Volume I
ADMINISTRATION AND MANAGEMENT OF LOCAL STREETS AND ROADS

A Handbook for Indiana County, City and Town Officials

1988

Purdue University
School of Civil Engineering
Highway Extension and Research Project, Indiana Counties and Cities

Indiana Department of Highways

U.S. Department of Transportation,
Federal Highway Administration

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VACCNET
ADMINISTRATION
AND MANAGEMENT
OF LOCAL STREETS
AND ROADS

A Handbook for Indiana
County, City and Town Officials

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Program Director

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PREFACE

The Purdue University Center for Public Policy and Public Administration and the Purdue University Highway Extension Research Project for Indiana Counties and Cities, developed this manual which will become a valuable reference for local road and street officials. Two volumes have been developed. Volume I is a quick reference guide to a number of recurrent topics while the second volume is a codification of selected Indiana road and street statutes with accompanying notes to decisions. The resulting manual (now called a handbook) is written for county commissioners, engineers, city and town boards of works, engineers, and street superintendents. Mayors and county or city councilmen will also find the manual to be a valuable reference as they go about their duties.

The stated objective of the project was to develop a manual "to serve local public officials as a guide to technical, environmental, legal and procedural constraints pertaining to local street and road programs in the state of Indiana and to provide a comprehensive and usable documented discussion of these subjects." A by-product of the project could be the development of recommendations for streamlining both state statutes and local ordinances and administrative procedures pertaining to local road and street work.

This handbook was compiled by staff of the Center for Public Policy and Public Administration until the center was closed in 1987. Work was completed within the Purdue School of Civil Engineering with assistance of the Engineering Productions Office.

During assistance visits it was observed that local governments had few road and street ordinances or administrative instructions which went beyond establishing speed and weight limits (frost laws). By that time (late 1984), a prototype manual for government officials had been developed and published by the Association of Oregon Counties. After review of this manual and discussion and coordination with Purdue's Highway Extension Research Project for Indiana Counties and Cities, it was decided to propose a similar manual for local governments in Indiana. This proposal was approved in late 1984 and funded for implementation as part of the FHWA HPR Part I program.
Because the audience was one which contained a variety of local officials - commissioners, members of boards of works, street superintendents, city and county councilmen, planning officials, and others - the Center for Public Policy and Public Administration and HERPICC decided to create a technical advisory committee consisting of a number of these same officials. A committee of about 30 county and municipal officials was selected. This technical advisory committee was then divided into a number of subcommittees which were focused upon one or more of the original mix of topics planned for the manual. Eventually, eleven chapters were planned and eight technical advisory subcommittees created to participate in the development and review of these chapters.

The project to develop the manual was divided into three phases. The objective of the first phase was to collect and analyze Indiana road and street statutes and case law. Concurrent organization of the technical advisory committees also took place. Once collected, the material was placed into a computerized data base for both analysis and future editorial changes. Additional material concerning local ordinances and administrative instructions was also sought and collected. In addition, phase 1 included meetings with the committees to review and to revise the material in the file.

The second phase incorporated ongoing analysis and revision generated by the first phase and the development, editing and review of the first volume. The third phase, to put it simply, put on the finishing touches and distributed the manual.

The handbook will become a useful reference for local officials and should become a permanent part of local government libraries throughout the state.

Changes will be mailed to original addressees. The handbook will be useful to users only if it is maintained and available to the elected officials and their staffs for ready reference.

Suggestions for improvement are welcome and encouraged. Such communications should be sent to Highway Extension Research Project for Indiana Counties and Cities, (HERPICC), Civil Engineering Building, Purdue University, West Lafayette, IN 47907.

This project could not have been completed if it were not for the spirited cooperation of a number of individuals.

This handbook was conceived through the advisory board of the Highway Extension and Research Project for Indiana Counties and Cities. The concept of this handbook was developed with the assistance of the advisory board of the Highway Extension Research Project for Indiana counties and cities. The project was later funded by the Federal Highway Administration and the Indiana Department of Highways. The handbook was written by the Center in conjunction with the Highway Extension Research Project for Indiana Counties and Cities (HERPICC). Principal Researchers were C.F. Scholer, HERPICC, and James M. Turley, CPPPA, with R.K. Whitford acting as executive director.

Other individuals who contributed their time and effort to the successful completion of this project were: Lyn Corson, Gil Satterly, Jan Anderson, Timothy Monger, Bill Patterson, Joe Fletcher and John River son, consultants; Mike Thomas, Faye Myers and Will McDermott, graduate research assistants; Wendy Howard, Barbara Buis and Dawn Leverknight, secretaries and data entry; Carol Erler and Carol Lewis, IDOH acquisitions; and Dallas Pasco, editor.
During the early stages of development, a technical advisory committee of local county and municipal officials was established. This committee was divided into sub-committees which were to review and comment on separate chapters of the handbook. The sub-committees were consulted many times during the development process and their assistance ensured a product of lasting value to local officials responsible for streets and roads in Indiana. Also assisting was a research advisory committee made up of HERPICC and CPPPA personnel as well as individuals from the Indiana Department of Highways and the Federal Highway Administration.

The members of the technical advisory committee were: Ellsworth Biesecker, Richard Cockrum, Joe Meyer, Diane Shea, George Stevens, Hyun Lee, Lee McBarron, Forrest Miller, L. Andre Roy, Pat Patterson, Bill Williams, Thomas J. Fromme, Patricia Logan, Kenneth Nigh, Keith Shelton, Tom Bredeweg, Steven Brooke, John A. Hardwick, David Wolfe, Art Boyle, Keith Reeves, Steve Daily, Bill Fife, Joe Long, Dick Thompson, Ken Traylor, Donald Walton, John Willen, Dave Ziegner and Jim Proctor.

The members of the research advisory committee were: Lawrence D. Tucker, U.S. Department of Transportation, Federal Highway Administration; Stan Yoder, Local Assistance Division, Indiana Department of Highways; Art Boyle, Program Development Manager, Indiana Department of Highways; Professor Charles Scholer, HERPICC; and Robert K. Whitford, CPPPA.

Finally, special recognition should go to some of the people already mentioned for the quality and/or quantity of their individual contributions. These people are: Forrest Miller, Diane Shea, Richard Cockrum, L. Andre Roy, Dave Ziegner, Lee McBarron, Ellsworth Biesecker, Lawrence D. Tucker, Art Boyle, Stan Yoder, Carol Erler and Thomas J. Fromme.
ABSTRACT
OF CONTENTS

CHAPTER 1 - INTRODUCTION - SETTING THE STAGE

The requirement for a handbook which addresses the environmental and technical issues affecting local street and road work in Indiana provided the impetus for this project. It is based upon an Oregon county road manual published in the early 1980's. Municipal concerns and considerations have been included in addition to those of counties. Two volumes make up the handbook. The first is a discussion of ten major topics, ranging from local authority to traffic control and management. Each chapter includes a quick-reference guide in a question and answer format, and administrative guidelines or suggestions for ordinances. A list of references is found at the end of each chapter. Volume I also contains references to federal and state statutes and regulations, a bibliography, glossary, and index to statutes.

Volume II contains an arrangement of Indiana statutes and notes which pertain to the topics discussed in the chapters of Volume I, and are arranged in the same order. The statutes were selected with permission from Burns Statutes, Annotated. Some statutes and notes to statutes were not included because of the need to control the size of the handbook. Background information concerning the development of the handbook, along with the acknowledgements, and guidance concerning use, distribution, and the addition of changes are also included.

CHAPTER 2 - LOCAL AUTHORITY

Home Rule legislation of the 1970's and 80's re-defined the issue of local government power by fundamentally changing Dillon's Rule, which held that authority not expressly granted to a local government entity was therefore withheld. This chapter reviews the authority of local officials to carry out their responsibilities and duties in managing and administering local streets and roads. Assuredly, limits remain and are discussed. Tort liability as it relates to local government entities in the conduct of street and road work is reviewed and some suggestions are made for reducing liability exposure. Finally, ideas for ordinances, resolutions and local administrative regulations are presented.
CHAPTER 3 - INTERGOVERNMENTAL RELATIONS

The nature, authority and complexity of intergovernmental relations set the stage for this chapter. The intergovernmental transfer of funds produces significant intergovernmental activity. The Federal Highway Administration's role and its delegation of responsibility to state highway departments forms the essence of the intergovernmental relationship as it relates to streets, roads and bridges. The Indiana Department of Highways provides a check on local street and road work and provides valuable assistance to local officials. County-city cooperation provides a means of maximizing the use of scarce resources at the local level, as does inter-county coordination concerning arterial roads and county line roads. Twenty counties of the state have borders with counties of Ohio, Illinois and Michigan and eighteen Indiana counties border the Ohio or Wabash Rivers, thus creating special challenges. The processes for entering into and approving inter-local agreements are discussed. Inter-local (between local governments) cooperation in the provision of emergency services and area-wide transportation planning provide for continuity at the local level and should not be ignored.

CHAPTER 4 - TRANSPORTATION PLANNING AT THE LOCAL LEVEL

A major concern at both the local and state level is the initiation and coordination of transportation planning where it is not already being accomplished; and the nurturing of such planning where it does exist. The need for transportation planning in the more rural and remote communities is emphasized along with the need for comprehensive plans in the larger and more rapidly growing communities. The transportation planning organization and function at state level are reviewed along with the state's impact on local transportation planning. Available planning literature is reviewed in general terms, and references are included. Answers to transportation planning questions are provided, and suggestions are made for administrative guidelines.

CHAPTER 5 - OBTAINING RIGHT-OF-WAY

Most roads and highways exist because of right-of-way provided by either government and state, or private entities. Governmental units have the authority to secure necessary right-of-way to provide access routes or traffic ways for county, city or town road and street systems. Should routine procedures to acquire right-of-way fail to produce the desired result, the entity can exercise the power of eminent domain. This chapter explores the procedures for obtaining and maintaining right-of-way and it outlines those procedures required by the state of Indiana and the Federal Government. Legalization of poorly defined right-of-way is a problem in some areas of the state because of either archaic or improperly acquired right-of-way. Some procedural ideas are presented for accomplishing this task. Also discussed are the concept of way of necessity which is required to provide property owners with egress and ingress access and rights over adjoining private or public land in order to reach their own property. Way of necessity principles pertain when public construction of a road or ditch leaves a property owner isolated from access to a public highway. Guidelines, instructions and ordinances outlining right-of-way acquisition procedures are important in providing information to local citizens and in insuring that the necessity for right-of-way acquisition is widely known.
CHAPTER 6 - LOCATION, RELOCATION, VACATION AND RAILROAD ABANDONMENT

This chapter begins with an overview of the topic of location and relocation of highways, roads and streets. The problems encountered in reading the present-day location and relocation statutes are explained in relation to their 19th century roots. A local government unit determination that a property no longer is required for public use sets in motion a chain of events and procedures which require careful management. Indiana statutes provide uniform procedures for initiating and completing vacation and relocation actions. This chapter also raises and answers a number of questions which are encountered in vacation actions.

Railroad abandonment has become an increasingly visible issue for local governments and is reviewed with the objective of surfacing and explaining abandonment procedures required by law. Options open to local entities where a railroad is nominated for abandonment are highlighted. Determination of ownership and the conflict between public and private interests tend to cloud railroad right-of-way issues. These areas are reviewed in both the text and in the questions and answers.

CHAPTER 7 - JURISDICTIONAL AND FUNCTIONAL CLASSIFICATION

Grouping various types of roads by their functions and the integration of all public highways, roads and streets into systems and networks to best serve local and state transportation needs is discussed. Jurisdictional issues are highlighted to aid local officials in answering ownership, maintenance and related questions. Unique definitions pertaining to these issues are also highlighted. Administrative guidelines are included along with questions and answers pertaining to functional and jurisdictional classification.

CHAPTER 8 - ROAD REVENUES

Funding highway, road and street work is a never-ending challenge. Local officials must be aware of the numerous sources of funds and the procedures involved in the acquisition and distribution of these dollars to local levels of government. Sources of funds are discussed. Answers to a number of road revenue questions are provided.

CHAPTER 9 - ORGANIZING AND MANAGING THE LOCAL ROAD AND STREET EFFORT.

Prudent and effective expenditures of the public's money is important. Contracting, construction and maintenance regulations and standards must be complied with. The impact of new purchasing regulations mandated by the 1985 General Assembly are reviewed. This chapter also highlights management principles and techniques and presents some ideas concerning organization and management of local road and street work. Ordinances and administrative instruction are discussed along with answers to a number of pertinent questions.
CHAPTER 10 - DESIGN AND SPECIFICATIONS FOR STREETS AND ROADS

Local street and road officials must be cognizant of the technical aspects of design and specifications of streets and roads. Location, establishment and certification are critical to the processes of design and specification. Reports, plans and specifications must meet strict standards. Good management of the quality of materials is critical to road work. Ideas for ordinances and administrative instructions are also included.

