—Is It Working?”; “American with Disabilities Act Implementation”; and “Evaluation of Hazardous Waste Sites.”

Workshop participants not only present unusual cases, but often identify potential legal problems before they become widespread predicaments. The workshop's greatest success, however, is providing a forum in which attorneys from federal, state, and local highway and transit organizations come together once a year to exchange problems and propose solutions.

Although the first 29 workshops focused primarily on highway issues, transit lawyers became active with the Council at the 30th workshop and have become an integral part of the Council's operations. In fact, the prevalence of

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transit-related legal issues prompted the Council to establish the Transit and Intermodal Transportation Law Committee in March 1992.

Many of the papers presented at workshops and the TRB Annual Meetings have been indexed in the TRB Transportation Research Information System (TRIS) and can be retrieved in a TRIS search.

NCHRP Project: Legal Problems Arising from Highway Projects

The NCHRP project was initiated in 1968 to assemble, analyze, and evaluate operating practices, administrative procedures, and legal issues associated with highway and transportation projects. It is a continuing study under the direction of the TRB staff Counsel for Legal Research, subject to the guidance of an NCHRP Project Committee.

Throughout the years, the project has used independent researchers to produce 70 reference reports that are supplemented periodically. These reports are published individually in the *Legal Research Digest* series and have been compiled and published in four volumes entitled *Selected Studies in Highway Law*. However, the erosion of sovereign immunity, the growth of construction contract claims related to non-building costs, the Clean Air Act Amendments of 1990, ISTEA, and ever-changing court decisions dictate the need for broad revisions to this material.

The Project Committee at its November 1992 meeting recommended such revisions, subject to the availability of funding. To accommodate the growing influence of other modes of transportation as well as the publication of reports from other projects, the committee also recommended that the revised material be published in a new compilation, *Selected Studies in Transportation Law*. Each report will continue to be published individually in the *Legal Research Digest* series.

The *Legal Research Digest* and *Selected Studies in Highway Law* are used by attorneys in state departments of transporta-

tion and are also available to program officials. Report 24 of the *Legal Research Digest* contains an index of articles.

TCRP Project: Legal Aspects of Transit and Intermodal Transportation

From the inception of TCRP, the consensus was that it should include a continuing legal research component. As stated in the initial program statement, "the nation's mass transit agencies need to have access to a program that can provide authoritatively researched, specific, limited-scope studies of legal issues and problems having national significance and application to their problems." The transit law project was initially approved by the Transit Oversight and Project Selection Committee in July 1992 and has since been approved for a second year.

The topics being researched are (a) State Limitations on Tort Liability for Public Transit Operations; (b) Transit Labor Protections—A Guide to Section 13(c) of the Federal Transit Act; (c) Risk Management for Rideshare/Carpool Matching Programs; (d) Strategies to Facilitate the Acquisition and Use of Railroad Right of Way by Transit Providers; and (e) Barriers to Intermodalism. Reports for the first four topics are expected to be published in the *Legal Research Digest* series by the end of 1994.

The TCRP Project Panel voted to participate in the *Selected Studies in Transportation Law* and formed a subcommittee to work with a Subcommittee of the NCHRP Project Committee for Continuing Research for Legal Problems Arising out of Highway Programs. The idea is to minimize duplication of work and improve indexing so that transit topics can be located easily.

Legal Resources Group Council

The Legal Resources Group Council serves as an umbrella for the seven technical activities committees, coordinating activities among committees and preventing duplication. Primarily, however, the Council focuses on the sessions at the

TRB Annual Meetings and Annual Workshops on Transportation Law.

The Council believes that its most valuable activities for non-lawyers are the sessions presented at the TRB Annual Meetings. In the past, the committees in the group have presented sessions on highway user issues, tort liability risk management, evaluation of billboards, hazardous waste, and clean air legislation.

The seven committees described in the following carry out the programs of the Legal Resources Group Council.

Eminent Domain and Land Use Committee

The Eminent Domain and Land Use Committee is concerned mainly with evaluation of interest in property (i.e., land, right of way, tenancy) condemned by government entities for highway purposes. Initially, its concern focused on land acquisition and evaluation issues. In recent years, however, a series of court decisions have turned constructive takings by government action into a preeminent issue.

