



COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF HIGHWAYS  
FRANKFORT

MITCHELL W. TINDER  
COMMISSIONER OF HIGHWAYS

January 11, 1967

ADDRESS REPLY TO  
DEPARTMENT OF HIGHWAYS  
DIVISION OF RESEARCH  
132 GRAMM AVENUE  
LEXINGTON, KENTUCKY 40506

H.2.26

Mr. John B. Kemp  
Division Engineer  
Bureau of Public Roads  
151 Elkhorn Court  
Frankfort, Kentucky 40601

Subject: Final Report; HPR-1(2), Part II,  
KYHPR-63-26; KYHPR-67-52;  
Research Relating to Highway Laws

Ref: 4-15.P; Commissioner Ward's letter of  
October 25, 1965; your letter of December 7,  
1965.

Dear Mr. Kemp:

Your letter, referenced above, granted approval of the Department's request to conclude the above-listed study upon submission and acceptance of a final summary report. Response thereto has been delayed somewhat unseemly by our irresolute action. Continuance was provided, however, in the current Planning and Research Program--but for the sole purpose of compliance with the above-referenced terms and stipulations.

With our letter of June 16, 1964, we submitted a compilation of "Kentucky Highway Law," which was prepared by the School of Law, University of Louisville, and which fulfilled a portion of the original research plan (cf. your letter of April 9, 1965). An earlier draft, entitled "Resume of Kentucky Highway Laws," dated May, 1963, was adjudged to be inadequate for the intent and purposes of the study and was rejected by the Department; new instructions were given; a two-column format in the revision provided references to significant court decisions. Copies of the Department's notice to the University of Louisville, School of Law, terminating its contract in connection with this study were filed with our letter to you of June 16, 1964.

As instructed by your letter of December 7, 1965, we are submitting, herewith, twelve copies of a final summary report.

Mr. John B. Kemp

-2-

January 11, 1967

Additional copies of the draft of "Kentucky Highway Law" are not available.

This closure of the subject study will in no way deter the Department from conducting or renewing researches into any facet of law or needed legislation.

Respectfully submitted,

A.O. Neiser  
State Highway Engineer



by: Jas. H. Havens  
Director of Research

JHH:lhs

cc: W.B. Drake  
Office of the Commissioner-BPR file

Attachments

Research Report

RESEARCH RELATING TO STATE HIGHWAY LAWS  
KYHPR-63-26; HPR-1(2), Part II

by  
Jas. H. Havens, Director of Research

Division of Research  
DEPARTMENT OF HIGHWAYS  
Commonwealth of Kentucky

in cooperation with the  
BUREAU OF PUBLIC ROADS  
U.S. DEPARTMENT OF COMMERCE

The opinions, findings, and conclusions  
in this report are not necessarily those of  
the Department of Highways or the Bureau of  
Public Roads.

January, 1967

## INTRODUCTION

The ultimate objectives of highway law studies are, summarily speaking, to modernize highway statutes according to a uniform styling, or model, commensurate with current functional and operational demands. Various terms, such as: "updating," "modernizing," "recodifying," etc., are applicable but not sufficient altogether to describe the purpose and motivation for the studies. There is understandably, a desire to improve the searchableness of the codes and statutes-- by indexing and grouping: repeal of archaic and ambiguous provisions (if any) is a worthy ambition; but such matters have not escaped attention in the Kentucky Legislature-- as may be noted from the quotation given below.\*

\*"The Legislative Process in Kentucky," Research Publication No. 43; Legislative Research Commission, 1955; pp. 234-235

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Statute Revision. The purpose of statute revision is to consolidate statutory law, correct inaccurate or redundant expressions, eliminate conflicts and collect the whole into a logical, compact and orderly arrangement.

The first provision for continuous revision of the Kentucky statutes was in 1936, when a Statute Revision Commission was created. No revision...had been undertaken for a number of years, so bulk revision was initiated in 1938. In compliance with the direction of the legislature, the first stage was to determine what statutes were in effect and to obtain accurate copies of such laws, and then to make provisions for the definite elimination by specific repeal of all laws which at that time were no longer effective. The second stage in this work was to bring together all those statutes which belonged together because of similarity of subject matter, thereby eliminating duplications, contradictions, ambiguities and technical

errors. The third stage was to compile the statutes into a publication arranged, numbered and indexed to be easily and conveniently used. In 1942, the General Assembly enacted the Revised Statutes and repealed all prior statutory laws of a general and public nature. Since 1942 the Commonwealth has had the benefit of a continuous revision program in its true sense.

In 1954 the legislature transferred the office of Reviser of Statutes and the functions of that office to the Legislative Research Commission.

The logical- or subject-grouping system presently employed in Kentucky is orderly but not necessarily ideal from a functional standpoint; there seems to be considerable nationwide impetus toward functional arrangements--especially within chapters and in regard to the authority and responsibilities delegated to highway departments, declarations of legislative purpose, legislative intent, provisions, and definitions. It has been presumed, moreover, that broad, general declarations of intent and purpose and discretionary powers of the departments would avoid unnecessary conflicts, unburden the courts, and eliminate the necessity of enacting expedient legislation to enable departments to perform their proper but not foreseen functions. Several rather monumental discourses dedicated to so-called highway laws are well known in the highway field; a few are cited below:

"Legislative Purpose in Highway Law, An Analysis;"  
Special Report 39; Highway Research Board, National  
Academy of Sciences, National Research Council; 1958.

"Selected Problems Relating to Highway Laws;"  
Special Report 76; Highway Research Board, National  
Academy of Sciences, National Research Council; 1962  
(22 papers).

"Frontiers of Research in Highway Law;" Highway  
Research Record Number 78; Highway Research Board,  
National Academy of Sciences, National Research  
Council; 1965 (8 reports).

In substance at least, the notions of legislative policy  
and intent have been admitted -- as may be noted below:\*

\*Bill Drafting Manual, Legislative Research Commission,  
Commonwealth of Kentucky; August 1957, p.12.

In some instances, a declaration of purpose may be  
useful as a guide for judicial construction or  
administrative application; Kentucky Law (KRS 446.080)  
directs that all statutes shall be liberally con-  
strued with the view of promoting their objectives  
and carrying out the intent of the General Assembly.  
But a well-drafted bill seldom needs a separate  
statement of what it seeks to accomplish.

Whereas numerous authorities have asserted the need for  
revisions in format, the basic desire seems to be bent toward  
uniformity amongst the states and toward broad, enabling-  
type, administrative statutes--especially those concerning the  
implementation of federal controls and programs. Although  
federal highway programs have been traditionally voluntary in  
context, they are, in reality, compelling and binding upon  
the states; they delegate broad discretionary powers to the  
secretary of the department administering the program. A  
few states have discovered that they have no legislative assent  
to continuing participation in these programs; others have  
found themselves limited by various restrictions. KRS 176.240  
seems quite adequate in that respect.