CHAPTER 11 - TRAFFIC CONTROL AND MANAGEMENT

Adoption of the Manual on Uniform Traffic Control Devices by local officials is a critical first step toward effective traffic control management. Local authorities have the power to control traffic by enacting ordinances and erecting signs and traffic control devices. With that power comes responsibility to the public to insure that signs and devices are inventoried and maintained, and to be fully cognizant of community changes which will affect existing procedures for control.
CHAPTER 1

INTRODUCTION
SETTING THE STAGE

by Jim Turley

The United States has long been guided by the philosophy that maintenance of the lines of commerce will be the business of the national, state, and local government. This philosophy has been held by those who have governed Indiana, even before statehood. The attention of early citizens and their state government was focused on the issues surrounding internal improvements, which included the laying out of major land routes for both railroads and highways and the establishment of canals. Strong emphasis on railroads was a feature of the mid to late nineteenth century while at the same time the need for developing an infrastructure of state and local roads lagged.

Indiana road and street policy evolved from the fragmented responsibility for national and state roads made financially un-maintainable by the financial crisis of the late 1830's. From that point to nearly the end of the century, roads in Indiana became the responsibility of the local governments with even that fragmented to the point that townships were responsible for some roads while the counties were responsible for others.

These local roads were maintained by local citizens under a corvee system of almost forced labor. Citizens were required to either donate a specified number of days of road work or to pay taxes for the maintenance of the roads. This system remained until the early part of the 1900's. Late nineteenth century reformers attacked this system as being a gross waste of resources and as a major factor in the stagnation of progress toward the application of good management and science to the design and maintenance of local and state roads.

The late nineteenth century did see some reforms. The plank road and turnpike companies were gradually eliminated and there was a move toward the consolidation of roads in the counties into county-wide systems. The 1905 Gravel Road Law tied most of the existing statutes together and the County Unit Law established the county as the governmental entity which was to have exclusive responsibility for county roads.

The federal highway legislation of 1916 forced the states to organize for the management and administration of state highways. Indiana esta-
Figure 1-1 Indiana Department of Highways Organization Chart (Courtesy of Indiana Department of Highways)
established a highway commission with a 1917 law which was almost immediately challenged in court. The legislature revised the statute in 1919 and established the Indiana Highway Commission which was the forerunner of today's Indiana Department of Highways. (An organizational chart of the Department of Highways is provided in Figure 1-1.)

Much has happened since that time. Language and procedure of the older statutes remain 'on the books' to both thrill and confound local government officials. Questions arise and often go either improperly answered or ignored because of the variety and complexity of the local road and street laws. This handbook is organized to assist the local official, staff member or attorney in highlighting topics and statutes which apply to local roads and streets.

The titles of these chapters are as follows: Introduction; Local Authority; Intergovernmental Relations; Transportation Planning at the Local Level; Obtaining Right-of-Way; Location, Relocation, Vacation, and Railroad Abandonment; Functional and Jurisdictional Classification; Road Revenues; Organizing and Managing the Local Road and Street Effort; Design and Specifications for Streets and Roads and Traffic Control and Management.

Volume I (User's Manual) contains information, questions, answers and either paragraphs or ideas for inclusion in ordinances. In a few cases, a model administrative instruction is included. Where appropriate, specific topics are cross-referenced with the second volume which contains references to statutes and regulations and the text of selected Indiana statutes relating to local streets and roads. Questions and answers related to the main theme of each chapter are included to enhance the quick reference features of the handbook. The questions were developed by the technical advisory subcommittees in conjunction with the researchers and HERPCC personnel.

Readers are cautioned, however, that individual legal counsel should review specific actions contemplated.

Finally, reference lists of national laws, pertinent federal regulations and directives are found at the end of volume I. A master list of all Indiana road and street statutes is also provided.

REFERENCES


Esarey, Logan, Ph.D., 1922. History of Indiana From Its Exploration to 1922.
CHAPTER 2

LOCAL AUTHORITY

by Jim Turley

INTRODUCTION

Local highway, road and street officials are constantly faced with questions concerning their authority to make policy and to take actions in meeting their duties and responsibilities. These questions are not unusual nor will they be eliminated as a result of home rule legislation. It is true these newer statutes have reduced the requirements for local governments to apply to the general assembly in cases where authority and power has not been explicitly delegated. The home rule statutes of 1971, 1975 and 1977, accompanied by their re-codification as Title 36 of the Indiana Code in 1980, essentially reversed that part of "Dillon's Rule" which held that local governments possessed only those powers directly conferred by statute or the constitution. The relationship of the state to the local government, though, remains the same (Perry 1977, 9-12). The constitution of 1816 made no explicit reference to the independence of local governments (Perry 1977, 8), but the constitution of 1851 went a bit further by prohibiting local or special laws concerning the location and vacation of roads (Article 4), among other things. It has been left mostly to the legislative branch to put flesh on the bones and bring into existence the local governmental structure which exists in Indiana today.

Taken together with a number of other statutes, IC 36-1-3 completes the picture of a more specific area -- the authority for local road and street officials to perform their duties and to meet their responsibilities. Figure 2-1 provides a quick reference guide to the derivation of local authority to administer and manage local street and road programs. Notice that it also refers to statutes found in Title 8, Transportation and Public Utilities, Title 32, Property, and Title 36, Local Government.

This chapter will discuss the key issues which pertain to local authority and, in addition, will provide some insights through the use of questions and answers. It will end with a discussion of the processes which apply to the development of ordinances, resolutions, and administrative instructions pertaining to authority to manage and administer local roads and streets.

The planks of this Tippecanoe County road are barely visible in this photograph. From the mid to late 19th century, these roads were most often constructed by private concerns who then charged for their use. A later movement resulted in efforts to establish 'free' plank or gravel roads which increased the authority and responsibility of the Boards of Commissioners of the individual counties. The result was the establishment of 'county unit' road laws in the teens and twenties. Interest in improving these laws and county road management continues to this day. (Tippecanoe County Historical Association)
Constitution of the State of Indiana

Article 4
Legislative
Section 22 prevents the legislature from passing local or special laws providing for the laying out, opening, and working on highways; for the election and appointment of supervisors; and which provides for the vacation of roads, town plats, streets, alleys and public squares.

Article 6
Administrative
Section 2 authorizes county officers - Clerk, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. Section 3 authorizes the legislature to provide for additional county officers. Section 10 authorizes the legislature to "confer upon boards doing county business in the several counties the power of a local administrative character."

Title 8
Transportation & Public Utilities
Article 11: Highways, generally applies to both state and local government.
Article 16: Bridges and tunnels
Article 17: County unit law. Statutes detailing county responsibilities and procedures for conducting highway work.
Article 18: County roads financing and bonding.
Article 19: County roads. Petitions and assessments. Contains heavily amended statutes concerning the financing of county roads.
Article 20: County roads - Location, Vacation and Eminent Domain. Provides the basic authority for county commissioners to locate and relocate county roads.

Local Ordinances Resolution: Administrative Instructions

Title 36
Local Government
Article 1: General Provisions
Chapter 3: Home Rule. Contains the basic guidance and authority for local governments to exercise those powers which are not expressly prohibited by the constitution of the legislature.
Article 2: Authorization duties and responsibilities of county officers.
Article 7: Local government planning.
Article 9: Transportation and Public Works.
Chapter 2: General Powers.

Figure 2-1 A Quick Reference Guide to Local Authority
LOCAL AUTHORITY TO CONDUCT STREET AND ROAD WORK

Local county, city and town officials have the power, within certain limitations, to organize and manage local street and road work. These powers are spelled out in detail in Title 8, Transportation and Public Utilities, and in Title 36, Local Government. The section of this chapter containing local authority questions and answers explores these powers in more detail. The full text of the significant local authority statutes are found in Volume II.

Traditionally, Indiana's local governments had to deal with what is called Dillon's Rule, which limited the exercise of power expressly granted by legislation or by the Indiana Constitution. In 1980, the Indiana General Assembly recognized the expanding responsibilities of the local governments and the need to change the extensive, complex and restrictive laws. The result was Home Rule legislation which was enacted as part of Title 36 of the Indiana Code. This legislation relaxed the presumptions of Dillon's Rule legislation which was enacted as part of Title 36 of the Indiana code. This legislation relaxed the presumptions of Dillon's Rule by stating that: "Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence." (IC 36-1-3-3). Doubts as to the existence of a specific power were now to be resolved in favor of the local government. Under this concept, municipalities and other local governments were granted all powers expressly granted by statute plus all other powers necessary or desirable to conduct their own affairs. If a specific method of exercising the authorized power is not mandated, an ordinance prescribing a specific method may be adopted by the unit.

Limitations on local authority

Local governments cannot exercise authority which has been expressly granted to others or withheld by the Constitution of the State of Indiana (IC 36-1-3-5). Since federal dollars and state taxes are distributed and managed by both federal and state agencies, there are a number of checks on local street and road administration and management. Some prime examples include requirements for certain financial and maintenance records and detailed documentation of right-of-way acquisitions. Local road and street officials generally have the authority to acquire right-of-way, to lay out, maintain, improve, manage and, ultimately, to vacate street and roads and to perform all implied tasks associated with those duties. This is not blanket authorization. Legislative and fiscal procedures must be followed and the legal requirements for notice must be fulfilled, and coordination must be effected with state authorities, and other governments. (See Chapter 3, Intergovernmental Relations)

RULES CONCERNING NOTICE

The requirements for public notice are a reality for local road and street officials and, though sometimes thought of as a nuisance by some, have a valid purpose. Following these procedures can reduce the likelihood of conflict and the wasting of resources. IC 5-3, Legal Advertising and the Publication of Legal Notices contains the basic provisions governing legal notice. Most requirements for notice are based specifically on IC 5-3-1, and must be followed using some guidelines which follow. Generally, notice is required for ordinances which contain penalty provisions.
and for those which provide for appropriations of money. In these two cases the full text of the ordinance must be published as part of the notice. A number of Indiana statutes contain specific notice provisions. The most important of those relating to street and road work are published in this manual. Figure 2-2 summarizes notice requirements which may have application to local street and road work. (Source: Indiana Elected Officials Handbook, Indiana Association of Cities and Towns, 1983.)

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<th>Event</th>
<th>Requirement</th>
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<tr>
<td>1. Public Hearings</td>
<td>10 days prior to the date</td>
</tr>
<tr>
<td>2. Election</td>
<td>once: 30 days prior</td>
</tr>
<tr>
<td>3. Sales of Bonds</td>
<td>1st notice: Fifteen days, second notice: 3 days</td>
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<tr>
<td>Notes, Warrants</td>
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<td>4. Bids</td>
<td>First: At least 17 days prior, second: 10 days</td>
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<tr>
<td></td>
<td>prior</td>
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<tr>
<td>5. Estimated Budget</td>
<td>First: At least 17 days prior, second: 10 days</td>
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<tr>
<td>and Proposed Tax</td>
<td>prior</td>
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<td>Rate</td>
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<td>6. Other Events</td>
<td>Publish two times, at least one week apart, the</td>
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<td>second being at least 3 days prior to the event</td>
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Figure 2-2 Notice Requirements

PLANNING AND PROGRAMMING AT THE LOCAL LEVEL

Planning and programming is an important part of the administration and management of local streets and roads. Economic analysis of costs and benefits is vital, as is intragovernmental communication and coordination to avoid duplication of effort. The intergovernmental implications of planning and programming are explored in more detail in Chapter 3, "Intergovernmental Relations." The impact of local plan commissions on the authority of local street and road officials should be examined and understood along with their regulatory activities. The topic of transportation planning at the local level is explored in more detail in Chapter 4, "Transportation Planning at the Local Level."

PLANNING AND ZONING

Not to be confused with planning and programming activities associated with roads, planning and zoning is a process which should be closely monitored by the local official engaged in the administration and management of streets and roads. The planning and zoning process is one through which the local government controls growth and development within its jurisdiction. Though the words "planning" and "zoning"
are often used interchangeably by many people, each word has a specific and functionally different meaning. Planning is the process through which local government determines land use, present and future, and compiles the data needed to periodically assess those determinations. Zoning is a legal mechanism for implementing a plan (Indiana Association of Cities and Towns).

PURCHASING AND CONTRACTING

Purchasing for local streets and roads is a support activity which requires close attention to insure that statutory requirements are met and that the public's money is wisely spent. This process has been revised by the changes made in the purchasing and construction statutes by the 1985 Indiana General Assembly which amended four sections of IC 36-1-9 and in sixteen sections of IC 36-1-12 all of which apply generally to local government entities. These statutes govern the procurement or lease of materials using public funds, no matter the source. Local government boards and officers have the power to award contracts for the purchase or lease of materials. The works board of second and third class cities has permissive authority to award contracts for purchase or lease (IC 36-9-2), and a city can adopt an ordinance designating another officer or board to act as a purchasing agent, or establish a central purchasing officer or department (IC 36-1-3-6).

