

SELECTION AND ACQUISITION OF RIGHTS-OF-WAY

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It is a pleasure to have this opportunity to appear before you concerning highway right-of-way and I have been assigned the very broad subject :

SELECTION AND ACQUISITION OF RIGHTS-OF-WAY

There are so many angles and conditions in connection with such a subject and, since I cannot by any means pose as an authority, I am going to present a few thoughts from a layman's view point and then any following discussions will probably be of more value to all of us than the presentation of a lengthy paper.

1. First I would like to touch briefly on the *selection* of right-of-way. Of course, you know that the routes selected for the acquisition of right-of-way are determined by the final surveys in the field. The engineers making these surveys really do have in mind the future acquisition of right-of-way and try to run the lines so that as little taking as possible and as small amount of damage as feasible is inflicted on the property owner; even though in some instances you may think that very little consideration has been given such items. But I think you will find the Department of Highways always willing to give consideration to changes in the surveys when those affected and those actually acquiring the right-of-way feel that the right-of-way costs and damages can be reduced; but of course we must bear in mind that such changes must be weighed against the costs of construction and the standards of the class of road to be constructed.

The normal width of right-of-way to be acquired is determined by the standard governing the particular class of highway to be constructed but it almost invariably develops that in special locations it is necessary to

obtain additional widths, over and above the normal width, due to slopes and the construction of proper drainage facilities. All of you are familiar with the many rivers traversing our State and the numerous hilly and mountainous sections that have to be traversed and can readily understand the necessity of obtaining right-of-way widths accordingly; but you can be sure that we will require just as little as possible for a properly constructed and maintained highway.

Enough for the *Selection* of Right-of-Way.

ACQUISITION OF RIGHT-OF-WAY

This is a subject that, in itself, could require thousands of words and hours of discussion and still remain very much unsettled and indeterminate.

- A. Location and Personnel. Right-of-way is acquired through the efforts of varied types of persons, the locality in which the right-of-way is being obtained, often governing the type of personnel active in such work. By this I mean that:
 1. In larger metropolitan areas right of way acquisition is mostly on a business basis and one can, after a careful appraisal, get right to the point of negotiating. The agents must be well versed in property values, must have a basic knowledge of laws governing real property, must be familiar with zoning regulations, and must know how to deal with leases, tenants and other related features.
 2. In less commercial areas we run the scale all the way from industrial property to at least "small town" property and in turn the agents working in such sections must not only know the business angles but must also be able to "visit about" a little before he can approach the subject of acquiring right-of-way. You know we were all proud and

jealous, and rightly so, of our own places and homes and maybe we would like to have the improvement but we'd just a little rather that the right-of-way be taken from the place across the road. So naturally such situations call for tact and diplomacy in order to obtain the right-of-way at a fair price and yet leave the property owner in a friendly and cooperative mood towards the improvement to be built.

3. In rural areas we have two situations:
 - (a) When the State is using its own agents to acquire the right-of-way and
 - (b) When the counties are acquiring the right-of-way with little or no assistance from State personnel. In the first instance we try to impress upon our agents the necessity of being polite, honest, frank and patient with the property owners and explain fully how the proposed work will affect their property. First, you *must* gain their confidence and try to sell them on the good merits of the improvement. The good will of the public is a *very* important item and must be fully encouraged for without it we can't get very far. In the second instance, that is where the counties are getting the right-of-way, well you could tell me far more about that than I could ever tell you. Sometimes I know that various methods work better than others: maybe you can get all the owners along the road to attend a meeting and work up enthusiasm and get everybody signed up; or, perhaps to get some of them signed you may have to get someone close to them to use a little persuasion. Any way you take it, a lot of visiting and time is required and above all a lot of hard work.

B. Types of Right-of-Way and their Associated Conveyances.

1. Right-of-way for limited-access facilities. In this type the right-of-way is designed and secured in such a manner that access from the abutting property is either entirely eliminated or at least strictly controlled. Provision is made so that access is had only at designated points and this is accomplished in some instance by the construction of service roads or local roads, whichever you wish to call them, which are constructed parallel to the main thoroughfare and these parallel roads, in turn, have access to the main highway only at limited intervals. Deeds covering limited-access highways are taken in fee simple so that all the rights of the property owner are surrendered to the agency which is taking title. The law governing Limited-Access Facilities was enacted by the General Assembly in 1946.
2. Right-of-way for the construction of normal Federal Aid highways and State projects. Right-of-way for such projects is secured according to the standard to which the road is to be constructed and the right-of-way limits are designated on the plans. Conveyances for such right-of-way are taken on our standard form of "Deed for Highway Purposes." As the name implies, these deeds represent what might be termed—"permanent easements" and are effective as long as the property conveyed is used for highway purposes.
3. Right-of-way for the purpose of State Maintenance where usually the construction has been performed by some agency other than the Department of Highways. For this type, the limits of the right-of-way are as

designated by the Department and the conveyances are of the same nature as employed for Federal and State road construction.