Note: KRS 176.240 contains context "...subject to the rules of the United States Secretary of Agriculture...;" the Bureau of Public Roads was transferred from the Department of Agriculture, July 1, 1939, and became the Public Roads Administration under the Public Works Agency; in 1949, it was transferred to the Department of Commerce and again named the Bureau of Public Roads; it is scheduled to be transferred to the newly-created Department of Transportation. KRS 177.863 and KRS 177.890 refer to "...Secretary of Commerce...". KRS 177.830 makes two references to "...Department of Commerce...".

In many respects "highway law" is a combination of administrative procedure and engineering and should reflect the best and most advanced technological and legal concepts to enable proper and efficient prosecution of the legislative plan. The statutes or codifications should be capable of withstanding the most inquiring analytical scrutiny. Law studies have, thus, begun necessarily with compilations and analyses. Inferences of omissions, deficiencies, or conflicts have, customarily, been displayed in an advocatory manner by side-by-side comparison of existing statutes with model laws or codes; accompanying comments and annotations are also persuasive. Several highway departments, state agencies, and others have employed similar devices, and these have come to be the principal advocatory instrument where specific revisions have been sought. General revision has usually involved drafting of substitute texts; but the enormity of details and inquiries needed in those cases has been rather overwhelming.

A recent example of the side-by-side advocatory analysis is found in a special study of "Kentucky Traffic Laws and the

Uniform Vehicle Code", which was prepared for the State by the National Committee on Uniform Traffic Laws and Ordinances, 525 School Street, N.W., Washington, D.C. 20024, March 1966 (in behalf of the Insurance Institute for Highway Safety, 1725 DeSales Street, N.W., Washington, D.C. 20036). Traffic and motor vehicle laws are here considered to be separate and apart from "pure" highway law; but the look-alike vogue infects these realms also. Current emphasis on highway safety has drawn new attention to the need for stronger disciplinary regulations--the illusion remains, somewhat hauntingly, that the mounting toll of traffic accidents is directly attributable to inadequacies in regulatory laws. Nevertheless, inter-state uniformity is an implied virtue. KRS 8.060 directs the Legislative Research Commission to advise the Governor and General Assembly of activities of the Council of State Governments and the National Conference of Commissioners on Uniform State Laws.

The Department's study began late in 1962 and was undertaken as a review and analysis of the main body of highway law; but, of course, any subsequential objectives--stated or implied--remained contingent upon and would become a natural consequence of the first-mentioned type of inquiry and the improbability of discovery. Undoubtedly, the Department was influenced by and was under inducement of the Bureau of Public Roads in this undertaking (see appended Items 1 and 2). The review-and-analysis phase was accomplished, in part, by the School of Law,



University of Louisville, acting under contract (CH11936, dated November 15, 1962) which was subsequently dissolved (9-30-63); a draft report issued therefrom (October 1963) and remains the principal instrument of the study. Subsequent phases, as originally proposed, were suspended-- thereby rendering intangible any accrual of direct benefits gained from the review and analysis. Nevertheless, the summary, which follows, reflects implied, emergent, and perhaps latent, influences of the study.

# SUMMARY

Significant excerpts from the October, 1963, analysis are cited here and discussed. Where subsequent legislative action has provided relief or dissolved the issue, appropriate accompanying notations so indicate. All excerpts appear in reduced print.

## DEFINITIONS

Statutes	Cases
KRS 175.410 - Definitions - Turnpike Authority	
"Authority"	
"Department"	
"project"	
"Turnpike project"	
"cost"	
"public highways"	
"bonds"	
"revenue bonds"	
"owner"	
"agreement"	
"lease"	
"biennium"	
"biennial period"	
"biennial term"	
KRS 176.010 - Definitions - Department of Highways	
"Department"	
"Roads"	
KRS 177.010 - Definitions - State and Federal Highways; Limited Access Facilities; Turnpikes; Road Bonds; Billboards; Junkyards.	
"Department"	
"Construct"	
"roads"	
KRS 177.220 - Definition of "limited-access facility"	
KRS 177.390 - Definitions for KRS 177.390 to 177.570, Turnpike Projects.	
"Department"	
"project"	
"turnpike project"	
"cost"	
"public highways"	
"bonds"	
"turnpike revenue bonds"	
"owner"	
KRS 177.630 - General obligation bonds for road construction "	
"year"	
KRS 177.820 - Definition of "Year" for KRS 177.700 to 177.820, Bond issue statutes.	
KRS 177.830 - Definitions for KRS 177.830 to 177.890, Billboard Advertising.	
"limited access highway"	
"interstate highway"	
"turnpike"	
"advertising device"	
"highway or highways"	
	Kentucky Administrative Regulations RTWA-BB-2 Advertising devices on limited access and interstate highway or turnpike has a lengthy excellent definitions section.

KRS 177.905 - Definitions for KRS 177.905 to 177.950, Junkyards

"road"  
"automobile, vehicle or machinery junkyard"  
"operator or operators"  
"person"  
"Department"  
"Commissioner"

KRS 178.010 - Construction of Chapter; County Roads; Grade Crossing Elimination.

"construction"  
"county roads"  
"hard surface roads"

KRS 179.010 - Definitions - County Road Engineer and Maintenance of Public Roads.

"county roads and bridges"  
"county engineer"  
"obstructions"

KRS 179.010 - Safety cone post erected by street railway in street held not a dangerous obstruction of the highway. Goucher v. Ry., 247 Ky 504, 57 SW2d 472 (1933).

KRS 180.010 - Definitions. State Bridges, Tunnels and Ferries.

"advertising"  
"department"

KRS 180.272 - Definition for KRS 180.272 to 180.278.

"interstate bridge"

KRS 181.010 - Definitions - County and City Bridges, Tunnels and Ferries

"bridge"  
"employee"  
"owner"  
"streets"  
"cost of bridge" - on purchase  
"cost of bridge" - on construction  
"improvements"

KRS 181.851 - Definitions for KRS 181.850 to 181.869. Bridge Commissions in First Class Cities.

"city"  
"commission"  
"bridge"  
"cost"

KRS 189.010 - Traffic Regulations; Vehicle Equipment and Storage

"Department"  
"highway"  
"motor truck"  
"operator"  
"semi-trailer"  
"truck tractor"  
"sharp curve"  
"State police"  
"steep grade"  
"trailer"  
"unobstructed highway"  
"vehicle"  
"authorized emergency vehicle"  
"wrecker"

KRS 189.010 - Traffic Regulations, etc. Definitions. The provisions of chapter apply to farm tractors operating on the highways. Davidson v. Moore, Ky., 340 SW2d 227 (1960).

KRS 189.060 - Since the definition of an authorized emergency vehicle includes all police vehicles, fire apparatus and ambulances operated in connection with an emergency military vehicles used for police services, fire fighting services and rescue service should be permitted to use red lights and sirens when operated in connection with an emergency under the civil defense statute 1955 OAC 37, 569.