Generally, county commissioners are authorized to purchase materials and could create a purchasing department under an ordinance based on powers granted by Home Rule legislation. IC 36-2-3.5-4, "County executive - Powers and duties," provides the authority for county commissioners in counties with two or more second class cities to establish centralized purchasing procedures. In the case of towns, either the town board or the town manager can act as purchasing agent (IC 36-6-4-3 and IC 36-6-4-7). The designation or definition of a governmental unit's fiscal officer and procedures for payment of claims by the unit are governed by statute and therefore not subject to modification by a local ordinance. (See Chapter 9, "Organizing and Managing The Local Road and Street Effort.")

TORT LIABILITY AS IT PERTAINS TO LOCAL STREETS AND ROADS

Managing and administrating the local street and road effort creates numerous opportunities for the generation of suits against the local governments. For many decades there was a strong tradition of immunity of local and state governments from tort liability. The changing climate of the 1960's and 70's worked to eliminate this tradition and the resulting tort liability environment has created a nightmarish atmosphere for local officials. In 1974 the Indiana General Assembly passed the Tort Claims Act which delineated the provisions under which governments would not be liable. The statute (IC 34-4-16.5) also outlines the conditions under which a governmental entity is not liable for loss. Under certain circumstances liability may result even in these instances. Those statutory exceptions which seem to apply most to the subject of streets and roads are:

- Loss resulting from the natural condition of unimproved property.
- Loss resulting from the temporary condition of a thoroughfare which results from the weather.
• Loss resulting from the condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

• Loss resulting from the initiation of a judicial or administrative proceeding.

• The adoption and enforcement of or the failure to adopt or enforce a law, rule or regulation, unless the act of enforcement results in false arrest or imprisonment.

• Loss resulting from the act or omission of someone other than the governmental entity employee.

• Loss resulting from the failure to make an inspection or the making of an inadequate or negligent inspection of any property other than the property of the governmental entity.

• Loss resulting from the entry upon any property where entry is expressly or implicitly authorized by law.

• Loss resulting from the theft by another person of money in the employee's official custody, unless the loss was incurred because of the employee's own negligence or wrongful act or omission (See IC 34-4-16.5-3).

The high costs of insurance and the problem of finding an underwriter have forced local governments to aggressively explore ways of reducing liability. Because of the current crisis, state law authorizes the purchase of insurance to cover the liability of the local government entity and its officers and employees (IC 34-16.5-18). The 1986 legislature created an insurance pool to assist local governments with their insurance difficulties. A significant part of the solution to this dilemma seems to be a more professional approach to the management and administration of streets and roads and the development of actions which can reduce the incidence of exposure to tort claims. Some of these answers can be found in the following check list excerpted from an article published in Technology Transfer (University of Connecticut Transportation Institute), Volume 2, No. 1, Winter, 1984, and re-printed in Tech Transfer, #5, May 1984.

Fourteen Practical Tips for Reducing Agency Tort Liability

1. There should be a clear definition and understanding of the duties, responsibilities, and authority of the agency, its sub-units, and each individual in the organization.

2. Officials and employees should clearly understand and subsequently perform their general duties in a satisfactory manner.

3. Decisions concerning professional plans or programs, such as the physical and geometric design of traffic facilities and the application of traffic control devices and regulations, should either be made by competent professionals or be based on the advice of such persons.

4. Public highway agencies should establish and maintain adequate record systems to provide current facts about existing conditions. These systems include:
• Traffic accident records and procedures for identifying high-accident locations, and

• Inventory procedures which will provide reasonably current information about the physical features and conditions of existing transportation facilities (i.e. photo logging and condition ratings) and traffic control devices (location, model and/or type and size, date installed or repaired, condition, function, reliability, and operational criteria).

5. A system of regular inspection should be established and maintained on a continuing basis. These inspections should cover the physical conditions of facilities and traffic control devices. Traffic signals should be checked at a maximum of six-month intervals. Traffic signs should be inspected at least twice annually under both day and night conditions, especially in inclement weather. Traffic markings should be checked as needed but special attention should be paid in the late winter and early spring. Temporary traffic control devices (such as those placed in construction or maintenance areas) should be checked on a daily basis, including workdays, weekends, and holidays. More frequent inspections should be made in major work areas. A chain of command should be established for the inspection process so that changing conditions can be anticipated, present and potential defects can be reported, and prompt action can be taken on those reports. An extremely helpful type of inspection is periodic trips made by the traffic engineer and traffic enforcement counterpart.

Another source of inspection capability is the development of a sense of awareness and responsibility on the part of all agency employees, including non-technical staff, so that they will be constantly on the lookout for vandalized or malfunctioning traffic control devices or other hazardous conditions.

6. An established procedure for the handling of complaints and reports should be developed and maintained with one person or one office being designated to receive and record all such reports and take appropriate action. Effective handling of complaints has legal as well as public relations benefits.

7. Complete and current maintenance records can provide information about type and character of repair or replacement activity including what trouble was found, what repairs were made, and what materials were used.

8. All designs or facilities or traffic control devices should be in accordance with currently adopted policies, guidelines, standards, and manual specifications. Geometric designs should be predicated on criteria which exceeds minimum standards. Field conditions should be correlated with traffic controls (i.e. having a 55 mph speed limit on a road which has stopping sight distance for a maximum of 35 mph is unsafe and irresponsible).

9. Standards of performance should be adopted in the areas of design, construction, operations and maintenance.

10. Rational procedures for determining improvement priorities and programming should be established and followed. Normally this will include a consideration of the cost effectiveness of various alternatives.
11. There should be design and operational reviews both before and after any facility or traffic control change is made. Both the basic design and traffic control elements should be checked in the field. Reviewers should be alert for changing conditions such as increased traffic movements, changes in vehicle type, etc. There should be inspections of active and completed projects.

12. All agency employees should be impressed with the importance of reasonable care in the fulfillment of their individual duties as well as the overall group mission.

13. Beware of false economy. The foolish cutting of necessary expenditures in order to appear fiscally responsible to the taxpayer inevitably leads to careless and negligent work.

14. Provide liability insurance against claims.

**Actions local government can take when an accident occurs**

Indiana's Attorney General, Linley Pearson, suggested a number of actions local government officials can take to minimize damages resulting from an incident or accident. Presented to the 1986 Purdue Road School, these important thoughts are included here.

First Mr. Pearson recommended establishing a record-keeping system which insures that important information is kept on any incident which might result in a claim or a lawsuit. Prompt investigation is important to determine the condition of the road, signs, and signals as they were at the time of occurrence. A camera is a small expense compared to a potential damage award. All critical documents including photographs should be labeled and certified as to date, time and place the document was created. All documentation should be carefully safeguarded and placed in an accident/incident file which is established immediately after an accident/incident is reported. Witness statements are crucial to this file. Remember that police and fire personnel at the scene are interested first in saving lives and second in clearing the roadway and may not take time for extensive statements or make photographs needed for later litigation. The local government's independent investigation system will insure that all important witnesses are interviewed and that their evidence is documented. A complete list of the witnesses and their addresses is important in ensuring the usability of the accident/incident file in future litigation. In summary, the reality of the liability climate requires local governments to take aggressive action in protecting the viability of the agency against the effects of claims and tort liability suits.

**ORDINANCES AND LOCAL AUTHORITY**

Local governments have the power to enact ordinances and resolutions and to act upon motions which have the purpose of regulating and managing street and roads and appropriating money for these activities. Title 36, "Local Government," of the Indiana Code spells out these powers in detail for each governmental entity. Statutes governing specific road and street topics also provide detailed guidance concerning ordinances and notice of pending actions. Volume II of this handbook contains the statutes which are considered most applicable to the administration of local streets and roads. Throughout this handbook, the authors have provided language and ideas which could be incor-
porated into ordinances or suggested verbage pertaining to the administration and management of local streets and roads. These discussions are suggestions only and should not be implemented without also consulting with appropriate specialists and legal counsel.

A local government legislative body normally acts through the use of motions, resolutions, or ordinances. Motions are the most informal method of action since they are generally made orally, and noted in the minutes of the legislative body. The Indiana Association of Cities and Towns' Handbook for Elected Municipal Officials, 1983, indicates that the distinction between ordinances and resolutions is not clear and that the terms are frequently used interchangeably. The Indiana Supreme Court has declared that an ordinance is a more formal or solemn declaration and that a resolution passed with all the formalities required for passing an ordinance may operate as an ordinance regardless of the name by which it is called (Town of Walkerton v. New York, C & I St. L.R.O., 1999, 18NE2d 799).

"An ordinance is best defined as a local law prescribing a general and permanent rule. Resolutions ordinarily are used to take actions that are temporary only, or to grant a special privilege or which express the opinion of the (legislative body) such as those expressing sympathy or requesting action of governmental units" (Indiana Association of Cities and Towns' Handbook, 1983, p. 24). Legislative bodies should consider the subject matter and determine the appropriate form the local policy document is to take. Procedural rules of city councils, county councils, and boards of commissioners should contain guidelines and procedures for the development and enactment of ordinances.

Title 36 of the Indiana Code also requires that local governments codify, revise, rearrange or compile ordinances "... into a complete, simplified code excluding formal parts of the ordinances." The intent of the legislation appears to be to develop ordinances into a more readable form readily accessible to the general public. The requirement for a code doesn't mean that a professional codification firm must be employed to do the work. In-house codification projects can be done by legal counsel with the assistance of self-help manuals (IACT and Academy in the Public Service: Ordinance Codification: A How-to-do-it Guide).

A governmental entity which has the power to enact ordinances has therefore been given the power to modify or repeal such ordinances unless the power has been otherwise restricted by statute. Examples might be amendments which jeopardize a legally vested right or an ordinance which is enacted in compliance with a statute which mandates the enactment or which once enacted may not be repealed or amended (Indiana Association of Cities and Towns Handbook, p. 25). Since an ordinance has the same force as a statute or law, the governmental entity enacting it has the power to enforce the provisions as required but is also subject to some restrictions. Violations of ordinances are now punishable by civil proceedings rather than criminal prosecution. (IC 34-4-32.) A governmental unit wishing to enact ordinances which regulate traffic or roads and streets must consider jurisdictional issues, especially if state rights-of-way are involved. IC 9-4 contains provisions which govern these issues. (See Chapter 11, "Traffic Control and Management")

This brief survey of the subject of authority of local governments to conduct road and street work may generate an appetite for more infor-
Figure 2-3 provides a graphic depiction of legislative and executive authority and is focused generally on the subject of highways.

| County with No Consolidated City | Board of Commissioners | County Council | Auditor | Board of County Commissioners, County Council |
| County with a Consolidated City | Mayor of Consolidated City | City-County Council | Auditor | City-County Council |
| Consolidated City | Mayor | City-County Council | Controller | City-County Council |
| First Class City | Mayor | Common Council | ** | Common Council |
| Second Class City | Mayor | Common Council | Controller Clerk Treasurer | Common Council |
| Third Class City | Mayor | Common Council | Clerk Treasurer | Common Council |
| Towns | President of the Board of Trustees | Board of Trustees | Clerk Treasurer | Board of Trustees |
| Townships | Trustee | Advisory Board | Trustee | Advisory Board |

Notes:
* County-Council for county having two (2) or more Second Class Cities (according to 1980 census, this applies to Lake and Saint Joseph Counties only)
** When First Class City becomes Consolidated City, the First Class City is abolished as a separate entity. (IC 36-3-1-4)
"City" refers to a Consolidated City or other Incorporated City of any class unless reference is to a School City. (IC 36-1-2-3)
"Town" refers to an Incorporated Town, unless reference is to a School Town. (IC 36-1-2-21)
"Township" refers to a civil township, unless reference is to a congressional township or school township. (IC 36-1-2-22)

Classification of Municipalities (IC 36-4-1-1)

<table>
<thead>
<tr>
<th>Status &amp; Population</th>
<th>Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cities of 250,000 or more</td>
<td>First Class Cities</td>
</tr>
<tr>
<td>Cities of 35,000 to 249,000</td>
<td>Second Class Cities</td>
</tr>
<tr>
<td>Cities of less than 35,000</td>
<td>Third Class Cities</td>
</tr>
<tr>
<td>Other municipalities of any population</td>
<td>Towns</td>
</tr>
</tbody>
</table>

Figure 2-3 Legislative & Executive Authority

QUESTIONS AND ANSWERS CONCERNING LOCAL AUTHORITY

AUTHORITY IN GENERAL

Q: Describe the nature of a governmental unit’s power to enact ordinances.

A: Under the general provisions of IC 36-1-4-11, counties, municipalities and towns may adopt, codify and enforce ordinances. In all counties (except Lake, St. Joseph and Marion) the county commissioners are empowered to enact ordinances through a standard procedure. A majority vote of the legislative body of the governmental unit is
needed to pass an ordinance unless there is a differing statutory requirement (IC 36-4-16-14). In Lake and St. Joseph counties the provisions apply to the County Councils instead of the County Commissioners, and in Marion County the City-County Council is empowered to enact ordinances.

