

## RIGHTS-OF-WAY FOR COUNTY ROADS

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When Mr. Hailey suggested to me that I be on the program of the Kentucky Highway Conference, I first thought that when I made my little talk that here would be an opportunity to put in practice one of the main traits that I have always admired especially in anyone appearing before an audience. That trait of a successful speaker was, I thought, his ability to stand up before an audience and, without benefit of notes, to be able to go thru the entire talk without hesitancy. But as Rube Goldberg used to say in one of his syndicated cartoons that appeared years ago in many of our daily papers, "It's different when it happens to you."

So from now on, if I refer to any notes or even read the remainder of this paper, just remember it was different when it happened to me.

As noted in the program of the Kentucky Highway Conference, this particular session involves right of ways and planning county road systems. Yesterday, in this same room, Mr. Hailey presided over another session dealing with county roads, during which various phases of maintenance and bridge replacements were ably discussed. Today Mr. Hailey is again presiding and Judge Hood is the mediator. My subject is Right of Ways for County Roads, to be followed by Mr. Sabel's discussion on Planning Future County Road Systems.

As you all know, under certain conditions, when the Highway Department constructs or reconstructs roads, the county thru which the road is to be built is required by law to furnish the necessary right of way. This is true of many of our Federal Aid Secondary roads and *all* of our Rural Secondary roads. On Federal Aid Secondary roads, if the particular road was never under state maintenance or if the county had never previously furnished any right of way, then the county is required by law to secure this right of way without cost to the Highway Department. This includes all phases of right of way acquisition, such as taking care of all utility adjustments, one example of utility adjustment being the removal of all telephone poles from the right of way, as well as moving or having all buildings or other obstructions that lie within the proposed right of way limits. You county officials probably already have had much experience dealing for right of way on the Federal Aid Secondary roads, but when you were also asked to

secure the right of way for our Rural Secondary roads, beginning in the early part of 1949, then things really started popping, because then you had to secure miles and miles of right of way before the roads could be constructed.

In this matter of right of way acquisition, I guess I might be a little bit prejudiced. In the first place, I firmly believe that in a vast majority of the cases of individual property owners along the route to be constructed or reconstructed, the property affected by the right of way is vastly improved. Of course there are rare instances in which property is damaged, but that is without doubt the exception rather than the rule. I think that the property owner damaged the most is the one whose property the road misses entirely. In the main, it has been my experience in dealing for right of way on roads for which the state is required to pay, that the majority of property owners try to place a fair price on their land, fences, buildings, if any, but you all know that ever so often a selfish individual bobs up and this guy or gal will ask a ridiculous price for the right of way thru his property. It doesn't take much experience in dealing with this type before one learns that it's just a waste of time to keep fooling around with him and trying to get him to place a decent price for his right of way. I know this to be a fact, because I have wasted hours and hours of the state's time, my time, and his time by going back and back and back to him. For the sake of the remainder of the people along the road who have either given the right of way or else settled for a decent figure, I think that the only thing to do is to file a condemnation suit. I suppose it's a little different for a right of way agent working for the State Highway Department to institute condemnation proceedings than it is for a county official, because there is the matter of filing suits on people you have known all of your life and possibly making enemies of them, but I firmly believe that the new road will make and keep more friends than it will create enemies. You all have seen too many roads lost to your counties because the right of way was not clear and to let a few selfish individuals block the construction is not fair to the traveling public, the property owners along the route and maybe even the selfish individuals themselves.

In line with the condemnation proposition, you all know that in the 1952 session of the Legislature, a bill was passed relating to the condemnation of property for construction, reconstruction and maintenance of highways and bridges and facilities related thereto. This act repealed KRS 177.075, passed by the 1950 Legislature. By and large, this new bill follows rather closely old KRS 177.075 with one or two major exceptions; exceptions that I feel will work to the benefit of the