#### I-A COMMENTS ON DEFINITIONS

Many words in these various sections are defined in exactly the same way several times. While there may be justification for repetition, economy of space indicates a mere rearrangement and coalescing of definitions to include in one section of the statutes all the words that have only one meaning throughout, such as "Department" meaning the Department of Highways (repeated seven times in the present statutes) or "commissioner" meaning the Commission of Highways. Many other states have revised their statutes to follow this method. Words with two or more meanings would continue being defined in the topic section where appropriate. An example: "year" being defined as calendar year one place, and fiscal year for the purpose of another topic.

Some words of evident importance are used but not defined. For example:

KRS 94.294 uses the terms "stage improvement", and "complete improvement" and  
KRS 94.299 uses the term "street intersection" - none are defined.  
KRS 177.220 defining "limited access facility" and  
KRS 177.830 defining "limited access highway" read together give these terms exactly the same meaning.

A document prepared and adopted by the American Association of State Highway Officials (A.A.S.H.O.) published in 1961 recommends definitions of almost every term used in Kentucky Highway law, under the general headings: Types of Highways; elements of the cross section; traffic terms; intersection terms; right-of-way terms and pavement structure terms.

In reviewing the definition sections of the above Kentucky Statutes one particular point deserves comment. The basic statutes are quoted below as background for the comment following:

1. KRS 178.010 "(a) 'construction' includes reconstruction and improvement;"
2. KRS 177.010 "(2) 'construct' includes reconstruct and improve;"
3. KRS 93.010 "(1) 'Improvement', when used with respect to public ways, means all work, material used, land acquired and every expense connected with the original construction of public ways, including the costs of any action."  
(Note that most of this definition is actually the things that go into the creation of the improvement and is not just a definition of what an improvement is. Evidently, this would be original construction.)
4. KRS 94.010 "(b) 'Improvement', when used with respect to public ways and sewers, means all work, material used, land acquired and every expense connected with the construction and reconstruction of public ways and sewerage systems, including resurfacing on a foundation already in place."  
  
"(2) As used in KRS 94.291 to 94.325 (financing of public improvements in cities of all classes), unless the context otherwise requires:  
" (a) 'Improvement' contemplates original construction or substantial reconstruction, as distinguished from repair."
5. KRS 181.010 "(c) 'Improvements' means repairs, replacements and additions to a bridge acquired by purchase". . . etc. . . .
6. Federal Highway Code Title 23 - Highways USCA, Sec. 2.

"The term 'maintenance' means the constant making of needed repairs to preserve a smooth-surfaced highway."

"The term 'construction' means the supervising, inspecting, actual building, and all expenses, including the costs of rights-of-way, incidental to the construction of a highway, except locating, surveying, and mapping."

"The term 'reconstruction' means a widening or a rebuilding of the highway or any portion thereof to make it a continuous road, and of sufficient width and strength to care adequately for traffic needs."

COMMENT: Good statutory drafting dictates that meanings given to words be the ordinary meanings where possible. A word should not be legislatively given a peculiar or non-ordinary meaning unless the context requires. The ordinary meaning of "improvement" carries the clear implication that some thing preexists to be improved or added to ("an addition or change that improves something"; "a change or addition to land, property, etc. to make it more valuable" - Webster's New World Dictionary, College Edition, 1960). "Improvement" does not ordinarily carry a meaning of "original construction".

Therefore, the definition section of a new Kentucky Highway Code might proceed on these premises:

1. Borrow the term "project" from KRS 175.410(3) and KRS 58.010 ("(1) 'Public Project' means any lands, buildings, or structures, works or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use. . . etc. . ."), but give it the ordinary meaning (a proposal of something to be done; an undertaking - Webster's New World Dictionary, supra). Eliminate the term "improvement".
2. Use the notion of:
  - a. Construction - meaning the original creation, building, surveying, etc.
  - b. Reconstruction - meaning taking a pre-existing road and rebuilding, widening, etc.
  - c. Maintenance - meaning the repair work required to preserve a road in its existing condition.

These terms would then be combined in the substantive sections of the statutes to characterize exactly what is desired. Examples:

"Highway construction project"  
"Highway reconstruction project"  
"Highway maintenance project"

(In this connection the statutes should be separated to make separate sections for roads and other public works in cities (KRS Ch. 93; 94), sewers, drains, and sidewalks mix functionally, but not semantically. The above set of definitions would then be usable for uniformity in all sections dealing with public works in cities. Example:

"sidewalk construction project, sidewalk reconstruction project, sidewalk maintenance project").

The drafters of the Proposed Highway Code for Wyoming suggested:

"In view of the highly technical nature of highway construction maintenance and operation, it is important that terms used in the law be clearly defined and understood, so that they may be uniformly interpreted by the courts."

"It is recommended that the Highway code include those definitions found in the proposed law itself and in the plans, specifications and rules and regulations of the State Highway Commission of Wyoming."

The Wyoming drafters recommended the uniform definitions of the A.A.S.H.O. (given in detail below).

The drafters of the Nebraska Highway Code similarly proposed:

"Thirty words and phrases are defined in the new law (L.B. 187 sec 2, Neb. Legis., 67 Sess. (1955)). So far as possible, the definitions are based on recommendations of the American Association of State Highway Officials. Misunderstandings, lack of clarity in meanings and litigation often arise from semantic problems because custom and usage have caused the same word or phrase to convey different meanings to different persons. Therefore, it is important that terms used in statutes may be uniformly construed and interpreted by everyone relying on the statutes."

DECLARATION OF LEGISLATIVE POLICY

Statutes

Cases

1. Chapter 93 - Public Works in Cities of the First Class

- (a) KRS 93.351 - Declaration of need for off-street parking facilities that free circulation of traffic necessary to the health, safety and general welfare of the public.
- (b) KRS 93.900 - Declaration of benefited area due to arterial highway, and stated as a legislative finding of fact.

2. Chapter 175 - Turnpike Authority

- (a) KRS 175.420 - Declaration of intent that Chapter 175 should supplement 177.390 to 177.570 by providing an alternative method for establishing turnpikes, and relieve hazardous and congested traffic conditions, etc.
- (b) KRS 175.560 - Tax exempt status of turnpike properties and bonds, because for benefit to people of state and for increase of commerce and prosperity, improvement of health and living conditions. Turnpikes an "essential governmental function".

3. Chapter 177 - State and Federal Highways; Limited Access Facilities; Turnpikes; Road Bonds; Billboards; Junkyards

- (a) KRS 177.041 - City streets constituting link in state or federal system declared to be an integral part of the

state system, serve a state purpose, are of general benefit to state, maintenance a proper and legitimate state function.