Q: What are some of the limitations placed on a governmental unit when enacting ordinances?

A: A unit may exercise this power to the extent that it is not expressly granted to another entity (IC 36-1-3-5). If an ordinance conflicts with the constitution or contradicts, duplicates, alters, modifies, or extends the subject matter of a statute, that ordinance is impermissible. An ordinance which a municipality seeks to uphold by virtue of its incidental powers, or under a general grant of authority will be declared invalid, unless it is reasonable, fair, and impartial. (See Notes to Decision concerning IC 36-1-4-11, Burns Indiana Statutes.)

There are also some powers specifically prohibited by statute listed in IC 36-1-3-8. Those powers prohibited are:

1. The power to condition or limit its civil liability, except as expressly granted by statute.
2. The power to prescribe the law governing civil actions between private persons.
3. The power to impose duties on another political subdivision, except as expressly granted by statute.
4. The power to impose a tax, except as expressly granted by statute.
5. The power to impose a license or other fee greater than that reasonably related to the administrative cost of exercising a regulatory power.
6. The power to impose a service charge greater than that reasonably related to the cost of the service provided.
7. The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.
8. The power to prescribe a penalty for conduct constituting a crime or infraction under statute.
9. The power to prescribe a penalty of imprisonment for an ordinance violation.
10. The power to prescribe a penalty of a fine of more than two thousand five hundred dollars \[$2,500\] for an ordinance violation.
11. The power to invest money, except as expressly granted by statute.

Q: How are ordinances incorporated by reference?

A: State statutes, regulations or other authoritative documents may be incorporated into local ordinances by reference. This authority is to
be exercised by the legislative body. The ordinance or code must state that two (2) copies of the material are on file in the office of the clerk for the legislative body for public inspection, and the copies must be on file as stated for public inspection (ICC 36-1-5-4). If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of federal or state statute, rule, or regulation, and a code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association. Each matter incorporated by reference must be fully and exactly described (IC 4-22-2-21).

Q: What should be considered when drafting street and road ordinances?

A: An ordinance is used for legislation intended to have a permanent and general effect. It generally does not take effect immediately unless an emergency clause is inserted. Simple sentences and ordinary English should be used to make the ordinance understandable to its users, and it should be determined if there is a limitation on penalties a governmental unit can impose. Depending on the nature of the ordinance, certain state agencies should be consulted for helpful information and advice. For example, the Indiana Department of Highways’ Division of Land Acquisition should be contacted for assistance when drafting right-of-way ordinances while the Division of Planning should be contacted when considering street light ordinances.

Q: What is the authority for county commissioners or town or street supervisors to perform their duties?

A: The Board of County Commissioners has and can exercise the powers expressly granted by the constitution and the statutes of the state; or such powers as which arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law (Notes to Decision, IC 36-2-2-2, Burns Indiana Statutes Annotated). Cities, towns and counties have the general powers conferred by IC 36-1-3. The broad powers this statute gives to these units must be exercised by ordinance or resolution.

AUTHORITY OF COUNTY COMMISSIONERS

Q: Apart from general home rule powers, what is the specific authority of the Board of County Commissioners to conduct road and street work?

A: The Board of County Commissioners is authorized to:

1. Construct public highways by the laying out and improving, reconstructing or repairing of any existing public highway (IC 8-17-1-2);
2. Appoint highway supervisors (IC 8-17-3-10);
3. Appoint highway engineers (IC 8-17-5-11);
4. Establish and designate preferential highways (IC 8-17-9-1);
5. Designate those highways in their county which are important to justify erection of guide posts (IC 8-17-10-3);
6. Improve roads on county lines (IC 8-17-11-1);
7. Close all or parts of impractical or unsafe highways (IC 8-17-14A-1). [Note: IC 8-17-14A is a number created by the editors of Burns Statutes. The correct IC number is IC 8-1-23-1.];
8. Purchase, receive, or otherwise acquire the lands and rights necessary to widen, straighten or change the route of any county road (IC 8-20-3-1);
9. Solicit and evaluate bids for construction and maintenance of roads (IC 8-19-2-1) and of bridges (IC 8-20-1-31);
10. Employ teams, trucks and employees as may be necessary to assist and carry on the repair work on the roads, and shall determine the rate of wages to be paid for labor, trucks and teams (IC 8-17-3-7);
11. Make suitable rules and regulations covering traffic upon any highway in the county, and shall be authorized to take such steps and do such things as necessary to enforce the rules when made (IC 8-17-1-40); and
12. Prepare an itemized estimate (budget) of all expenditures during the next calendar year (IC 36-2-5-7).

Q: Is the Board of County Commissioners empowered to perform work on highways, bridges and culverts under the supervision of the Department of Highways?

A: Yes, but only if such work is approved by IDOH (IC 8-17-1-1).

AUTHORITY OF MUNICIPAL OFFICIALS

Q: As a city or town road and street supervisor, what is the source of my authority to conduct street and road work?

A: "A unit (which includes counties, cities and towns) may establish, vacate, maintain and operate public ways" (IC 36-9-2-5). The Notes to Decision under this statute state that "unless otherwise provided by law, every municipality has exclusive power over its streets, alleys, crossings, and public places." In addition, a unit may grant rights-of-way through, under or over public ways (IC 36-9-2-6). "Public ways" includes highways, streets, avenues, boulevards, roads, lanes or alleys (IC 36-9-1-7). (See Glossary for related definitions.)

The city or town is authorized to:

1. Acquire private or public property and property rights
for limited access facilities and service roads (IC 8-11-1-5);

2. Plan, designate, establish, regulate, alter, improve, maintain and provide limited access facility for public use (IC 8-11-1-3); and

3. Designate any limited access facility and regulate, restrict, or prohibit access as to best serve the traffic (IC 8-11-1-4).

TORT LIABILITY

Q: What are the procedures for handling a tort claim against a municipality or other governmental subdivision?

A: IC 34-4-16.5-1 contains the procedures and guidance for handling tort claims against government entities. All tort claims must be filed within 180 days after the loss occurs. An exception is made for minors or incompetents. The entity must settle the matter within 90 days of filing the claim or the injured party will then have the right to file a lawsuit in any court of the state which has jurisdiction to hear such suits. The injured party has two years to file suit. In the event of a judgment against the government entity or public employees acting within the scope of their employment, the damages are limited to $300,000 per person and $5,000,000 for all persons injured or killed in the same incident (IC 34-4-16.5-4). These limits do not apply when Federal laws or the constitution have been violated. Payment must be made by the governmental entity to avoid paying interest penalties.

Q: Why should local street and road officials and employees be concerned about tort liability?

A: Recent changes in judicial decisions have resulted in the doctrine of governmental immunity being abrogated and courts assessing damages without regard to policy limits of any insurance carried by the county. In recent years the number of liability suits against governments has increased and the result has been the rapid expansion of associated costs. Government tort liability is here to stay and local governments and local government employees must adapt to this environment. As a result, local governments must pay close attention to the subject of tort liability to insure that all that can be done to reduce exposure and costs is, in fact, done. The implementation of risk management plans and "preventative engineering" are necessary to insure survival and maintenance of faculty in this environment.

Q: What actions can be taken to reduce tort liability arising from the administration and maintenance of streets and roads at the local level?

A: The governmental unit should take immediate action to insure that the administration and management of street and road work is accomplished in the most professional manner possible. Personnel need a clear understanding of their duties, responsibilities and
authority. Plans, programs and the application of traffic control should be accomplished by competent professionals or based upon the advice of such persons. Adequate records must be maintained. Regular inspections should be accomplished, documented, and backed up by random checks. Procedures for handling complaints and reports will also aid in insuring that problems are identified and that action is quickly taken to correct deficiencies. Standards of performance should be formulated and adopted in areas of planning, design, construction, operation, maintenance and management. Careful planning will insure that necessary work is accomplished expeditiously. Employees must be aware of the necessity for reasonable care in the performance of their duties. (See pages 2-5 to 2-8.)

Q: Under what conditions is a governmental entity not liable for loss?
A: IC 34-4-16.5 governs tort claims against government entities which include counties, cities and towns. The statute provides for certain exemptions for persons and governmental entities. These exceptions are detailed on page 2-5.

REFERENCES


CHAPTER 3
INTER-GOVERNMENTAL RELATIONS

by Mike Thomas

INTRODUCTION

Intergovernmental transfers of funds are the source of over half of the local street, bridge and road expenditures by local governments in Indiana. Counties', cities' and towns' interactions with state, federal and other local governments in the areas of finance, purchasing, strategic planning and provision of joint services has created increasingly complex relationships. Projected cutbacks in federal resources have further complicated intergovernmental relations for the local street and road official. Intergovernmental relations, then, tend to emanate from intergovernmental transfers, management of funds and other critical issues of an interlocal nature such as joint purchasing provisions and joint strategic planning.

Relations between governmental entities are always going to be more difficult than those experienced within single units of governments and local street and road officials are not excepted from dealing with this reality. Ambiguities in the operating methods of other agencies may create confusion and tension resulting in suspicion and a lack of trust. Governmental entities must be aware of the procedures and policies of other entities. Personal contact, well planned information briefings and fact sheets can aid in this process and contribute to more effective government.

Intergovernmental relations are, in the final analysis, relations between officials who govern different governmental units. Relations between these officials are not one-time or occasional occurrences, but are continuous and day-to-day in their nature and the participants' concern about accomplishing tasks. It is obvious that all public officials must be engaged in intergovernmental relations. Policy pervades all intergovernmental action and at the core of policy are financial (fiscal) issues and problems generated by scarce resources. How will funds be raised, by whom and from whom will the intergovernmental transfers be received and how will these funds be allocated and administered at the local level?

This chapter develops the topic of intergovernmental relations as it affects local street and road officials. Because the topic is so complex, a
more global approach is taken in some areas to provide needed back-
ground information. Indiana statutes pertaining to the subject of inter-
governmental relations are found in Volume II of this handbook. Refer-
ences to other Indiana statutes, federal law and federal and state regula-
tions concerning intergovernmental relations are found in the References
section of this volume.

In Indiana, as in every other state, planning for highways takes into
account all levels of government. Highways provide the means of com-
mercial transport and recreational travel which cross state lines, thus
bringing into play the relations of the states to each other. Therefore, all
levels of government have a primary interest in highways located within
their jurisdiction; and yet each government has a connecting interest in
the highways operated and maintained by other governments.

The Federal government, states, counties and municipalities continue
to play a vital role in the construction and maintenance of highways. At
times it is difficult to ascertain where the national interest ends and
state and local interests begin. Overlaps are common. Cooperation
between all levels of government is needed for an efficient and well-
managed road system. Every part of the road system is related to every
other part in one way or another—intergovernmental relations cannot be
avoided.

STATE-COUNTY COOPERATION

The Indiana Department of Highways offers technical assistance to
the counties, cities and towns in the areas of engineering and consulta-
tion, road and street inventory, management, programming, personnel,
financing, and the administration of Federal aid Highway programs.
Counties may use facilities of the department’s testing laboratory for the
testing of highway construction and maintenance materials or for other
appropriate highway, road or street purposes. The Indiana Department
of Highways also contracts with educational institutions and private
agencies in providing research information to the county highway officials
and staff members of the county highway departments. The Indiana
Department of Highways uses other means such as district meetings,
conferences, and training seminars to provide information and advice
concerning highway system planning, design, construction, operation,
maintenance, financing and administration of highways, streets and
roads. Local road and street officials can obtain up-to-date information
concerning available IDOH assistance from The Division of Local Assis-
tance.

The Indiana Department of Highways office of Field Operations is
responsible for managing the operation of the six Indiana Highway Dis-
tricts. These districts, shown in figure 3-1, are responsible for highway
construction, maintenance, traffic and development and testing. Each
district is headed by a District Engineer who is assisted by maintenance,
materials and test, development, construction and traffic engineers. An
administrative manager is also assigned at co-equal level with the High-
way District Engineer. The districts assist various divisions of the Indi-
ana Department of Highways in the performance of their function, and
assist local government agencies in the area of roads and streets. The
districts also monitor development and implementation of federally-
funded construction projects. Figure 3-2 depicts the organization of a
typical Highway District.

The highway district’s local agency responsibilities fall primarily
under the purview of the IDOH Divisions of Construction and Local
Figure 3-1 Indiana Department of Highway Districts (Courtesy of Indiana Department of Highways)

Figure 3-2 Typical IDOH District Organization
Assistance. All municipal and county federal-aid highway construction projects are administered by the Division of Construction and are monitored by the Highway District Construction Engineers.

Local public agency consultant agreements are monitored by the District Construction Engineer and the IDOH Division of Local Assistance. Claims vouchers are reviewed by the Highway District before forwarding to IDOH for approval.