4. Right-of-way for Rural Secondary Roads. Reference to this type is meant the roads that are to be constructed under the provisions of the statute passed at the 1948 session of the General Assembly covering the disposition of the funds realized from the collection of the additional two (2) cent gasoline tax. As you will learn from subsequent discussions here, these roads are to be constructed with the minimum amount of surveying and preparation of plans and at the minimum expenditure of funds; *but* at the same time not overlooking the principles of sound construction and utility of the road. *Time* is a very important factor in this program. For these reasons, the plans will be incomplete as compared to our usual road plans and, in turn, it will not be feasible to show all the extra right-of-way widths that will be actually required for the construction of proper slopes, drainage structures, etc. Therefore, the plans and deeds for the permanent right-of-way required all show the same width straight through for the entire length of the project. Most of these roads will call for a total permanent right-of-way width of 40 feet, measured equally on each side of the center line of survey; but some of the roads will call for a total permanent right-of-way width of 60 feet. Since the plans will not be in sufficient detail to predetermine the exact limits of extra widths required, we have decided to use a general clause in the deeds to cover such contingencies.

This clause will read as follows:

"It is further agreed and understood by the parties hereto that said party of the first part does hereby grant to the party of the second part a license for the use of any additional land actually required for the purpose of drainage and for the construction of slopes, drainage structures, channel changes, and borrow pits as are deemed necessary by the Kentucky Department of Highways."

You can see from this clause that we are asking for only a "license" for these extra widths and therefore title to the areas covered by the extra widths will remain in the name of the grantors. In other words we are merely asking for the right to enter upon these extra widths in order to perform the necessary work. It is thought the owners will be willing to sign a deed with such a clause inserted, for they can be assured that we will not use any more than is absolutely required and certainly not any more than we would call for if we had fully detailed plans.

The form of the deed is the usual standard used for normal Federal and State roads.

5. Right-of-way for roads constructed under the regular 5 million dollar Rural Highway Program. The right-of-way limits for such construction are designated by the Department of Highways and are of such extent as to provide only sufficient area for proper construction. Title in such right-of-way conveyances is vested in the County obtaining the deeds for, as you know, such roads are not in general taken over by the State for permanent maintenance.
6. Blanket deeds. It sometimes develops that the Department is willing to take a deed from a County on a road that has sufficient

width of right-of-way but for which the County has no title except by prescription; in other words, just by use of the public for a number of years. In this case the County executes a blanket deed for the entire length of the project and conveys to the State the prescriptive rights. However, when the County does have a recorded title, such as often occurred on WPA on TVA roads, the Department will accept a blanket deed but such a conveyance must cite the source from which the County obtained title.

- C. Special Conditions and Reservations in Deeds. One thing that we wish to especially bring to your attention and caution you about is the insertion of any special provisions, conditions or reservations in deeds without the approval of the Department. Such insertions may not be objectionable, in fact in many instances they are desirable but they must have the approval of the Department before they are placed on record.
- D. Features of Legal and Recordable Conveyances. I would like to take this opportunity to call to your attention the items that usually cause us the most trouble in our Legal Section and in the Right-of-Way Section. If these items are given attention before the deeds are submitted to the Department for approval, much lost time and motion can be saved in finally obtaining the required right of way.
1. The names of the persons signing the deed must appear in the caption of the deed the same as they signed their names. Their marital status should be shown in the caption.
 2. Of course all persons having an interest in the property must sign the deed or

have someone with legal authority to convey their interest for them. In this connection it is often quite difficult to determine all the persons who own an interest in the property; for instance when someone dies without leaving a will we often run into an almost impossible line of descendents. For infant heirs and incompetents the title can be cleared only by court action.

3. The signatures of all grantors must be acknowledged by a Notary Public or a County Clerk and the names in the acknowledgment must appear the same as the signatures and the marital status should be indicated.
4. A source of title must be shown indicating the immediate source from which the grantors obtained title. This source of title may be from the recording data of a previous deed, the record of a will, or an affidavit of descent. In the case of a commissioner's deed the source of title is not imperative but certainly is of great advantage if available.
5. Last, but not least, all deeds should be approved by some authorized representative of the Department before being recorded.

E. Acquisition by Condemnation.

The Commonwealth of Kentucky can exert the power of Eminent Domain and this power is delegated to the Department of Highways and can be exercised by the authority of an official order by the Commissioner of Highways. The Commissioner of Highways can further delegate such power to Counties and municipalities

so that they can enter condemnation in the name of the Commonwealth through its Department of Highways. We will not attempt to go into the intricacies of condemnation proceedings for then we are encroaching on the realm of the legal profession; so when you reach the stage of filing condemnation, you'd better just turn it over to the lawyers and say, "Take it away!"