- (b) KRS 177.310 - Declaration of necessity for KRS 177.220 through 177.310 (limited access facilities): For immediate preservation of public peace, health and safety, and promotion of general welfare.
- (c) KRS 177.400 - Declaration of usefulness of turnpikes; safety; congestion; and promote agricultural and industrial development.
- (d) KRS 177.510 - Tax exempt status of turnpike properties and bonds, because of benefit to people of the state, declared (similar to 175.560).
- (e) KRS 177.580 - Intent of General Assembly to enable issuance of bonds for matching funds for construction of highways declared.
- (f) KRS 177.850 - Purpose of billboard statute: - promote safety, visibility, preserve natural beauty, no distraction of drivers, no confusion traffic signals, etc.
- (g) KRS 177.970 - Violation of billboard statute declared to be a public nuisance.

Walton v State Property and Buildings Commission, Ky., 304 SW 2d 342 (1957)

Upheld major provisions of KRS 177.580 \$100,000,000 bond issue for roads.

"A challenge of the sufficiency of a law under constitutional provisions is not a technical objection to be treated lightly by the courts. Indeed, it is the sworn duty of the court to enforce provisions of the Constitution irrespective of the consequences. But one of the most firmly established principles of constitutional law, and an oft-repeated mandate of the courts, is that the wisdom or expediency of enactments of the Legislature is not for the courts to pass upon. . . . Nor are we concerned with the question of whether this project is based upon sound or unsound economic theories or is the best means to achieve the desired results. That is not within the scope of judicial inquiry. So, the wisdom of imposing the debt of one hundred million dollars and freezing all or as much as may be required of the highway taxes and revenues for the next thirty years is of no concern whatever to the court."

Lee Moore, et al vs Henry Ward, Commissioner of Highways of Kentucky, et al., Franklin Circuit Civil Action No. 63644, Court of Appeals refusal to extend injunction, and opinion, 1953. SW 2d \_\_\_\_\_, June 27,

Circuit Judge opinion, "The declared purposes of the Act, on their face, are unexceptionable, the power to determine such matters resides in the Legislature, and in the exercise thereof it is subject only to the limitation that the Act have a reasonable relation to those objects." . . . "It is concluded here that the power exerted by this act bears a substantial and entirely reasonable relation to each and every one of its declared purposes and objects." (Emphasis by the Circuit Judge.) "Billboard Act" upheld.

James P. Stanton v Comm. of Ky., Commissioner of the Kentucky Department of Highways, Franklin Circuit Civil Action, No. 62716, January 22, 1963.

"Any exercise of police power is a matter of legislative prerogative. . . . When the subject is one for the legitimate exercise of the police powers, so long as it has an ascertainable relevancy to the object, it is clearly within the scope of that power" . . . Upheld KRS 177.905 et fol on automobile, vehicle and machinery junkyards.

4. Chapter 181 - County and City Bridges, Tunnels and Ferries
  - (a) KRS 181.859 - Bridge commission properties and bonds exempt from taxation because of benefit to people of the Commonwealth, increase commerce and prosperity, improvement of health and living conditions. 1952 C 189 provides: Sec. 17 "This Act, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof".
5. Chapter 184 - Public Road Districts
  - (a) KRS 184.010 - Purpose of public road districts; to provide "all weather" roads.
6. Chapter 186 - Licensing of Motor Vehicles, Operators and Trailers
  - (a) KRS 186.005 - Policy that all motor vehicles should be registered.
7. Chapter 281 - Motor Carriers
  - (a) KRS 281.590 - Policy of Commonwealth to provide for fair and impartial regulation of transportation; promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation; prevent unfair practices.

Turnpike Authority v Wall, Ky., 336 SW 2d 551, Upholding the "Turnpike Authority" (1960)

It may be of significance that the statutes upheld in these cases, particularly the Billboard, Turnpike and Junkyard cases contained fairly specific legislative policy statements. A clear statement of the legislative object was of great use to the court in resolving the issues of constitutionality. Example: KRS 175.420; 175.440.

#### COMMENTS ON DECLARATIONS OF LEGISLATIVE POLICY

A declaration of policy statement by the Legislature, included as part of the purview of the statute and not as a mere preamble, is of great value in three respects. A good policy statement will contain a statement of the evil or condition to be attacked, the legislative plan, and the means of intended application of the plan. Therefore;

1. The Kentucky Court of Appeals will use such a statement:
  - a. To aid in the determination of the legislative function as distinct from the judicial function when constitutionality of the statute is attacked. (Dalton case, supra.)
  - b. To aid in the resolution of ambiguities discovered in the statute.
  - c. To aid in the determination of the validity of administrative action taken under the statute.
2. The Kentucky Department of Highways will use such a statement:
  - a. To determine the legislative plan.
  - b. As a guide for action in carrying out the legislative plan.
3. The general public, with its great monetary stake in highways, will be better able to understand the legislative plan with a carefully drawn statement of policy as a guide.

The existing policy statements found in the statutes of the 50 states fall into these general categories:

1. Public Health, Safety, Welfare - usually general statements (Ky.)
2. Acquisition of land for highway purposes
3. Highway administration
4. Highway system classification (Ky.)
5. Location and design of highways
6. Construction and maintenance (Ky.)
7. Financing (Ky.)
8. Intergovernmental relationships (Ky.)
9. Federal Aid
10. Expressways and control of access (Ky.)

11. Bridges, ferries and tunnels (Ky.)
12. Toll roads (Ky.)
13. Control of the roadside
14. Parking facilities (Ky.)
15. Public Safety
16. Public relations (dissemination of public information).

It should be noted that almost all of the policy statements in the Kentucky statutes are quite general in terms and essentially fail to point out specific legislative policy. They are consequently of little value.

At least two states in their study of a new highway code have adopted the findings of Special Report 39, "Legislative Purpose in Highway Law", published in 1958 by the Highway Research Board:

1. Nebraska - Under the declaration of legislative intent adopted, the Legislature in effect said that the convenience and safety of the traveling public is the most important factor to be considered in the location, relocation and abandonment of highways and that it is expected that in constructing, maintaining and operating roads and highways, an integrated system of highways shall be provided. To this end, the legislature stated that it was placing a high degree of trust in the State Engineer and making the State Engineer and the Department of Roads and Irrigation direct custodians of the state highway system with broad authority, subject to the limits of the Constitution and the mandates imposed by the provisions of the act, to plan, develop, construct, operate, maintain and protect the highway facilities of the state within the limits of available funds.

Such declaration of intent (1) provides a valuable yardstick for those responsible for developing and preserving the highway facilities of the State; (2) serves the public interest when conflicts arise between public and private rights; (3) sets up a standard of performance which must be adhered to by the highway officials in their administration of delegated functions; and (4) serves as a broad frame work for the general guidance of future legislatures and as an aid for the courts in litigation on highway matters, Highway Research Board, Legislative Purpose in Highway Law, Spec. Report #39 (Wash D.C., 1958).

2. The Wyoming recommended statute reads:

"Sec Declaration of Legislative Intent

"The legislature hereby recognizes that safe and efficient highway transportation is a matter of important interest to all the people of the State. Inadequate roads

and streets obstruct the free flow of traffic; result in undue cost of motor vehicle operation; endanger the health and safety of the citizens of the State; depreciate property values, and impede generally the economic and social progress of the State.