In 1985, IDOH added the position of Program Coordinator to the Highway District staff. These coordinators are liaisons between the local agencies and the districts/department headquarters, and provide assistance in the area of Federal-Aid Highway funds -- their availability, requirements, types of projects, eligibility determination and procedural requirements.

Highway Districts also provide emergency and disaster assistance when authorized by the governor. Districts are also responsible for keeping the state highways in their area open and passable during extreme weather.

Land acquisition required for highway projects may be initiated by highway districts in conjunction with the responsible division. Districts are also responsible for investigating and commenting upon county legal drain assessments before forwarding them to the Department of Highways.

INTERGOVERNMENTAL FINANCIAL SUPPORT

As mentioned earlier, the intergovernmental transfer of funds generates the most pervasive intergovernmental transactions. In most cases the state acts as the agent in the allocation and management of federal funds at the local level. Federal funds most commonly administered by the state include Federal-Aid Highway funds and Community Development Block Grants. State funds allocated in accordance with statutory formulas include the Motor Vehicle Highway Account (IC 8-14-1), the Local Road and Street Account (IC 8-14-2), the General Highway Engineer Fund (IC 8-17-5), and, in selected cases, the Distressed Road Fund (IC 8-14-8).

Other activities supported by state funds include sharing of lighting and utility costs with municipalities (IC 8-13-6.5 and IC 36-9-9), sharing of costs associated with maintenance and improvement of railroad crossings (IC 8-6-2.1), and providing technical assistance to local governments (IC 8-13-1). The state also uses both federal and state generated funds in the construction and maintenance of the state highway system. The primary sources for these funds are the State Highway Fund (IC 8-13-5) and the Primary Highway System Special Account (IC 8-14-2).

The Indiana Toll Finance Authority (IC 8-15-2) administers the Indiana Toll Road System. In the administration and maintenance of the toll road system, the authority may finance, construct, improve or maintain public improvements (such as roads and streets) in any county through which a toll road passes. The improvements must be within ten (10) miles of the center line of the toll road (within two (2) miles if the project is a limited access highway that interchanges with the toll road).

The Indiana Toll Finance Authority may also work in cooperation with the department of highways or political subdivisions to help “con-
struct, reconstruct, or finance the construction and reconstruction of an arterial highway or arterial street that is located within four (4) miles of the center line of a toll road project" (IC 8-15-2-1). These arterial highways and streets must either interchange with the toll road or intersect another road or street that is a toll road interchange.

The topic of local and state road funding and the mechanics involved is covered in significant detail in chapter 8, Road Revenues.

STATE-MUNICIPAL COOPERATION

Intergovernmental relations between the state and municipalities (cities and towns) are on a continuous and day-to-day basis. Most state and municipal government officials recognize the joint benefits of close cooperation in governing efficiently and responsively. Some of this interaction is mandated by statutes and the Constitution of Indiana, backed by the tangible and intangible benefits to cooperating governments.

There are a number of state-municipality relationships that arise from the need for cooperation. As with counties, the Indiana Department of Highways has developed a program of providing technical assistance to municipalities. The department administers federal highway grant programs that allocate funds to local units of government; maintain and continuously update a road and street inventory; furnish engineering and consultation services; and provide assistance in areas of management, programming, personnel and financing. For example, federal grant programs to municipalities for highways are administered by the Department of Highways' Division of Local Assistance.

COUNTY-MUNICIPAL COOPERATION

Legally-mandated relationships between counties and the municipalities within county boundaries are few in number. Cities are not "creatures of the county," and thus the county has no inherent powers of supervision and control. Counties do collect and distribute property taxes on behalf of municipalities, and certain state funds are distributed to the municipalities through the counties. The counties do not exercise discretionary power over these funds.

Traditionally, the county's interest does not enter municipal street activities. However, the Interlocal Cooperation Act of 1980, (IC 36-1-7) provides that Indiana municipalities and the executive of the counties in which they are located can make agreements concerning highway construction and related matters. (See page 3-10.)

Counties and municipalities may enter into contractual relationships. Often smaller municipalities, with little street mileage and a small road and street staff budget, will contract with their respective county highway department for maintenance of municipal streets. This arrangement is beneficial to both the county and municipality because the municipality receives services at minimal cost and counties can recover some of their investment on equipment and personnel.

FEDERAL-STATE-LOCAL COOPERATION

The Constitution of the United States grants specific authority to the national government in certain areas concerning public roads. Article 1, Section 8 gives Congress the power to "establish post offices and post
roads." However, from as late as 1850, road construction was usually a task for state, county and municipal entities. The increased use of automobiles in the early 20th century stimulated an intense interest in better roads and resulted in a need for greater cooperation between the national and local governments. This impetus, magnified by looming national defense needs, resulted in the Federal Aid Road Act of 1916, which was enacted by Congress to provide national funds for roads approved by the federal government. The new law left the actual planning and construction of roads up to the state highway departments; creation of which was a mandated pre-requisite to receiving Federal-aid Highway support. Indiana was one of those states which had not created a statewide highway organization by 1916, but hurried to do so by bringing the State Highway Commission into being in 1917.

Events also increased federal involvement in public roads. During the Great Depression a large number of the unemployed were channeled by several agencies into a number of public works programs. In order to assist states in matching funds for federal projects, Congress, in 1930, provided an advance of $80 million to be apportioned to the states. The national government also launched massive highway programs without the requirement for matching funds. Under the National Industrial Recovery Act (NIRA), $400 million was authorized for expenditure under the regular highway legislation and an extension of the federal-aid program was made to municipalities. Also, funds for secondary or feeder roads were authorized. Later, the Hayden-Cartwright Act of 1934 authorized more funds to NIRA. The depression era also produced a tremendous expansion in the number of relief agencies, such as the Works Project Administration (WPA), which spent large sums of money for wages paid for work on highway projects.

Congress initiated action to improve roads for national defense and, in 1940, the Federal Highway Act was passed to provide national money without matching funds, to be used for roads important to national defense. In November of 1941, the Defense Highway Act of 1941 established the pattern for defense highway programs and it continued as the basic defense highway legislation throughout the war.

Following World War II, new defense highway legislation was enacted. The most important, and still existing today, is the National System of Interstate and Defense Highways which came into being in the 1950's. This system consists of routes considered to be of highest importance to the Nation, which connect, as directly as practicable, the principal metropolitan areas, cities and industrial centers, including important routes into, through and around urban areas. It serves the national defense and, to the greatest extent possible, connects at suitable border points with routes of continental importance in Canada and Mexico. The Federal-aid primary system consists of "an adequate system of connected main roads" which are considered to be important to interstate, statewide and regional travel. Rural arterials and urban extensions may be part of this system. The Federal-aid secondary system consists of major rural collectors and the urban system consists of arterial routes and collector routes which do not include urban extension of the Federal-aid system. (Chapter 6-7, FHWA FHPM) Additional information concerning this and other functional classification issues is found in Chapter 7 of this handbook.
GOVERNMENTAL AGENCIES AND ADVISORY COMMITTEES

The activities of the Federal government in the highway construction and maintenance function have an enormous impact on states, counties and municipalities. Many federal agencies and advisory committees are currently engaged in highway research and use. Agencies were formed because of the need for coordination of highways and to counteract the lack of information in other levels of government.

Federal Highway Administration (FHWA)

This administration is a major agency of the U.S. Department of Transportation which administers the Federal-Aid Highway Program of financial and technical assistance to the states for highway construction and improvement of efficiency in highway and traffic operations. The FHWA provides for construction and preservation of the approximately 42,500 miles of the National System of Interstate and Defense Highways, financed on a 90% Federal and 10% state basis, and improvement of about 200,000 miles of other Federal-Aid primary, secondary and urban roads and streets on a 75%-25% basis. The FHWA also administers the Highway Bridge Replacement and Rehabilitation Program which provides assistance in the inspection, analysis and rehabilitation of bridges both on the Federal-Aid Highway System and outside the system. The FHWA cooperates with the state of Indiana and local governments through the Indiana Department of Highways (IDOH).

The Department of Highways is authorized by the state of Indiana to make all final decisions on highway projects, to take other actions on behalf of the state and is responsible for Federal-aid projects in Indiana. Current FHWA regulations are published in the Federal-Aid Highway Program Manual (FHPM) which is distributed to all state highway departments. The Local Assistance Division of the Indiana Department of Highways uses the FHPM as the basis for development of policies and programs concerning the planning, programming, justification, contracting and construction of all Federal-Aid Highway Projects. The Local Assistance Division provides continuous assistance and monitors all local federal-aid projects to ensure that the requirements of laws are met. The Local Assistance Division, along with the other IDOH departments, is also a great source of information on a variety of topics ranging from federal aid to engineering problems. A list of contacts at the Department of Highways is provided in Figure 3-3.


Operating under the U.S. Department of Transportation, the National Highway Traffic Safety Administration issues standards and recommendations to state, county and local governments in areas of highway design, maintenance and safety.

Federal Regional Council.

The Federal Regional Council is an interagency and intergovernmental body designed to maintain good working relationships between the Federal, state and local governments. The Federal Regional Council coordinates consistent responses to issues requiring the attention and services of two or more member agencies. Comprised of the principal regional officials of the major domestic federal agencies serving the Chicago Regional Office, the Federal Regional Council strives to promote
Construction Division
- Prequalification Engineer ....................................... (317)232-5095
- Engineer of Construction ....................................... (317)232-5075

Design Division
- Consultant Services Manager .................................... (317)232-5345
- Plan Development Manager ....................................... (317)232-5348
- Design Services Manager ......................................... (317)232-5343
- Engineering Services Manager ............................... (317)232-5310

Land Acquisition Division
- Local Public Assistance ......................................... (317)232-0035

Local Assistance Division
- Technical Assistance Engineer .................................. (317)232-5319
- Area Engineer (Fort Wayne & Greenfield Districts) ........ (317)232-5315
- Area Engineer (LaPorte & Crawfordsville Districts) ...... (317)232-5316
- Administrative Assistant Manager ........................... (317)232-5318
- Program Development Manager ................................ (317)232-5142

Program Development Division
- Urban Planning Supervisor ...................................... (317)232-5481

Traffic Division
- Engineer of Traffic Development ................................ (317)232-5204
- Engineer of Traffic Operations ................................ (317)232-5204

District Offices
- Crawfordsville District ......................................... (317)362-3700
- Fort Wayne District .............................................. (219)484-9541
- Greenfield District .............................................. (317)462-7751
- LaPorte District .................................................. (219)362-6125
- Seymour District ................................................... (812)522-5649
- Vincennes District ................................................ (812)882-8330

Figure 3-3 Indiana Department of Highways Contact People (Source: Indiana Department of Highways 1987 Phone Directory)

interagency coordination; resolve conflicts between agencies; instill a sense of partnership among Federal agencies; and speed the delivery of Federally administered services. Indiana is in the Chicago region.

The Advisory Committee on Intergovernmental Relations

This committee was established in 1959 to monitor the operations of the American Federal system and to study and recommend ways to improve its functioning and effectiveness. Its underlying purpose is to strengthen the ability of the Federal system to meet the problems of an increasingly complex society by promoting greater cooperation, understanding and coordination of activities among the separate levels of government. The committee undertakes its work in terms of specific issues and problems in the areas of taxation, finance and other functions that provide for improved cooperation among the Federal, state and local levels of government and reports its findings to the Congress.

National Hazardous Materials Transportation Advisory Committee.

This committee was established in 1983 to provide advice, information and recommendations to the U.S. Department of Transportation on matters relating to all aspects of hazardous materials transportation. Federal, state and local governments’ roles and relationships are also addressed.
STATE-STATE COOPERATION

The Indiana Department of Highways must engage in interstate highway relationships with Illinois, Ohio, Kentucky and Michigan. These are practical relationships which involve the coordination of highway systems and the responsibility for projects of joint interest. For example, the planning of an interstate bridge requires cooperation concerning location, cost-sharing and maintenance. Indiana has established an interstate bridge fund which is financed by tolls collected from bridges and the Indiana Toll Roads.

Often little cooperation between Indiana and neighboring states on the subject of highways themselves is mandated since most of the highways lead straight up to the state boundaries and merely connect with the highway of the neighboring state. In the case of county roads or highways, if improvements are needed on or near state lines, the boards of commissioners of the several counties are authorized and empowered by statute to lay out, establish and grade, drain and pave any new county highway, or part of a highway, lying on, along, or near a state line. (IC 8-11-9-1)

INTERLOCAL COOPERATION

County to County Cooperation

The relationships between counties have always been important. County commissioners and engineers find that administration and management of the county highway system impacts adjoining counties. County line highways and bridges generate the majority of the requirements for county-to-county cooperation and coordination. The board of commissioners of any two or more counties are authorized by statute to establish, lay out, widen, change, construct or improve any highway or part of highway along the boundary line between any two or more counties. They may also aid in the erection, repair or purchase of bridges that lie across county boundaries (IC 8-17-1-20). Although counties can work together to change highways or roads as outlined above, each county also has full responsibility to construct, reconstruct, maintain, and operate the roads comprising its southern and eastern boundaries (IC 8-17-1-45).

