



Blatnik to Now

A Modern History of U.S. Transportation Legislation

The Honorable John A. Blatnik was the chair of the Special Subcommittee of the Federal Aid Highway Program of the House Committee on Public Works, created in 1959. Before discussing the investigation conducted by that committee, let me give you a brief history of the development of right-of-way work from the perspective of the federal government's involvement and its influence on right-of-way programs nationwide.

In December 1914, the American Association of State Highway Officials (AASHTO) was organized "for the purpose of providing mutual cooperation and assistance to the state highway departments and the several states and the federal government, as well as the discussion of legislative, economic and technical subjects pertaining to the administration of such departments."

One of the first acts of the newly formed association was to instruct the executive committee to prepare for the consideration of Congress, a Bill authorizing federal aid to highways. The Federal-Aid Highway Act of 1940 permitted, for the first time, federal participation in the cost "of necessary new or additional rights of way" in the territory of Hawaii under certain specified conditions related to the national defense. The Public Roads Administration was authorized to pay all or any part of the costs of specified projects, including the cost of rights of way.

In 1916, the *Federal-Aid Road Act* was passed. Twenty-seven years later, Congress gave recognition to right of way

as a requisite to peacetime highway construction; however, no provision was made for acquisition of rights of way.

Congress made its first major departure from the policy of not participating in costs of rights of way within the *Defense Highway Act of 1941*. Then, passage of Public Law 146 by the 78th Congress on July 13, 1943, redefined the term "construction" to include the cost of rights of way, thus permitting federal participation in its funding. In 1953, the Bureau of Public Roads issued a new directive which required full documentation of right-of-way costs, if federal funds were desired. Still, right of way received little attention, as states were concentrating on construction.

With the passage of the *Federal-Aid Highway Act of 1956* (which increased the national interstate and defense system length to 41,000 miles) and an allocation of 90 percent of federal funds, the states earnestly went into the right-of-way business. States that were organized and functioning with right-of-way divisions expanded quickly. Those having little or nothing resembling operational right-of-way units found themselves confronted by an overwhelming task and had to begin organizing such units.

Under the Bureau of Public Roads (BPR), state partnership's new right-of-way policies were studied, discussed and finally agreed on as the most expeditious way to acquire the needed right of way for the interstate and defense highway system, and other federally-aided programs, with fairness to property owners, as well as state and federal governments.

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The federal highway administrator officially designated these policies and procedures as PPM 21-4.1 dated December 30, 1960, entitled *Right of Way Procedures (State Acquisition Under Federal Aid Procedures)*. It was barely more than 11 pages in length, with a 2¹/₂ page attachment 1, entitled *Guidelines for the Preparation of an Appraisal for Right of Way Purposes*, a 2¹/₈ page attachment 2, entitled *Guidelines for the Administration of Public Roads' Policy Relative to State Acquisition of Rights of Way by Condemnation*, and a one-page attachment 3 which was the format required for states to certify their right of way costs for a federal aid project.

PPM 21-4.1 required states to submit information regarding regulations, procedures, and manner in which right-of-way matters were handled by the state. The information, as a minimum, had to respond to 35 statements or "points," as we used to refer to them.

Much later, on April 18, 1967, PPM 21-4.1, et al, was replaced by PPM 80-1, Right of Way Procedures (general principles and coordination with other governmental agencies). Suddenly, words like "documentation" and "justification" became very important in every state highway organization.

So much for the brief history ... Now for a discussion of

A Partial Listing of Findings by the Blatnik Committee

1. Certain statutory limitations and restrictions in state laws had the effect of substantially increasing the cost of rights of way obtained for highway purposes and may have caused delays in carrying out the Federal Aid Highway programs. They also hindered states in such matters as width of highways, slope easements and providing for county approval of right-of-way acquisitions for state highways.

2. Some states lacked authority to: (1) acquire rights of way in fee simple; (2) acquire rights of way by purchase, gift, or devise; (3) provide for the acquisition of marginal or excess land; and (4) to sell or exchange properties.

3. Supporting documentation for right-of-way acquisition was often inadequate.

a. Appraisals lacked essential information concerning the methods used to arrive at the fair value of a property and damages to remainder properties.

b. Property not needed for highway purposes was acquired by this state and cost thereof billed by the state and paid by the BPR.

c. The state acquired certain properties before the BPR had approved the programming of the particular projects.

d. Settlements were made with property owners, in certain instances, in excess of the appraised value, with no explanation about how the excess value was justified.

e. States failed to give the BPR information on its procedures and controls relating to revenue collections on properties acquired which were rented or leased.

f. Appraisers generally assigned an arbitrary 10 percent value to takings of excess rights of way that were landlocked.

g. Justification for recommended settlements was not documented.

h. Information was lacking as to source data used in determining the appraised value of improvements.

i. Certain appraisals did not include comparable sales data or the reasons for excluding data in developing appraisal amounts.

j. Appraisal reports did not show the bases and methods used in determining values for land, improvements, and severance damages.

k. When two or more appraisals were obtained, wide

variations between appraisal values were not adequately explained in determining actual settlements with property owners.

l. Appraisals were sometimes made after negotiation with owners and agreements were executed.

m. Non-compensable items, such as personal property and loss of rent, were included in the acquisition price.

n. No indication was given in appraisal reports as to highest and best use.

o. Estimates of severance damages to remainder properties were based on an appraiser's experience and judgement without a presentation or reference to factual evidence.

p. Right-of-way acquisition files did not show the name of the negotiator or the date of initial contact with a property owner.

q. States' property acquisition records did not always include such items as: The name of a negotiator to whom acquisition was assigned or the date of assignment; the amount authorized to be offered and by whom it was authorized; and a record of each contact with the owner and results of each contact.

r. States used only one approach to determine the value of a property when their procedures specified the use of three, without an explanation of why only one approach was applicable.

s. Where more than one state appraisal was made, due to a procedural requirement, there was clear evidence that the two appraisers had collaborated in the preparation of their reports.

t. In addition to appraisal reports that were incomplete or inadequate, there was a high incidence of substantial differences in two or more appraisal reports without any explanation of the differences by the review appraiser.

u. Settlements with property owners were substantially above the amount established by the review appraiser without an adequate explanation of the reasons for those variations

4. Insufficient lead time for acquisition of rights of way increased highway costs.

5. Nonparticipation by right-of-way personnel in determining highway locations increased costs.