"For these reasons, the legislature declares that adequate and integrated systems of roads and streets, efficiently managed, operated and controlled, are essential to the general welfare of the State of Wyoming.

"In designating the highway systems of this State, as hereinafter provided, the legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this State for the present as well as for future use.

"To this end, it is the intent of the legislature to make the State Highway Department custodian of the State highway system. Similar responsibilities are imposed upon the boards of county commissioners with respect to county roads and to municipal officials with respect to the streets under their jurisdiction.

"Sufficiently broad authority is provided to enable the highway officials at all levels of government to function adequately and efficiently in all areas of appropriate jurisdiction, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

"The problem of establishing and maintaining adequate roads and streets, eliminating congestion, reducing accident frequency, providing parking facilities and taking all necessary steps to insure safe and convenient transportation on all public ways is urgent.

#### LAND ACQUISITION

#### COMMENTS

KRS 416.120 (set out under VI-E, City Streets and Bridges - Land Acquisition) describes a procedure for condemnation which begins in circuit court, avoiding county court altogether. KRS 416.115 authorizes the Highway Department to condemn under 416.120; but the Department does not use this method, despite the fact that KRS 177.081 to 177.089 is slower and more cumbersome than KRS 416.120. Condemnation by the Department of Highways could be speeded up considerably by starting the proceedings in circuit court, rather than county court, and there appears to be no constitutional barrier, as long as "just compensation" is "previously made" as required by Kentucky Constitution sections 13 and 242.

There are no specific provisions in the Kentucky statutes regarding acquisition of land for future use for highway purposes. Condemnation may be used by the Department, "when it has, by official order, designated the route or location of a highway", etc. (KRS 177.0f1). Presumably the Department may condemn land for use within a "reasonable" time. It may be to the Department's advantage to have corridors for future roads designated and set aside in some manner long before construction of the road actually begins. This could be done in one of two ways. Statutory authority could be given the Department to buy or condemn land for future use. (The federal statute permits the U.S. government to participate in costs of land acquisition if the highway is to be constructed within seven years.) Or, something akin to local planning and zoning could be put into effect, whereby a route could be officially designated by the Department for a future highway, and restrictions could be placed on the land which would prevent improvement by the landowner.

Department of Highways, Division of Law, Litigation Guidance Manual, Section 11-02.0300 says in part: "The county court proceedings shall be for the purpose of obtaining right of entry...." If right of entry is not obtainable under KRS 416.115 or if KRS 177.081 through 177.089 were intended to be the sole process available to the Department, KRS 416.115 could be repealed or otherwise amended to reflect its purpose.

KRS 177.083 -

no longer useful - should be revised to reflect Court of Appeals recent decisions. "They shall also award any damages resulting to the adjacent lands of the owner considering the purpose for which it is taken, but shall deduct from such damages the value of the advantages and profits that will accrue to the adjacent lands from the

construction and prudent maintenance of the proposed project." Should be amended to read: "The measure of compensation to be awarded shall be the difference between the fair market value of the entire tract before the taking and the fair market value of the remaining tract after the construction of the project."

"Stating separately each item of damages" should be amended to read "Stating the compensation to be awarded to the owner or owners".

#### COUNTY ROADS AND BRIDGES

#### COUNTY ROAD SYSTEM DEFINED

KRS 178.010 - "County roads" defined.

"(b) 'County roads' are all public roads outside of incorporated cities, except primary roads and Federal parkways. 'County road' includes necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls, and all bridges having a span of five feet or less."

KRS 179.010 - "County roads" defined.

"(1) 'County roads and bridges' are all public roads and bridges outside of incorporated cities, except primary roads and Federal parkways and bridges thereon, including right of way to such roads and bridges, including right of way to such roads and driveways used by the public as means of ingress and egress to and from churches, cemeteries and public schools as may have been accepted as donations in fee by the several counties."

#### COMMENTS ON COUNTY ROAD SYSTEM DEFINED

While 178.010 and 179.010 include "all public roads" within a county's territorial and political jurisdiction in the definition of "county roads", the substantive provisions of chapters 178 and 179 sometimes use the term "public roads" and sometimes the term "county roads". 178.020 creates a presumption that a road "used and occupied as a public road" is a "public road" but what "used and occupied as a public road" means is not stated and "public road" is not defined.

Most sections of chapters 178 and 179 originated in ch. 80 (and 87) of the Acts of 1914. There is evidence in ch. 80 that the two terms under discussion were not intended to mean the same thing. There was no definition of "county roads" in ch. 80, but internal evidence indicates that this term may have been intended to cover a narrower category than "public roads". There was a statement in section 1 of ch. 80 to the effect that public roads established by court order were public roads, but the wording did not clearly indicate whether this was intended as an exclusive definition. The substantive provisions of ch. 80 (and 87) used the term "county roads" only in a few sections, "public roads" being used in most sections. Usually the term "county roads" appeared in connection with imposition of general obligations of maintenance. Where servicing obligations of more limited scope were imposed, and in sections dealing with other aspects of county road law, the term "public roads" or just "roads" was usually used. When KRS was formulated many of the references to "public roads" in the original sections were changed to "county roads", but not all.

Case law subsequent to the enactment of ch. 80 (see Riley v. Buchanan, 116 Ky. 625 (1903) for prior law) indicates that there are two types of public roads in a county; (1) those which are such for purposes of public user but toward which county government bears no servicing obligations, and (2) those which are such for public user and for county servicing obligation purposes. The distinction is drawn in terms of "acceptance" which in turn requires an action by a county official body in reference to a particular road. See Rose v. Nolen, 116 Ky. 336 (1915); East Cairo Ferry Co. v. Brown, 233 Ky. 299 (1930); Salvers v. Tackett, 322 S.W.2d 707 (Ky. 1958).



KRS 178.010 and KRS 179.010 were amended in 1964 -- re-defined "county road" to be public roads which have been accepted by the fiscal court of the county as a part of the county road system (see S.B. 137 in list of 1964 bills, which follows).

#### STATE HIGHWAY SYSTEM DEFINED

##### Comments

The basic statute, KRS 177.020, gives to the Department of Highways absolute discretion in determining which roads shall be considered part of the "state primary road system", i.e., which roads shall be constructed and maintained by the Department. Black v. Road Commissioners of Crittenden County and Jefferson County v. Department of Highways (both on p.1) bear this out, indicating that not only does the Department have discretion as to which roads shall be part of the state primary system, but in addition, KRS 177.020 and 178.030 give to the Department discretionary power to take any road off the state primary system.

The Department has power, under KRS 177.340, to take certain rural secondary roads into the "state highway system" when the Department deems it desirable. It is unclear to what "system", if any, these roads are attached before they are taken into the state system, because there is no definition of "rural and secondary roads" in the statutes.