County securing the right of way for the Commonwealth of Kentucky, Department of Highways. As provided in the old bill, the Department of Highways, counties and municipalities are authorized to condemn by filing in the office of the county court clerk a petition alleging that the party is entitled to condemn the land; describing the land shown to be condemned; applying to the county court to appoint commissioners to fix the amount of compensation which the owner should receive. Then the county court appoints three impartial house-keepers who are owners of land. They view the land and fix its value in a normal way and return their written report to the clerk. The clerk then issues process against the owner to show cause why the petitioner does not have the right to condemn. Then the owners only recourse in county court is to file a pleading in response to the summons issued after the commissioners have made their report, which pleading shall be confined solely to the right of the petitioner to condemn. The county court decides only on this right to condemn – and that without intervention of a jury. If the court determines that the petitioner has such right, it enters judgment to that effect and authorizes the condemnor to take possession of the land upon payment to the owner or to the clerk of the court the amount of the compensation awarded by the Commissioners. Right of entry is obtained on the first court day after the owner is before the court. If either side appeals the Commissioners award, trial by jury will be held in Circuit Court. The new bill follows pretty closely the old bill, but an additional provision has been added to this new law and we in the Right of Way Section feel that it will prove most helpful in getting fair and decent awards from the Circuit Court juries. This additional helpful item states that in any case where the road, bridge or other structure has not been completed by the time the action ordinarily would stand for trial on appeal, either party may file an affidavit stating that fact, and the case shall not stand for trial until such project is completed, but no trial shall be delayed for this reason beyond one year from the date of filing said affidavit. The amount of compensation to the owner is then tried by jury in Circuit Court and the jury, upon application of *either* party, shall be sent by the Court, in charge of the sheriff, to view the land and material – this is *after* the road is constructed. Then if possession of the land and material condemned has not previously been taken by the condemnor, it may do so upon payment to the owners, or to the clerk of the Circuit Court, the amount of the compensation adjudged by the Circuit Court to be due the owners and by paying all costs of the action. The new bill also does away with the old restriction in regard to condemning for gravel bed, quarry or mine whereas before we were not allowed to condemn for the above if they were within one thousand feet of any dwelling or stock barn.

I believe that this additional provision whereby the jury can look at the property condemned *after* the road has been constructed is going to be just what the doctor ordered. You all have had experience in right of way trials before the road had been constructed and you know that it's a tough proposition to show as evidence a set of blue prints and to try to explain to the jury just how the road is going to look after it has been completed. Of course, you might have an engineer from the Highway Department as a witness and he can, in his own mind, visualize the road after completion, but it's a hard and difficult proposition to get that idea thru to the jury, because quite understandably their minds are not so trained. If they can go out and actually see the new road, then right of way area, cuts and fills, curves and tangents mean something to them besides a mess of lines on a set of blue prints and we all fervently hope then that the jury won't think the damage as large as the defendants claim.

Right of way acquisition is a big thing — an expensive item. It costs the county a lot of money; it costs the state a lot of money. I don't have any way of knowing how much the various counties expend for right of way purposes on Rural Secondary and Federal Aid Secondary roads, but for the particular Federal Aid Secondary roads on which the state does bear the entire right of way cost around 10 to 20 per cent of the construction cost goes to right of way acquisition. When one considers the fact that the state is now spending slightly over a million dollars a year for right of ways on all types of roads and right of way costs for both the state and the counties are steadily mounting, then one can really appreciate the importance that right of way has assumed in relation to the finished highway. You all know that it is the exception rather than the rule to be able to approach a property owner with a deed in your hand— and a prayer in your heart— and say, "Mr. So and So, I have a right of way deed here and I would like for you and your good wife to sign same, because the State Highway is going to build you a good road and in order to do so, you must give up some of your property"— and to have him or her or both answer sweetly, "Oh, we'd love it! Where do we sign?" No, it isn't usually that easy, but in order to get a road, it is first necessary to get the right of way and in order to get the right of way, it is necessary to get people to sign right of way deeds and sometimes it's easy and sometimes it's hard, but it has to be done and somebody has to do it and sometimes I feel awfully sorry for that somebody, but there is a lot of satisfaction and a certain feeling of personal triumph when one rides blithely over the finished product and realizes that he had a part—and not a small part, either—in this improvement to the county.

I thank you!