

# FHWA – Changes for the Coming Year

## A 1982 perspective on infrastructure and funding

As published in the October 1982 issue of *Right of Way Magazine*



BY LESTER P. LAMM

*The following article was first given as an address at the Reno 1982 Annual Seminar Monday general session, held June 21, 1982 at the MGM Grand Hotel in Las Vegas, Nevada.*

I have to admire any group which comes to Nevada in 1982 to discuss its future. Speaking specifically of the Highway Program area, we are about as uncertain of our future today as at any point within the past quarter century. And yet, there are very hopeful signs in the air, signs which a betting person would back to the hilt.

Let me amplify—any public works program can be no more successful than its funding allows. At the Federal level, highway funds are all paid by highway users through a trust fund mechanism. That is, every time you buy gas, revenues are set aside for us to use. I won't embarrass anybody by asking for a show of hands here, but nationally only 6% of the people know that the Federal gas tax is 4 cents per gallon, and it's been 4 cents since 1959. And, even though the highway trust fund is a very efficient financing mechanism, it has not been able to keep up with inflation, the development of more fuel-efficient vehicles and the growing deterioration of the system.

As a result, we look ahead to the rest of the 1980's knowing that a revitalized

national economy can only be built on a strong transportation system. To provide the type of highway systems we need, we should invest \$4 billion/year for 10 years to close the final gaps in the interstate system, \$3 billion per year to upgrade and restore older interstate routes, \$2 billion for bridges, and \$2 to \$3 billion for other major roads. Even this rate leaves  $\frac{3}{4}$  of the road and street system with no Federal dollars.

That's a needed investment of more than \$13 billion per year. The highway trust fund now raises \$7.5 billion annually and if you think this is an academic issue for engineers, about 10% of the Federal dollar goes for Right of Way. I'm talking about your future as well.

I mentioned, though, that there were encouraging signs. FHWA's Ray Barnhart and transportation secretary Drew Lewis also recognize the funding gap, and the secretary has developed a proposal that would raise \$5 to \$6 billion per year. He wants to be the first Secretary of Transportation ever to increase Highway Trust Fund revenues. Can we do it? Yes. When? Good question.

Let me put aside the issue of funding for a moment, and turn to a few other significant items. The most important



*Lester P. Lamm was appointed Executive Director of the Federal Highway Administration in June 1973 by President Nixon. This is the top-ranking career post in the FHWA. Over an 8 ½ year time period, Lamm worked for five Secretaries of Transportation and five Federal Highway Administrators. During that time, FHWA supervised more than \$50 billion in Federal assistance for highway and bridge improvements.*

## A BLAST FROM THE PAST

to me is the one I term our good name. It truly pains me to see headlines all over the country about bid rigging by highway contractors.

Thus far, around 300 companies and individuals have been convicted of antitrust offenses, primarily through Department of Justice probes. Of these, about two-thirds involve Federal-aid contracts, and we therefore have been declaring them unacceptable for Federal-aid highway work. The unacceptability period may range from 6 months to 3 years.

The administrator, Ray Barnhart, has left little doubt where FHWA stands on the basic bid-rigging policy. He and I are disturbed that the reputation of the Federal-aid Highway Program, and that of the highway construction industry in general, is being tarnished through these conspiracies. Bid-rigging will not be tolerated by this administration. However, that's the construction area—what about the \$700 million annual Right of Way program, where temptations for collusion and fraud have been tradition in areas such as property management.

In the last 1950's and early 1960's, we saw one state where all the individuals doing business with the state paid a fee of 5% to 10% to a state official. In another state, alleged payments to property owners were retained by local officials. Hearings by the Congress identified Right of Way irregularities and grossly inflated appraisals in three other states.

In the early days of the program this rash of irregularities was probably due to the thinking of some officials and appraisers that no one would be reviewing their work independently. Also, it's clear to me that the Right of Way profession at that time had not reached today's sophisticated level. But even today, inflated appraisals are still being made and Right of Way

irregularities are still being called to our attention. It is just good business practice that appraisers follow the dictates of their own profession and that state highway agencies keep their systems of checks and balances. You are professionals, and I look to you to assure that these two Right of Way strengths are retained.

During the past several years, you have asked for less regulation from the Federal level. The Federal highway Administration has been working toward this goal of a lesser Federal role, and increased authority and responsibility at the state and local level. Since 1981, our efforts have been aided greatly by commitments and support from the President and his entire administration.

Some time ago, we organized a task force to review all of our existing regulations in order to reduce requirements and regulations. In the Right of Way area, major reductions are very close to completion. For example, in the acquisition and appraisal area, the number of regulations will be cut in half—from 20 to around 10. These regulation changes were discussed at the recent joint FHWA-AASHTO Right of Way conference in Oklahoma, which was attended by several of you at this seminar.