As to city streets constituting connecting links in the state system, the Department is again vested with discretionary powers in determining which streets to designate as part of the "state primary system" (KRS 177.041). City of Hazard v. Main Street Realty Co. and Perry v. City of Cumberland (both on p. 2) give to cities the power, but not the duty, to improve and maintain streets taken over by the state.

Turnpikes (KRS 175.610, 177.550) become part of the "state highway system" after the bonds are paid off and if the roads are in good condition and repair (although as a practical matter Turnpikes are considered part of the state system as soon as they are built). See Guthrie v. Curlin, Commissioner, on p. 5. Bridge and tunnels (KRS 180.270, 181.050) become part of the "state primary system", under certain conditions. However, KRS 177.020 and 178.030 suggest that any turnpike, bridge or tunnel could be taken off the state system at any time at the discretion of the Department.

There are inconsistencies of language in the statutes which make up the definition of the state system of roads. The basic statute (KRS 177.020) defines the system in terms of "primary" roads. Connecting link city streets become part of the "primary" system. Bridges and tunnels may become part of the "primary" system. But rural and secondary roads taken over by the Department under KRS 177.340 are part of the state "highway" system, and turnpikes become part of the state "highway" system after retirement of the bonds. Whether any real distinction is intended is doubtful.

S.B. 59 (see list of 1964 bills) amended KRS 177.010, defining "roads," and creates new section for KRS 177.020 to more clearly designate what public roads and streets may be part of the State Primary Road System.

## DISCUSSION OF SOME NEEDED RESEARCH

Considerable study and research is needed nationwide in the area of governmental liability for: 1) drainage damage, 2) slipperiness of pavements (so-called rain-slicked roads), 3) snow and ice hazards, 4) potholes in roads, and 5) debris and foreign objects. There seems to be a wide, growing disregard on the part of the public for natural and common hazards of the road; moreover, there seems to be a behavioral compulsion for drivers to press on and to charge the objective -- with abandonment. Trends in case law and limited waiver of sovereign immunity (now pursuant to contracts) offer greater redress for all manner of grievances and damage claims. The injured party is quite free to challenge the law or the engineering and to accuse negligence even though the claimant possesses almost equal awareness or foreknowledge of peril. Where accepted engineering criteria and safeguards have been employed, awards for damages derogate and impugn the engineer. Moreover, the personal liability of engineers and officials in such matters is of growing concern.

Claims of damages arising from highway drainage are sometimes won through implication and unwillingness of the defendant to contest the issue. The "common enemy" doctrine is easily repudiated by mere historical references to the effect that no like damage occurred prior to the construction of the road. On the other hand, the existence of the road attests to the fact that the natural course of drainage has been altered to some degree. The fact that floods, deluges etc. are extraordinary

happenings and the fact that nature has yet-undiscovered ways of compounding disasters should, it seems, be an admissible pleading in the defense as "persuasive authority." Statutory guidelines or codes might be helpful in this respect; or, the Department's Manual of Instruction for Drainage Design might provide amplified guidelines based on case law. Purchase of right to impound or divert water by easements or fee simple is a worthy consideration. Purchase of right-of-way automatically involves abutters' servitude to the roadway to some degree and may therefore be a compensable item or an admissible defense pleading.

"Inspection" versus "supervision" of contractor and construction has been matter of contention in damage claims filed by contractors; the supervisory implication is limited to surveillance and enforcement of the contract and specifications -- not supervision and planning of activities rightly belonging to the contractor; inspection of materials and construction are proper surveillance; hence the word "supervision" should be avoided where "inspection" properly applies.

The word "reasonable" should be avoided in specifications and contracts; in court proceedings; only a jury is qualified to ascertain what is reasonable and what is not. The use of "reasonable conformity" in contracts and specifications is intended to be a "tolerance" or "discretionary" clause but may also prove to be an injunctive or licentious term.

BRIEF SUMMARY  
OF  
BILLS PASSED BY THE 1964 KENTUCKY GENERAL ASSEMBLY  
THAT AFFECT THE DEPARTMENT OF HIGHWAYS

- S.B. 6 - Adopts secondary and rural highway formula in allocating appropriation for county roads and bridges. Both the RS and RH funds will be allocated on the same basis. Effective June 19, 1964.
- S.B. 13 - This bill amends KRS 189.390 (2) (b) to make the speed limit for trucks outside of business or residential districts the same at nighttime as during the daytime, that being fifty (50) miles per hour, unless otherwise ordered by the Commissioner of Highways. This bill also extends to second class cities the right that only first class cities now have in regard to recommending alteration of speed limits within such a municipality on state highways. This bill also allows counties containing a city of the second class to establish "no parking" areas on or along any highway, except a state highway, outside of incorporated areas of the county. Presently only counties containing cities of the first class have this authorization. This bill also repeals KRS 189.395 relating to 70 MPH limits on turnpikes and limited access roads and places the same limits in KRS 189.390 (4) (d). This bill will become effective June 19, 1964.
- S.B. 57 - Increases the "Force Account" limit from \$12,000 to \$25,000 on the amount authorized to be spent by use of department's employees on (1) industrial access roads and (2) projects where no satisfactory bids are received. This bill also authorizes emergency construction by use of employees of the department when the need is apparent or a road has been rendered unusable. There is no dollar limit set on emergency construction. This bill also authorizes, with no dollar limit set, construction or reconstruction by employees of the department if the project involves either of the following:
- (1) An existing road, and provides for such work as improvement of sight distance, traffic marking, channelization or the addition or widening of traffic lanes or widening of shoulders;
  - (2) Construction, reconstruction, widening or strengthening of small bridges and projects for which preparation of detailed plans required to secure bids is unnecessary;
  - (3) An emergency need does not allow for time for preparation of plans and advertisement for bids.

This bill becomes effective June 19, 1964.

S. B. 58 - Section 1 amends KRS 189.040 (8) to authorize highway equipment to use flashing lights while performing work that requires stopping or moving at slow speeds within the traveled portion of highways. The same privilege is also extended to school buses.

Section 2 amends KRS 189.340 (5) to make it clear that this subsection (which relates to use of certain lanes marked for traffic) applies only where a highway is divided into three lanes. The present law makes it apply where there are three or more lanes of traffic.

Section 3 amends KRS 189.370 to permit passing of a school bus or church bus if the vehicle is proceeding in the opposite direction from the school bus or church bus which is stopped on a highway where multi-lane roadways are separated by a raised, depressed, mountable or non-mountable median.

Section 4 amends KRS 189.375 to provide that no driver shall stop a school bus or church bus and allow it to remain standing for the purpose of discharging passengers whose immediate destination is on the opposite side of the road, or to receive passengers waiting on the opposite side of the road on a divided highway where the roadways provided for opposite direction of travel are separated by a median, except that it does not prohibit discharging passengers who desire to cross the highway at a marked pedestrian crossing after the bus has proceeded.