Municipal to Municipal Cooperation

The cities, towns and counties of Indiana must coordinate with each other to solve joint local problems. Most of these relationships do not extend beyond the practical matter of agreeing on the improvement and maintenance of boundary roads and common service such as fire and rescue. Many informal arrangements for the use of equipment and personnel are used. Sometimes an arrangement whereby no money changes hands is negotiated but more often one unit reimburses the other. Interlocal arrangements are also made for emergency coverage during periods of bad weather.

Co-Purchasing of Supplies and Equipment

Smaller municipalities may find it impractical or financially impossible to invest in their own supplies and equipment to maintain their own streets. Cooperative arrangements between Indiana government entities are allowed by IC 36-1-7, while IC 36-1-2-18 provides authority for local political subdivisions to purchase from state contracts. Co-purchasing
involves the county and one or more municipalities "binding together to share costs, and coordinate planning and administration in order to obtain some facility or service of mutual interest and benefits which none could as readily, or as efficiently, obtain on its own" (Handbook for Indiana Elected County Officials, Association of Indiana Counties. 1987). Such an arrangement often reduces overall cost by avoiding duplication and the inefficiencies of small value purchases.

The 1980 revision of the interlocal cooperation statutes are found in IC-36-1-7 "Interlocal Cooperation." Section 3 of Chapter 7 specifies the contents for interlocal agreements. Agreements must be filed with the county recorder and with the state board of accounts. The agreements must be reviewed/approved by the Indiana Department of Highways and coordination of specific agreements should be made with the IDOH Local Assistance Division. Approval by the Attorney General is required in cases where a political subdivision outside the state is involved or when there are special variations. Lack of approval by both fiscal officers or when a disbursing officer of one of the entities is not designated to receive, disburse and account for the monies of the joint undertaking are two variations that require approval. (See IC 36-1-7-5.)

When required, the contracting entities are empowered to appropriate funds necessary to carry out the interlocal agreement. If a separate entity is created by the agreement, it has only the powers delegated to it under the agreement. These powers must be precisely delineated in the agreement. This important point must not be overlooked.

**County to Municipality Cooperation**

Counties and the municipalities located within are authorized to contract with each other concerning highway construction, maintenance and other matters pertaining to streets, highways and roads. The fact that expensive supplies and equipment are required to construct and maintain local streets and roads should provide the impetus to use this method of intergovernmental or joint purchasing as often as possible. The requirements of the statutes must be followed and the parties should coordinate with the Indiana Department of Highways at the point of inception rather than at completion. The statutes mandate that joint highway construction and maintenance agreements cannot be made for a period of more than four years. Functions and services to be furnished by the county must be specified along with other appropriate matters.

The joint county/municipal highway construction and maintenance agreement may provide for the distribution of funds from the motor vehicle highway account, and the local road and street account be made to the county. The agreement may stipulate that the municipality appropriate specified portions of those distributions for purposes listed in the agreement. County and municipal joint highway construction and maintenance agreements must be approved by the fiscal body of each entity, recorded with the county recorder, and filed with the executive of the municipality as well as with the auditor of the county and the auditor of the state.

**ASSOCIATIONS AND PROFESSIONAL GROUPS**

**Association of Indiana Counties, Inc.**

The Association of Indiana Counties, Inc., headquartered in Indianapolis, represents the interests of county government in the state.
officials from member counties meet once annually, and district meetings are conducted twice a year. A legislative committee formulates priorities and determines positions on specific issues of interest to counties. During the legislative session of 1984, the association was influential in the passage of the county option income tax. The association has also been very effective in providing needed information concerning legislative changes and related local government policy issues. The Association of Indiana Counties is a member of the National Association of Counties and works closely with that organization.

**Indiana Association of County Commissioners**

The promotion, preservation, and improvement of the county commissioner form of county government is the focus of the Indiana Association of County Commissioners. The association promotes the cooperation of the County Unit with all other local government entities and with state and federal agencies. The organization's goal of assisting and promoting the improvement and efficiency in the delivery of county government services is fostered through the dissemination of guidelines and advice concerning functions and responsibilities of county commissioners. District Meetings, Area Meetings, Commissioners' Winter Conference, Purdue Road School and other regional and national meetings are forums for the organization.

**Indiana Association of Cities and Towns**

The Indiana Association of Cities and Towns, located in Indianapolis, is a non-profit unincorporated association which is owned by the cities and towns of Indiana. The following areas are important: representation of cities and towns to the Indiana General Assembly; dissemination of information; training programs; and technical assistance. The primary objective of the association is the representation and protection of the interests of Indiana cities and towns in proposed legislation. The Indiana Association of Cities and Towns also provides information in the form of newsletters and bulletins. For member cities and towns, difficult questions of a legal nature may be referred to the association staff attorney for comment.

**Council of State Governments**

Located in Lexington, Kentucky, the Council of State Governments has a governing board of 50 state governors and 2 legislators per state. The council exists to strengthen state government by improving administrative and managerial capacity and performance, promoting intergovernmental cooperation; collecting, processing, generating and disseminating information needed by states; and a variety of other services. An annual conference is held.

**U.S. Conference of Mayors**

Located in Washington, D.C. and founded in 1932, the conference consists of cities of more than 30,000 population, represented by their mayors. The conference promotes municipal government cooperation between cities and the Federal government and provides education information, technical assistance and legislative services to cities. In 1985 the conference consisted of 600 mayors and a staff of 45.

**National League of Cities**

The purpose of the National League of Cities is to collect and
exchange information concerning municipal affairs. They are very active in advocating city interests before state governments as well as before the Federal government. Membership is open to all cities.

National Association of Counties

This association consists of elected and appointed county governing officials and other county officials and their deputies at the management or policy level. They provide research and reference service for county officials and represent them at the national level.

NOTES ON RESOLUTIONS, ORDINANCES AND AGREEMENTS

The following notes are designed to provide some ideas for local officials to use when developing interlocal governments.

1. Ordinance or Resolution Authorizing Interlocal Agreements

a. Purpose. To authorize the county of (______) to enter into an interlocal agreement with (City, Town, Municipality) of (______) for joint construction and maintenance of local roads, highways, bridges and streets.

b. The Board of County Commissioners is hereby authorized to initiate negotiations and to complete the agreement in accordance with Indiana law and this ordinance. Once the agreement is completed the Board of County Commissioners will formally approve it during either a regular or special session in accordance with the administrative rules for county government bodies and Indiana statutes.

c. During negotiations, early coordination will be effected with the Local Assistance Division of the Indiana Department of Highways and other IDOH or state agencies as appropriate to insure compliance and consonance with both state and federal statutes and regulations.

d. Contents. The Board of County Commissioners will insure that the joint highway construction and maintenance agreement provides for a maximum term of four (4) years, and that it clearly specifies the functions and services to be furnished by the county on behalf of the municipality and vice versa. Any other appropriate matters may be included in the agreement. The joint agreement will provide for funding either by stipulating distribution of motor vehicle highway account fund and local road and street funds or both to the county; or that the municipality appropriate a specified part of distribution from the same account to the purposes listed in the joint agreement (Note: The funding can be stipulated in the ordinance or it can be a matter for negotiation.) In accordance with IC 36-1-7-10 the joint highway construction and maintenance agreements must be approved by the (fiscal body) of both the county and the municipality.

e. When completed the joint agreement will be recorded with the county recorder, filed with the executive of the municipality, the county auditor and the auditor of the state.
f. Repealer. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repeated.

g. Severability. The adjudgement of any provision or part of the ordinance as unconstitutional will not affect the validity of the ordinance as a whole or any section or provision not adjudged invalid or unconstitutional.

2. Contents of Interlocal Agreements. The Indiana statutes (IC 36-1-7-3) provide minimum standards for the contents of joint agreements, generally, and for joint highway constructions and maintenance agreements, specifically. Generally, joint agreements must provide for the following:

a. Duration (Four years in the case of joint county/city highway, street and road construction and maintenance).

b. Purpose

c. Manner of financing, staffing and supplying; and the budget process to be used.

d. Methods that will be employed in partially or completely terminating the agreement and for disposing of property.

e. Administration.

   1. Separate entity

   2. Joint board

f. Manner of holding, acquiring and disposing of real and personal property used when a joint board is included in e.(2) above.

g. Other appropriate matters

h. Statement including approval process and the requirement to file nature.

QUESTIONS AND ANSWERS CONCERNING INTERGOVERNMENTAL RELATIONS

FEDERAL AND STATE COOPERATION WITH LOCAL GOVERNMENTS

Q: What is the authority of local governments concerning cooperation with Federal authorities?

A: The highway authorities of the state, counties, cities and towns, acting alone or in cooperation with each other or with a federal, state or local agency of any other state, are authorized to plan, designate,
establish, regulate, vacate, alter, improve, maintain and provide limited access facilities for public use whenever such authorities feel that present or future traffic conditions will justify special facilities (IC 8-11-1-3).

Q: Can local governments enter into agreements with Federal authorities?

A: Yes. IC 8-11-1-3 provides the authority for local governments to enter into agreements with federal authorities. But many state and federal laws or regulations must be complied with. Laws regarding financing, planning, establishing, improvement, maintenance, use, regulation and vacation all have to be considered. Also, within cities and towns, such authority shall be subjected to municipal consent as may be provided by law (IC 8-11-1-8).

Q: Is there a requirement for such agreements to be reviewed by a state agency?

A: If an agreement concerns the provision of services or facilities that a state officer or state agency has power to control, the agreement must be submitted to that officer or agency for review and approval before it takes effect (IC 36-1-7-5).

Q: Who is responsible for the maintenance of county roads used as detours for state highways under repair?

A: Whenever it shall become necessary for the Department of Highways to designate and use any county highway as a detour, it shall be the duty of the Department of Highways to keep such highway in a reasonable state of repair at all times while being used as a detour. When the detour is reopened to traffic as a public thoroughfare, the Department of Highways shall place such highway in as good a condition as when it was designated as a detour (IC 8-13-16-1).

Q: What assistance is available from the Indiana Department of Highways?

A: The Department of Highways shall develop a program of technical assistance to units of local government with road and street responsibilities. As a minimum program the department shall:

1. certify annually, on or before April 1, to the state auditor those factors applied in any distribution used to allocate state collected highway funds among the eligible units of government;

2. develop and maintain maps of functionally classified road systems for the local units of government;

3. provide assistance, as requested, to local units of government in the areas of management, programming, personnel and financing;
4. administer federal highway grant programs which allocate funds to local units of government;

5. maintain and continuously update the road and street inventory required under IC 8-13-14.5-1; and

6. furnish engineering and consultation services and provide laboratory facilities, as required by IC 8-13-14-1 (IC 8-13-1-5.1).

Q: How is the Department of Highways funded to provide Local Assistance?

A: Funding for the Department of Highways program of assistance to local road and street departments shall be included in the department's budget. The appropriation shall be from the allocation of the revenues set aside for distribution to units of local government. Programs to be funded include:

1. the program of technical assistance; and

2. the program of research and extension conducted for local government (IC 8-13-1-5.3). This is the basis by which the Highway Extension and Research Project for Indiana Counties and Cities (HERPICC) at Purdue University is organized.

Q: What type of federal aid is available for road and street construction and maintenance?

A: Federal-aid highway funds are apportioned to Indiana through the Trust Fund. There are 9 types of federal-aid highway funds. These funds can only be used for projects to improve the highway system under that same category. The categories are:

1. urban funds, available for use in all urban systems routes including city streets and state highways for all units of government inside urbanized areas (cities or towns over 5,000 population);

2. rural secondary funds, available for use in all rural secondary system routes including county roads and state highways;

3. federal-aid bridge replacements, available for use on bridge projects involving the replacement or rehabilitation of an existing bridge;

4. protection and crossing funds, used for projects involving railroad crossings on or off a federal-aid system route;

5. hazard elimination funds, available for use on federal-aid highway systems at high accident areas to correct or improve the road;
6. *access roads to lake fund*, available for recreational roads to man-made lakes or reservoirs constructed by the U.S. Army Corps of Engineers;

7. *railroad relocation funds*, available for use for projects involving the relocation of railroads within large cities;

8. *emergency relief funds*, available to replace, re-construct or repair a roadway system damaged by a natural disaster; and

9. *transportation system management fund*, used to support projects such as Ride Sharing, Van Pools, Bikeways, etc.