I recommend that the association carefully study these proposed regulations when they are published in the FEDERAL REGISTER, and give us your views. I can assure you that they will be carefully considered. What you say does have an effect, it is your opportunity to get in on the ground floor, and influence the regulations with which you in the highway agencies will be working.

The phrase "do more with less" has taken on a special significance in the past few years in Federal and state

government. Increased costs, general economic conditions, and the public's view of the role of government have all taken their toll, and FHWA and the state highway agencies have all been affected. By the end of September, FHWA will be at our lowest staffing levels since the early 1950's. Many highway departments also have found themselves in the same circumstances.

This has forced us to take a hard look at the way we do business. In order to accommodate personnel reductions, there have been a number of reorganizations in our Washington office and in the field. In this process, we have taken into account the need to provide manpower resources in those areas that are most important to the FHWA mission.

Our Right of Way headquarters office was recently reorganized. The primary functions were left intact. The Highway Beautification program was transferred to the acquisition unit. Many people were released due to this restructuring. These personnel reductions have forced us to look at our priorities, and our role. We simply do not have the resources to devote time to anything but priority concerns where there is a clear Federal interest.

This means all of us have to use our resources more efficiently. It means we must have true competition in all our contracting activities—Right of Way as well as construction. It means actively looking for ways to reduce nonessential expenditures. It means making hard decisions on priorities. Fundamentally it means the willingness to make some changes. And I can assure you it is no easy task.

Even though we all have fewer people than in the past, and our dollar buys less, FHWA figures show the



## ...we should invest \$4 billion/year for 10 years to close the final gaps in the interstate system...



national Right of Way workload has held constant for several years, with a slight upward trend. About 24,000 parcels of property have been acquired with Federal-aid each year since the early 1970's. It's most interesting to note that the interstate system share of that total fell from over 40% in 1972 to about 20% in 1978. So in spite of the fact that the interstate system is approaching completion, the workload holds constant. Obviously, a greater effort is being put into the other Federal-aid systems, offsetting the interstate decrease. I see no reason for that basic trend to change. Even with an increasing emphasis on rehabilitation of existing highway facilities, quite frequently additional Right of Way must be acquired. However, I believe you can anticipate a greater number of smaller projects, and this has its own workload and manpower management implications.

Our Right of Way costs continue to increase. The 24,000 Federal-aid parcels acquired in 1977 cost \$342 million. The 1981 cost for about the same number of parcels was \$538 million. Similarly, relocation assistance claims are down in numbers, but up in dollars, while requests for last resort housing are growing rapidly.

You may wonder about my use of the phrase "Federal-aid parcels." In addition to property acquired with Federal-aid, state and local highway agencies buy over 16,000 parcels

each year with their own funds for Federal-aid construction projects. These acquisitions are also subject to the uniform act requirements, and have to be considered in workload management planning. All in all, there has been and will be a lot of work to do.

Your seminar program indicates that you will be discussing proposed uniform Department of Transportation appraisal and acquisition regulations. This is another long overdue accomplishment which will reduce regulatory requirements, increase uniformity within the department, and provide maximum flexibility. A major benefit is that state and local transportation agencies will no longer have to keep current on the regulation differences that exist between the various DOT administrations. A similar effort is underway for the Federal government as a whole under the auspices of the Office of Management and Budget.

Finally, most of you are aware of the congressional effort to amend the uniform relocation assistance act. The proposed amendments are intended to overcome the shortcomings of the original law, and update it to deal with present day concerns.

In addition to a number of technical changes, two significant issues are addressed. First, it would give state and local agencies more discretion in implementation. Second, it calls for establishment of a lead Federal

agency. The lead agency would have authority to issue instructions to all Federal agencies, and between a Federal agency and a state agency.

You have probably noted that all of the previously mentioned efforts (DOT uniform regulations, OMB "umbrella" regulations, and the legislative amendments) generally promote a common theme, even though they are proceeding independently. We do not see significant conflicts between the two sets of regulations—the proposed DOT appraisal regulation is consistent with the proposed OMB regulation. Further, if the amendments to the uniform act become law, it is entirely possible that the proposed DOT and OMB regulations in the appraisal/acquisition area would not have to be revised because they are all based on the concept of flexibility and delegation of responsibility.

So what does all this mean for your own trends and forecasts for the future? I see:

- State and local agencies getting a reduction in Federal regulatory mandates.
- More discretion afforded in the acquisition and relocation process.
- More consistency among the various Federal agencies in program administration.
- Finally, I see an eventual increase in funding and workload for the entire highway community.

Many of us have been asking for these changes for several years. It's important that we all be ready for them. I'm happy to see that this 28<sup>th</sup> educational seminar is preparing your membership to take advantage of what I see as a better highway future. ☘