Section 5 amends KRS 189.560 (3) to allow the Department of Highways to approve the design of "Stop" signs at railroad crossings which have been designated "unsafe." Such signs are to be placed at the marked stopping position or, if the stopping is not marked, on the pavement not more than twenty-five (25) feet in advance of the track. Signs must be of an octagonal shape and of the type and size currently approved for use by the department.

All sections in the bill are effective June 19, 1964.

S. B. 59 - Section 1 amends KRS 177.010 to include rural roads and city streets, viaducts and bridges in the definition of "roads."

Section 2 creates a new section of the Kentucky Revised Statutes to more clearly designate what public roads and city streets are part of the State Primary Road System. This designation is currently in KRS 177.020. This section also more clearly establishes the authority of the Department of Highways to determine which roads shall be established, constructed or maintained by the department, and which public roads or city streets may be eliminated from the system. This section also authorizes the department to acquire and bear the cost of new or

additional rights of way needed for the State Primary Road System. It also authorizes cities to deed any right of way owned by cities to the Commonwealth if the right of way is to become part of the system.

Section 3 repeals existing sections of the law which will not be required after this bill becomes effective.

This bill becomes effective June 19, 1964.

S.B. 113 - Creates a new section of the Kentucky Revised Statutes to allow the Commissioner of Highways to assume the responsibility for regulating traffic and parking on streets accepted as a part of the state highway system, and to make contracts with a city or a joint city-county agency for the performance of this function. KRS 177.046 dealing with somewhat the same subject is repealed. This bill becomes effective June 19, 1964.

S.B. 137 - Section 1 amends KRS 178.010 to redefine "county roads" to be public roads which have been accepted by the fiscal court of the county as a part of the county road system. Bridges are included without any limitation on size that is included in the present law. The previous restriction that a county road cannot extend into incorporated cities has been removed. Also, amends KRS 179.010 to adopt definition of "county roads" used in KRS 178.010.

Section 2 amends KRS 178.070 to remove the requirement that a petition must be filed with the county court before it can hold a hearing to discontinue a county road. A hearing is still required.

This bill becomes effective June 19, 1964.

S.B. 214 - Authorizes Jefferson County to establish and maintain a "county through road system." This Act becomes effective June 19, 1964.

H.B. 70 - This bill amends KRS 189.450 to allow school buses and vehicles of a common carrier to stop in a no passing zone if reasonable visibility is afforded to approaching motor vehicles from both directions. This bill became effective March 10, 1964.

H.B. 161 - This bill authorizes the department to pay relocation expenses where it is made necessary by the acquisition of right of way for federal aid projects. These payments are subject to reimbursement by the Federal Government on projects where there is federal cost participation. This bill became effective March 17, 1964.

- H. B. 176 - This bill amends KRS 178.290 to authorize the fiscal court of any county to build or repair sidewalks along public roads (up to sixty inches in width) where it is necessary for the safety of school children. Written approval of the agency having jurisdiction over the public road is required prior to construction. This bill becomes effective June 19, 1964.
- H. B. 231 - This bill amends KRS 177.050 to make it clear that before the department can reimburse a county for a road built with county funds, that the road must be accepted by the department as a part of the state primary road system. This bill becomes effective June 19, 1964.

BRIEF SUMMARY  
OF  
RESOLUTIONS AND BILLS  
PASSED BY THE 1966 KENTUCKY GENERAL ASSEMBLY  
THAT AFFECT THE DEPARTMENT OF HIGHWAYS

Resolutions:

- SR 32      Concurrent Resolution requesting the Department of Highways, Commerce, and Public Information to place Nazareth College in Nelson County on the maps of Kentucky and to inform all issuers of private maps to do the same.
- HR 67      Requesting the Department of Parks, in conjunction with the Department of Highways and the State Historical Society, to study the feasibility of preserving Hall's Gap as a historical site.
- HR 112     Requesting the Department of Highways to use only Kentucky seeds in seeding the Commonwealth's highway right of way.
- HR 120     Requesting erection of highway markers directing tourists to Little Shepherd Trail and Kingdom Come State Park. To erect same in Perry, Letcher, Harlan and Leslie Counties and on the Mountain Parkway.

Bills:

- SB 26      Authorizing the adoption of a manual of standards and specifications for a uniform system of highway signs, signals and markings. Effective June 16, 1966.
- SB 62      Authorizes use of certified mail in lieu of registered mail. Effective June 16, 1966.
- SB 91      Section 150 of this bill amends KRS 176.070 to require advertising for bids to be made pursuant to KRS Chapter 424 rather than KRS 176.070. No change in procedure is foreseen. Effective June 16, 1966.
- SB 192     Amending the billboard law to extend its application to roads on the Federal-aid Primary System. Provides for purchase or condemnation of prohibited signs and owner's interest in lawfully existing signs and property owner's rights. Effective June 16, 1966.



- SB 193 Amends KRS 416.140, relating to public utilities, to permit the construction of utility facilities along a "public way or dedicated road," outside of city limits. These utilities now have this right on state or county roads outside city limits. Effective June 16, 1966.
- SB 286 Permits the removal and relocation of an abandoned grave or cemetery on request of the owner of the property or on recommendation of the fiscal court. Abandonment presumed if unattended for ten years prior to removal request. Effective June 16, 1966.
- HB 58 Authorizes the department to acquire and improve land necessary for restoring, preserving or enhancing scenic beauty adjacent to any Federal-aid highway. Effective June 16, 1966.
- HB 59 Authorizes removal of abandoned vehicles from public roads after seven days. Sets out procedure for such removal and disposition of such vehicles. Effective June 16, 1966.
- HB 66 Makes any road, street or highway in use five consecutive years a public road and sets forth rules for determining width of roads in different situations. Also provides for payment of moving utility facilities when not on the public right of way. Effective June 16, 1966.
- HB 87 Requires the purchase price be set out in full on any deed, bill of sale or other instrument when any property is transferred to or by the Commonwealth of Kentucky. Repeals KRS 42.072 which had substantially the same provision. Effective June 16, 1966.
- HB 95 Permits Director of Purchases to require state markings applied to all public books of the state. Also, requires all public documents to indicate the office or unit printing it and any document distributed free of charge to indicate that the cost of printing was paid from state funds. Effective June 16, 1966.
- HB 97 Amends KRS 45.140 to allow funds received from the Federal Government to be expended for the purposes intended even though received in a fiscal year other than that in which the original encumbrance or expenditure was incurred. Effective June 16, 1966.
- HB 99 Section (1) subsection (6) provides that the Department of Highways appraise property owned by it that is to be sold by the Department of Finance. Also, sets out procedure for disposition of surplus property. Effective June 16, 1966.