Tort Liability and Risk Management Committee

Tort liability has become a major concern for highway departments. The erosion of sovereign immunity and the courts' and plaintiffs' increasing use of design and maintenance manuals as standards rather than guides have intensified the exposure to tort liability for transportation departments all over the country. Increasingly, states are establishing risk management groups to provide oversight and devise programs to enhance safety and thus minimize, or at least reduce, exposure to tort liability.

In fulfilling its mission, the Tort Liability and Risk Management Committee, composed of attorneys, engineers, risk managers, and administrators, has implemented a program of education, training, and research and has sponsored workshops and seminars on defending and avoiding tort litigation.

Motor Vehicle and Traffic Law Committee

The Motor Vehicle and Traffic Law Committee deals with highway user issues but

is revising its mission to focus on the application of high technology; the restructured committee will draw on attorneys from state and local governments. Just as the Legal Resources Group Council works closely with the AASHTO Legal Affairs Subcommittee on highway issues and with the American Public Transit Association's Legal Committee on transit matters, the Council envisions that this TRB committee will work with IVHS America's Legal Committee on the application of new technology to highways and traffic control systems.

Transportation Law Committee

The Transportation Law Committee concentrates on the interpretation of federal and state law relating to planning, construction, and operations by state agencies. Members of this committee were instrumental in presenting a number of seminars and sessions dealing with ISTEA soon after its enactment.

The committee will also concentrate on a number of systemic issues in 1994—the spending clause of the Constitution and relationships between the federal and state governments; federal preemption of state action; and the legal impact of the metric system—that are likely to be bases for legal debate over federal-state relations and the structure of transportation programs throughout the 1990s and well into the 21st century.

Contract Law Committee

The Contract Law Committee assembles and distributes information and legal analysis for cases on construction contract claims.

The rise of soft cost contract claims as a substantial aspect of any construction program, the lack of attorneys knowledgeable in construction contract matters, the interest of state transportation departments in various forms of innovative con-

tracting practices, the increased use of litigation to halt or influence the method of construction, the ascendancy of issues related to transit procurement, the emergence of IVHS technology, and questions surrounding minority contracting all point to the continued essential role of those involved in government contracting.

Environmental Issues in Transportation Law Committee

Environmental issues have long been an important part of transportation planning, but the Clean Air Act Amendments of 1990, as supplemented by the environmental requirements of ISTEA, have made environmental requirements a central, if not the dominant, element of transportation planning. Critical legal issues being addressed by the committee fall into four main areas: (a) the discovery, handling, transportation, and disposal of hazardous materials by transportation agencies; (b) compliance with the Clean Air Act Amendments of 1990 and the planning requirements of ISTEA; (c) compliance with the Clean Water Act; and (d) compliance with the environmental enhancement requirements of ISTEA.

The Environmental Issues in Transportation Law Committee puts out *The Natural Lawyer*, a quarterly newsletter that contains up-to-date material contributed by federal and state transportation attorneys.

Transit and Intermodal Transportation Law Committee

ISTEA and the Clean Air Act Amendments recognized the need for increased use of public transit to help reduce air pollution. Thus, the potential for funding transit acquisitions and operations was greatly increased, as was the involvement of transit operators in the planning process, both in the development of state

implementation plans and as part of metropolitan planning organizations. As program officials turn to their attorneys to seek help in understanding the mountain of regulations, guidelines, and other legal issues pertaining to transit operations, these attorneys look to the research and clearinghouse activities of the Transit and Intermodal Transportation Law Committee to obtain primary information and analysis.

Hitting Full Stride

Legal problems are more crucial today than at any time since the federal government began funding transportation programs. The Clean Air Act Amendments of 1990, ISTEA, Americans with Disabilities Act, Relocation Assistance Act, Buy American requirements, Section 13(c) Labor Protection for transit workers, tort liability, procurement requirements, construction contract claims, commercial driver licensing requirements—the list goes on—have made the administration of transportation programs a legal maze.

Fortunately, however, TRB legal projects are hitting full stride. According to Richard Bower of the California Department of Transportation, who chairs the Legal Resources Group Council, “We want transportation program officials to use the Legal Resources Group and committee members as resources to help work through these problems, and as panelists in their sessions.” Indeed, if we are to provide the needed legal guidance, not only must we hit full stride, but we must run full speed for many years to come.

For more information on the work or reports of the TRB legal programs, contact James B. McDaniel, TRB Counsel for Legal Research, 2101 Constitution Avenue, N.W., Washington, D.C. 20418 (telephone 202-334-3205).