**INTERGOVERNMENTAL TRANSFER OF ROADS AND STREETS**

**Q:** Can roads and highways be transferred between systems?

**A:** Yes, roads and highways may be transferred between systems. For example, if the department of highways determines that a portion of the state highway system no longer meets the criteria established by IC 8-11-2-4, but the highway continues to serve a useful purpose, that portion of the system may be transferred to a county highway system or to a city or town street system. Also, if a county, city or town determines, because of a change in general function or use, that an arterial or local road serves a state function, that portion of the arterial or local road system may be transferred to the state (IC 8-11-2-9).

**Q:** How are such transfers accomplished?

**A:** To transfer roads or streets between systems, a memorandum of agreement by both the transferring agency or unit of government and the agency or unit assuming jurisdiction over the road or street must be signed. The memorandum should state:

1. The purpose of the transfer
2. The effective date of the transfer; and
3. Any conditions agreed to by the signers (IC 8-11-2-10).

**INTERLOCAL AGREEMENTS TO CONDUCT ROAD AND STREET WORK.**

**Q:** What is the nature of cooperation between counties, cities and towns on street and road projects?

**A:** IC 36-1-7-9 allows for an agreement between an Indiana municipality and the executive of the county for highway construction, maintenance and related matters. The agreement must provide the following:
1. Its duration, which may not be more than 4 years; and
2. The specific functions and services to be performed or furnished by the county on behalf of the municipality.

Q: What must be done in order for such agreements to take effect?
A: Before an agreement takes effect it must be:

1. approved by the fiscal body of each governmental unit,
2. recorded with the county recorder,
3. filed with the executive of the municipality and the auditor of the county; and
4. filed with the auditor of the state (IC 36-1-7-10).

Q: What governmental units are authorized to enter into joint agreements?
A: Indiana political subdivisions and one or more other governmental entities. The entities must, by ordinance or resolution, enter into a written agreement. If Indiana governmental entities want only to buy, sell or exchange services, supplies, or equipment between or among themselves, they may enter into contracts to do so (IC 36-1-7-2).

Q: Must the attorney general approve joint agreements concerning streets and roads?
A: Not if an agreement:

1. involves only Indiana political subdivisions;
2. is approved by the fiscal body of each party; and
3. delegates to the treasurer or disbursing officer of one of the parties the duty to receive, disburse, and account for all monies of the joint undertaking.

If the agreement does not involve only Indiana political subdivisions, then it must be submitted to the Attorney General's Office for approval (IC 36-1-7-4).

REFERENCES


Federal Highway Administration, *Federal Aid Highway Program Manual*, September 1975, as changed, Volume 4, Chapter 6, Section 7, "Federal-Aid Highway Systems."


INTRODUCTION

Local road and street officials can no longer take an isolated approach to the administration and management of local roads and streets. The local highway, road and street system is an integral part of the total transportation mix whether in a local or a regional context. "The transportation system is the framework upon which the city is built" (ICMA, and APA. The practice of Local Government Planning, 1979, p. 214). Indeed, it is the framework upon which the state or nation is built. This system must be part of the overall plan for the community to ensure orderly growth and effective utilization of scarce resources.

This chapter will acquaint local officials with the transportation planning process as it generally applies to local situations and is directed toward accomplishing the following objectives:

- Familiarizing local officials with the objectives of transportation systems planning and its relationship to local streets and roads management and administration.

- Exploring the interrelationship between traditional road and street administration and management with the procedures and structures brought into being by area and advisory planning laws and procedures.

- Clarifying questions which arise in the day-to-day operation of traditional highway, road and street organizations as they relate to planning.

The basic purposes of transportation are to be able to move people and things to the end that personal and economic goals are reached. Transportation should support the collective mobility goals of the people (The Practice of Local Government Planning, p. 214), and the system must be an integral part of the overall community plan.

When transportation requirements expanded, planners rose to the challenge by expanding the infrastructure in response to the increased
demand. Later, when much of the transportation infrastructure had been completed, emphasis changed, in some areas, to a total systems approach which emphasized a mix of transportation resources to meet increasing demand.

So, why plan? Why even discuss it as a separate topic? Planning provides a blueprint for future growth and ideally protects both the rights of the citizens and those of the community. The plan represents a community’s view of its future appearance and character, and aids decision making about future development patterns. It is a continuous process permeating every aspect of transportation.

Long range, coordinated planning is necessary to anticipate problems and situations. Planning failures commonly seen throughout and often repeated: a road repaired with new pavement, then torn up to accommodate electrical or sewer lines, repaired, then ripped up again to accommodate another utility. The costs can be measured in immediate fiscal terms and in the physical deterioration which results.

Effective long-range planning depends upon a well-conceived estimate of the current and anticipated situation in relation to a workable view of what the community wants to happen (goals) in relation to what is possible (capabilities). What is reasonable? What has happened in the past that should be changed? How can the consequences of unplanned resource use decisions be avoided?

Finally, coordinated land use planning will ensure that compatibility is maintained between urban and rural land uses and between environmental and developmental requirements. Urban and suburban development patterns should be as compact as possible, and land uses that are reasonable should not be excluded from areas of the community. Exclusions should have a clear basis which is logical and understood (Michigan Townships Planning and Zoning Handbook, 1980. p. 105).

TRANSPORTATION PLANNING ORGANIZATIONS AND FUNCTIONS AT THE STATE LEVEL.

Three important state transportation organizations conduct transportation planning. The oldest of these is the Public Service Commission, created in 1905 as the Railroad Commission, to regulate railroads operating in the State of Indiana. The modern Public Service Commission retains a number of these railroad regulatory functions, but its responsibilities have been expanded to include utility and motor carrier regulation. It also has significant responsibilities in interstate and intrastate railroad abandonment cases. (See Chapter 6 for a more detailed discussion of railroad abandonment.) Note: in 1987, the Indiana General Assembly gave many of P.S.C.’s responsibilities to the Department of Transportation.

A second and newer agency is the Transportation Coordinating Board. This body is staffed by seven members appointed by the Governor: a chairman, four uncompensated citizen members, and the directors of the Indiana Department of Transportation (IDOT) and the Indiana Department of Highways (IDOH). Transportation Coordinating Board staff assistance is provided by the Transportation Planning Office. The Transportation Coordinating Board is responsible for developing and updating state transportation policies and plans, coordinating the planning and programs of the IDOT and IDOH, reviewing federal transporta-
tion grants and advising the governor and legislature on transportation matters. The board is assisted by a small staff within the Transportation Planning Office, the director of which is appointed by the governor. The plans developed by the Transportation Coordinating Board are important to local government road and street officials. The state rail plan, developed by the Rail Planning Office of the Transportation Planning Office, contains detailed information concerning the status of the intra and interstate railroads which traverse the state.

The Indiana Department of Transportation’s divisions of Aeronautics, Public Transportation and Railroads are responsible for the administration, planning, and coordination of those aspects of transportation.

The Indiana Department of Highways (IDOH) is charged with significant planning responsibilities. All IDOH staff agencies are engaged in planning activities to some degree. The Division of Planning has a significant impact on local road and street activities and planning. The Division is engaged in the planning and development of state highway improvement and maintenance projects. The Division of Land Acquisition supports with planning for land acquisition for new construction and expansion projects. The Division of Local Assistance is engaged in planning and programming the use of federal funds by local agencies and is one of the most familiar IDOH offices. IDOH Districts also provide input to these staff agencies and provide planning assistance to local governments.

The IDOH is also required to participate in the efforts of Metropolitan Planning Organizations (MPO’s) in the planning of urbanized area transportation systems.

IMPACT OF INDIANA PLANNING STATUTES.

During the past twenty years significant changes have been made in state planning and zoning laws and administrative procedures. A number of comprehensive planning and zoning statutes have been enacted by the General Assembly to refine the authority to organize local and regional planning bodies to carry out land use and transportation planning activities. These topics will be discussed in succeeding paragraphs. (The transportation planning statutes are found in volume II, chapter 4.)

LOCAL GOVERNMENT PLANNING

Planning is defined by the National Association of County Engineers as the process of "applying foresight and coordination to the location, extent, and timing of all public and private improvements to prevent deficiencies, avert problems, and to ensure that each new improvement will benefit the community as a whole" (NACE, Action Guides, 1986, Vol. II, P. 1-1). Planning literature contains variations of this definition so it is in order to clarify the definitions of both planning and zoning: The two terms taken together describe the methods by which local governments control growth and development. Planning is, therefore, the process through which the local government decides land use questions. Zoning, on the other hand, is the legal mechanism for implementing the plan. A comprehensive plan is the means by which zoning is accomplished and is the basis for the general zoning ordinance, and the subdivision control ordinance. The plan guides the local Plan Commission and the Board of Zoning Appeals in their activities and deliberations.
A long-range comprehensive plan provides a guide to both the private and the public sectors of the local community in attaining the goals formulated at the beginning of the process.

Planning is a continuous process requiring comprehensive plans to be developed with built-in review and revision mechanisms. The comprehensive plan for a community makes use of a combination of technical expertise, observation, and judgement, requiring technical research and study. The comprehensive plan must, of necessity, emanate from and be an inherent component of the community's goals and views concerning the implementation of those goals.

The process of local planning must be rational and lead to the determination of ways to meet actual needs rather than just what is popular at the moment.


- Enables the executive and governmental unit departments to coordinate planning and management activities.
- Facilitates informed programming and budgeting.
- Enables local governments to improve decision-making about public works (priorities, location, etc.).
- Facilitates the reservation of potential school and recreational sites.
- Enables private citizens to invest in housing and businesses with some confidence about the future.
- Ensures that development takes place in a way that minimizes social and environmental costs.

ORGANIZING FOR PLANNING

In Indiana, county and municipal executives generally possess the legal authority to establish planning bodies and to plan and to zone. During recent years, the Indiana General Assembly has developed a detailed local government planning statute which is codified as IC 36-7-4, "Local Planning and Zoning," and IC 36-7-5, "Thoroughfare Planning." These statutes provide the legal basis for local government planning, zoning and the development of thoroughfare plans. Using these statutes, the executive establishes the framework for planning, planning processes, and structures to be established by ordinance. Plans are developed by planning bodies with input from the community.

Area planning can be established by the board of county commissioners wherever the county and at least one municipality have enacted an ordinance adopting provision for creation of an area plan commission. The area planning department is then established to develop urban and rural areas and will assume the planning function for city, town, and county planning departments. A county advisory plan commission, on the other hand, has jurisdiction only in the unincorporated areas of the county.
When area planning has been authorized, the planning and zoning function of the county and the participating municipalities are exercised exclusively by the area planning departments. Following the establishment of area planning, other municipalities can adopt ordinances enabling them to participate in the process.

Membership of the area plan commission is designed to ensure that both urban and rural populations are represented. (See chapter 4, Volume II for the text of applicable statutes.)

There are two primary methods by which a municipality can conduct its planning and zoning. The first is to participate in an area planning process. The municipality accomplishes this task by adopting an ordinance under area planning law. Under the terms of this arrangement, the Area Planning Department assumes jurisdiction in the participating municipalities and in the unincorporated areas of the county. The Area Plan Commission is responsible for overseeing the Area Planning Department (IC 36-7-4-202).

The second method of implementing and managing planning and zoning is to adopt an ordinance in accordance with Advisory Planning Law. This is the most common type of planning in Indiana cities and towns. The Advisory Plan Commission can be established for a municipality or for a county (IC 36-7-4-202).

A municipality may also contract with an Advisory Plan Commission for planning and zoning services for that municipality (IC 36-7-4-410).

POWERS AND DUTIES OF PLANNING COMMISSIONS

Plan commissions organize (elect officers) and are authorized to hire an executive director to head the planning department. Plan commissions may sue and be sued and may accept gifts, donations, and grants within the scope of planning and community development responsibilities.

Generally, a planning commission is responsible for the following:

- conducting surveys and investigations, developing reports, and recommending planning and development actions.

- Preparing a comprehensive plan (Indiana statutes prescribe minimum content for the comprehensive plan).

- Developing and coordinating subdivision regulations. As a result of formal approval of subdivision regulation, a plan commission takes the authority to approve subdivision plats and related aspects.

- Preparing maps of streets and highways.

- Preparing and recommending zoning ordinances.

- Preparing and recommending long-range capital improvement programs, thoroughfare plans, and budgets.

THE COMPREHENSIVE PLAN

The planning process described in a previous paragraph provides a

- A good plan must be balanced in a functional sense. Services provided and planned for should be in balance with demand for these services.
- A good plan must be realistic in terms of the existing or foreseen framework of land use controls.
- A good plan must be realistic in terms of the economic prospects of the community.
- A good plan must embody sound standards.

The Indiana statutes provide for both mandating and permissive content of a comprehensive plan. IC 36-4-502 contains the mandating provisions which are as follows:

- A statement of the objectives for future development of the jurisdiction
- A statement of policy for land use development in the jurisdiction.
- A statement of the policy for development of public ways, public utilities, public lands, public structures, and public places.