- HB 181 Section 26 of this bill amends KRS 189.275 by extending the allowable length of a housetrailer from 50 to 55 feet without requiring a permit. Effective January 1, 1967.
- HB 256 Requires annual inspection of vehicles used on the highways. The department should become licensed under Section 4 of the bill to inspect its own vehicles. Effective January 1, 1968.
- HB 291 Amends KRS Chapter 427 to change the exemptions from execution, attachment or garnishment. Effective June 16, 1966.
- HB 337 Amends junkyard law to include materials not previously within junkyard law. Provides for exemption in industrially developed areas within limits of cities as they existed on March 1, 1966. Effective June 16, 1966.
- HB 442 Waives defense of sovereign immunity, with limitations, in suits brought against the Commonwealth of Kentucky pursuant to a written contract. Effective June 16, 1966.
- HB 500 Permitting the Commissioner of Highways to increase weight and height limits for trucks while being operated on roads being constructed or repaired under contract with the department. Effective June 16, 1966.

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BUREAU OF PUBLIC ROADS  
HIGHWAY AND LAND ADMINISTRATION DIVISION  
LAWS RESEARCH PROJECT

January 30, 1962

HIGHWAY LAWS REVISION STUDIES

Suggested Procedural Outline

In many States the laws which regulate and affect the function of providing highways are out of date and not adequate to support the greatly expanded highway programs of today. The purpose of a laws revision study is to produce a modern code which provides the authority and responsibility necessary for an effective modern highway transportation system.

The code resulting from the study should have three characteristics. First, it should be clearly written, logically consistent, and otherwise adequate from a legally technical point of view. This is largely a matter of skillful legislative drafting by experienced attorneys. Second, the law must be responsive to highway needs, that is, it must help the highway administrator in handling the practical problems with which he is confronted. This goal can best be achieved by taking advantage of the knowledge and experience of officials who are thoroughly familiar with highway department organization and procedures. Third, the proposed laws must be acceptable to the legislature. A provision which is perfect from a technical and substantive point of view is of no use unless it is enacted into law.

To insure that these objectives are met, it is important that the organization and procedures of the study provide for participation by all three groups involved - the legal study staff, the highway department and the legislature. The following suggested procedure includes many elements which were found to be desirable and successful in previous laws studies:

1. Identify and gather together all State statutes which affect highways. These are usually not confined to the particular portion of the code which deals with highways and it is necessary to carefully examine the entire State code to be sure that the study is comprehensive. Provisions affecting highways are often found in titles dealing with local government, planning, land use control, and eminent domain.

2. Arrange the provisions into meaningful sequence. Breaking the law down into functional categories at this point is quite effective. This would mean that all the law pertaining to highway contracts, for instance, would be grouped together and not split up, as is often the case, with respect to the governmental jurisdiction or type of highway to which it applies. (See list of tentative functional divisions in Highway Research Board Bulletin 88 - Better Laws for Better Highways.) The provisions should then be indexed and cross-referenced to related statutes and to pertinent judicial decisions, attorney general opinions, and departmental policies.

3. Identify inconsistent, repetitious, ambiguous, and obsolete provisions and also those which have been repealed by implication. These are made more readily apparent by the arrangement into functional categories. At this point, the language of the statutes, which is often unnecessarily complex and awkward, can be simplified.

The work up to this point, although preliminary to the substantive review, is very important. Painstaking searching, indexing, and cross-referencing at this point facilitates the later analysis and is well worth the effort.

4. Call a meeting of highway department operating officials and explain to them the nature and purposes of the laws study. A short discussion of how the law hinders or could help them in their work will point up problems to the researchers and will also prepare the way for more detailed consultation later.

5. Check the law of other States to see what elements they include in their statutes and also to consider the different approaches developed to handle various phases of highway activity.

6. Take the categories selected in step 2, and any others thought to be appropriate, and determine what the law in each should be for the State involved. This is the heart of the whole study. The first step is to define operational problems which can be eased by changes in State law. Since the problems are in administrative and engineering matters, the solutions, if they are to be realistic, must be to a large extent developed by men with experience in the administrative and engineering operations of the highway department. Their participation is

also beneficial in that departmental officials who help devise the new laws will understand them fully and be better able to implement them. Continuous contact and interaction between the study staff and the highway department makes the revision more time-consuming and difficult, but past results have indicated that it is necessary if the study is to serve its purpose.

It is also necessary at this point to have close liaison with the legislature to be sure that the proposed solutions and statutes are politically realistic. Any shifting of established lines of authority and jurisdiction is bound to raise some political opposition. Close liaison with the legislature will be beneficial in two ways. It will help the study staff realize how much change in established patterns is feasible and also it will keep the legislators informed on the progress of the work and the reasons and rationale behind various changes which are suggested. Legislators who understand the code fully are extremely helpful when it is submitted to the legislature for enactment.

Before a laws study is undertaken the legislature should be consulted. The studies which have been most effective in the past have been carried out from start to finish under the supervision of a legislative committee. On the other hand, it has been difficult, and sometimes impossible, to obtain legislative approval of code which is developed without legislative consultation.

7. Draft legislation to give effect to the solutions to problems and new procedures decided upon in consultation with highway department and legislative officials. The new law should be drafted carefully so that it says what it has to say in as simple, clear and direct form as possible.

Special Report

- 49 Intergovernmental Relations in State Highway Legislation  
- An Analysis
- 50 State Constitutional Provisions Concerning Highways -  
A Legal Analysis
- 57 Highway Contracts - A Legal Analysis
- 59 Condemnation of Property for Highway Purposes - A Legal  
Analysis, Part III

Research is under way on the following subjects:

Traffic Engineering  
Highway Financing  
Maintenance and Drainage  
Programing  
Toll Facilities  
Highway Administration  
Highway System Classification, Part II  
Highway Planning  
Highway Organization  
Highway Location  
Highway Design  
Highway Research.

Finally, it is hoped that the following will also be researched: Highway Definitions, Highway Construction, Grade Crossing Elimination, Public Relations, Landscaping, Regulatory Power, Law Enforcement Authority, and General Grants of Power and Authority to Special Agencies.

The Highway Laws Committee is now developing a program for continued legal research. The program will include a more extensive Highway Laws Correlation Service and increased emphasis on providing consultative services on legal matters to the State highway departments.

The laws research materials already produced to date have been very helpful to State highway departments in resolving current legal difficulties. Another objective of the Highway Laws Committee's exhaustive analysis of highway law and of its continuing legal research program is to aid the States in efforts to update and improve State highway legislation. In this connection, I strongly urge that you encourage the States to develop State highway law studies. This can be done under the regular HPS program, through the utilization of university or similar research facilities or with State highway department or legislative staff personnel.

There is considerable precedent for this type of research. States that have completed research of various kinds in this general field are Iowa, Nebraska, North Dakota and others. A few States have such studies currently under way.

Now that considerable substantive material is available, as developed by the HRB Highway Laws Project, our hope is that the State highway departments will respond and develop legal research that will lead to an updating and improvement of State highway law. The benefits accruing to the State highway operation could be immense.

We will be glad to assist you and the States, in the usual manner, in connection with these legal studies. For example, if you are interested in getting a highway laws study under way, we can supply you with a sample project statement and study procedure.

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