Comprehensive plans may also include (IC 36-4-503):

- Surveys and studies of current and probable growth.
- Maps, plats, charts, and descriptive material presenting basic information, location, extent and character of a number of critical items including transportation facilities (See IC 36-7-4-503 in Vol. II for a complete list).
- Reports, maps, charts, and recommendations for development and redevelopment.
- A short and long-range public works development program.
- A short and long-range capital improvement program.
- A short and long-range program for construction of thoroughfares and public ways to improve vehicular movement and encourage effective and economic use of land and funds (Thoroughfare Plan).

BOARD OF ZONING APPEALS (BZA)

To ensure fair and equitable implementation of a zoning ordinance, IC 36-7-4-901 requires an advisory planning commission to be supported by a board of zoning appeals (BZA), which is critical to the appeals process. The BZA is established by the local government legislative body in
the zoning ordinance. Membership varies depending upon the type of planning law which governs in the particular situation. (See Chapter 4, Vol. II for full text of applicable statutes.) The BZA is responsible for adopting rules governing the filing of appeals, application for variances, notice, hearings, and related matters (IC 36-7-4-916). Rules adopted by the BZA are to be published and made available to all applicants and interested persons.

TRANSPORTATION PLANNING

One could argue about whether or not transportation facilities precede development or whether development is concurrent; or whether or not development precedes transportation facilities. In some cases where transportation planners have worked energetically and diligently to keep pace with development, the existing system sometimes barely meets requirements. The growth and congestion of the Washington, D.C. area provide a realistic modern example.

Because of the direct relationship between transportation and land use, the impact of transportation is ignored only at the peril of the entire plan. "The transportation network is not only an essential element of the comprehensive plan, it is also one of the most important implementations of the plan" (Michigan Township Planning and Zoning Handbook, 1980, p. 105).

Transportation System Management (TSM) is an alternative transportation planning process that supplements or contrasts the traditional transportation planning approach often referred to as the "3-C" approach. The 3-C approach has been an effective planning philosophy especially adapted to new and developing urban and rural areas. The 3-C Approach uses a coordinated, comprehensive, and continuing planning process. It begins with an inventory of travel conditions followed by selection and validation of trip generation models, modal split, and network assignment and analysis. The results are used to test alternative networks and facilities and to justify capital improvement programs for highway, road and street expansion. (See: AASHTO, 1973, A Policy on Design of Urban Highways and Arterial Streets.)

Transportation System Management, on the other hand, attempts to achieve many of the same goals by "extracting more efficiency and effectiveness from existing highway and transit systems." Proponents argue that it provides more alternatives which are designed to modify demand for a specific type or mode of transportation. TSM can be implemented by both the private and public sectors, and it considers all travel modes instead of just one (The Practice of Local Government Planning, 1979, p. 222). A major role of highway and transit planners is to implement TSM actions and to monitor and adjust in improving system efficiency.

The goals of TSM play an integral part in determining what form TSM actions will take. Two major dominant goals might be to improve mobility, or to improve conservation. Actions taken will be different in each case. (See Figure 4-1).

The Transportation System Management process also makes use of Measures of Effectiveness which are used to "describe existing system performance and to provide a format and units for standards and criteria, prediction of action impact, and before-and-after studies" (The Practice of Local Government Planning, p. 224).
<table>
<thead>
<tr>
<th>Mobility</th>
<th>Conservation</th>
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<td>• Ride Sharing Promotion</td>
<td>• Ride Sharing Promotion</td>
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<td>• One Way Streets</td>
<td>• High Occupancy Vehicle Preferences</td>
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<td>• Express Bus Preference</td>
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<td>• Work Rescheduling</td>
<td>• Park-Ride with Express Bus</td>
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Figure 4-1 Relationship of TSM Actions to Dominant Goals (Adapted from *The Practice of Local Government Planning*, p. 224)

**THOROUGHFARE PLANNING**

The thoroughfare plan is the transportation element of the unit's comprehensive plan. Its purpose is to provide usable routes which connect business, recreation, residential and industrial areas, and is an attempt to provide a working traffic plan, and a means of anticipating development. In most comprehensive plans the thoroughfares are divided into two major classifications: urban and rural.

The term "thoroughfare" is defined in the Indiana statutes as "...a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains."

The thoroughfare plan can be a composite of a number of important information sources such as an urban or area transportation study, the unit's subdivision ordinance, and previous thoroughfare plans which are obsolete or changed by recent events. Suggested content could be as follows: (Figure 4-2)

- Introduction. State the purpose of the plan and provide background information.
- Definitions. Provide definitions which are peculiar to the thoroughfare plan.
- Sources of Information. Explain or reference sources from which the plan was derived (T.I.P., previous plans, etc.).
- Standards. Width, classification etc.
- Maps and Explanatory Appendices. Use of the urban and rural systems to demonstrate the relationship of existing roads to those which will be built or otherwise improved in the future.

Figure 4-2 The Thoroughfare Plan
Thoroughfare plans adopted before 1986 are automatically incorporated into a unit's comprehensive plan, and the unit can use the authority of IC 36-9-6.1 to carry out and finance improvement projects. This statute allows units to impose a 15 cent tax on each one hundred dollars ($100.00) of all taxable property in the unit for the purpose of funding work related to the thoroughfare plan.

A unit wishing to adopt a thoroughfare plan can do so by amending its comprehensive plan under the provisions of IC 36-7-4-511.

A city works board, board of county commissioners, or town board, as appropriate, are expressly empowered to carry out thoroughfare plan projects. This is done by adopting a resolution which describes the project, conducting a public hearing, and then making a decision. Project costs may be projected to specially benefited property under IC 36-9-18. If property acquisition costs exceed the revenues raised by the tax levy, the unit is authorized to issue revenue to pay for all or part of the costs.

Note: The material in the preceding section was extracted from a 1986 Indiana Planning Association Fact Sheet entitled: "Recent Developments in Planning and Zoning Statutes"

JOINT DEVELOPMENT

Closely linking private real estate development to public transportation services and facilities is the essence of the concept of "joint development". It is: "..... the pairing of public and private resources to achieve results which benefit both the private and the public sectors" (FHWA, 1983, Joint Development Handbook, p. 1). In fact, many development projects would not take place were it not for this cooperation between the private and the public sectors.

Significant joint development examples include a number of projects developed by the Washington, D.C. Area Transit Authority (WMATA), the Market Development Center, Baltimore; the Civic Center Terminal Development Project in Denver, Colorado; and the Overtown Area Development Project in Miami. The common theme is cooperation between the public and private sectors in achieving benefits for the community as a whole.

Benefits which can arrive from joint development activities include:

- Increased use of the transit system.
- Increased revenue from sale or lease of real estate.
- Enhancement of the environment around the transit facilities.
- Sharing of land acquisition and construction costs.
- Improvement of intermodal connections between public and private transportation systems.

In addition to direct benefits to the transportation entity, there are potentially significant benefits to the public as a whole. These include:

- Improvement of job opportunities.
Early municipal street construction was very labor intensive. This street construction scene was taken in Lafayette but it could be a view of the same process in any Indiana city or town of the late nineteenth or early twentieth century. (Tippecanoe County Historical Association)

- Increases in the various tax bases.
- Improved regional planning opportunity.
- Recapture value added to private property as a result of the public improvement.

The private sector is drawn to the concept of joint development by the opportunity to share expenses and risk; a chance to capitalize on new opportunities made possible by the public facility improvement; and the opportunity to improve traffic and people circulation which make the project competitive (Joint Development Handbook, 1983, p. 2).

Joint development ventures can take a number of forms. Generally, office and retail uses, or major activity centers (convention center, or market center) are common joint development candidates. Projects may be built around fixed rail systems or the renovation of deficient systems, transit ways or pedestrian malls.

Joint development also describes some earlier processes. Street car suburbs of the 1920's and suburban subdivisions of the 1950's provide a laboratory for measuring the effect of different forms of transportation on land use and development. The potential for joint development is open-ended for local governments. Opportunity and willingness to explore options can result in the generation of benefits described above.

Joint development is thought of in an urban context more often than in a suburban or rural environment. The process is identified most often with joint transit and real estate aspects. Rural units are not excluded, nor should they be. Extending elements of joint development beyond simple transit/real estate linkages may help rural units to realize some of the benefits, which were listed previously. (A more detailed treatment of the subject of Joint Development is found in the referenced FHWA handbook.)

QUESTIONS AND ANSWERS
CONCERNING TRANSPORTATION PLANNING AT THE LOCAL LEVEL.

STATE/LOCAL PLANNING

Q: Describe the planning, and coordination which takes place between Metropolitan Planning Organizations and Area Planning Departments and state transportation planning agencies.

A: Metropolitan planning organizations are established where authorized. The Indiana Department of Highways is required to participate in the efforts of MPO's to assist in the planning of each urbanized area's transportation system, to the end that it will provide for safe and efficient transportation of people and things within the urbanized area boundaries. Indiana Department of Highways policy provides for the IDOH to participate in the planning activities of the MPO, and in conjunction with the FHWA, determine fair and equitable policies for the distribution of federal funds. These recommendations are to be made to the Transportation Coordinating Board. The IDOH will coordinate its planning efforts with those of the
MPO. MPO long range plans thus coordinated, become components of the state's long range plan (IDOH policy 8-6). Area planning commissions and their departments are provided with advisory support by local transportation improvement plan (TIP) technical coordinating committees. IDOH personnel sit as members of these committees which provide technical advice on matters affecting local thoroughfare plans.

Q: What guidelines are established concerning IDOH planning responsibilities?

A: The Indiana Department of Highways is required to prepare, formally adopt, and publish a long range program of its future activities with regard to the construction of highways under its jurisdiction. A sufficiency rating is to be established to aid in determining the projects to be included in the long range plan, which is also required to contain revenue estimates. The department is also required to conduct estimates and to update the plan. A biennial work program of construction is to be published with the projects listed in order of urgency. The department is also required to publish an annual report of financial data and accomplishments. (IC 8-13-7-1)

LOCAL GOVERNMENT PLANNING

Q: Is the content of a comprehensive plan specified by statute or some other authority?

A: Yes, IC 36-7-4-502 and 503 contain some specific language concerning content of comprehensive plans. Elements which are required include statements concerning objectives for future development, a statement of land-use development policy, and a policy for the development of public ways and other public facilities. Comprehensive plans may include surveys, maps, plats, charts, descriptive material, population and land use statistics, locations of facilities, lists of blighted or problem areas, and discussions and/or maps of public ways and public facilities. For units which have no comprehensive plan a narrative statement about the community's development goals will suffice. (See both the cited statutes (Vol. II), and the more detailed discussion in Vol. I.)

Q: What planning steps can be taken when local governments do not participate in formal planning arrangements?

A: Local governments which do not participate in area, advisory or metropolitan planning organizations, do not have the power to control land use by zoning. (See Chapter 2, Local Authority.)

Q: What are the pre-requisites for adopting a zoning ordinance?

A: A comprehensive plan must be in place before a legislative body can enact a zoning ordinance. Comprehensive plans are to be approved by resolution rather than by ordinance (IC 36-7-4-501).
Q: What is the thoroughfare plan?

A: The thoroughfare plan is developed as a major element of the unit's comprehensive plan.

Q: What should be the content of the thoroughfare plan?

A: A thoroughfare plan which is included in the comprehensive plan may determine lines for new, extended, widened, or narrowed public ways in any part of the territory in the jurisdiction. After a thoroughfare plan has been developed and included in the comprehensive plan, they may be changed, widened, straightened or vacated only in the manner prescribed by the comprehensive plan (IC 36-7-4-506).

The thoroughfare plan, in addition to being an essential element of the comprehensive plan, is an attempt to provide a working traffic plan and to anticipate development. The thoroughfare plan can be a composite which includes those portions of transportation studies which are current.

The thoroughfare plan can incorporate standards from these studies or it can establish revised standards. The plan can impose width standards and it can provide for the classification of roads and streets. Where applicable the thoroughfare plan can encompass the entire transportation system in the jurisdiction.

In its simplest form, the thoroughfare plan can be a map depicting existing and proposed roads and their classification.

REFERENCES


Indiana Association of County Commissioners, 1985. *Handbook for Boards of County Commissioners - Guideline Series for Public Purchasing/Public Contracting for County Roads/Culverts/Bridges*. Indianapolis, IN.

Indiana Planning Association, 1986. "Recent Developments in Planning and Zoning Statutes."


INTRODUCTION

Road and highway rights-of-way exist today because someone granted or sold them to the responsible government entity. Rights-of-way for early projects such as the National and Michigan Roads were most often granted by the Federal Government. The status of modern rights-of-way has been determined by the practices and procedures used to acquire the original right-of-way. As recently as fifteen years ago, shortsighted land acquisition measures decided the final character of a number of roads. If land acquisition was postponed, as it sometimes was in the early part of the century, until the moment it was needed for construction purposes, it was frequently impossible to obtain needed right-of-way without expensive delays and changes in plans. From a national point of view, the diversity of acquisition methods and procedures was a primary obstacle to good construction management.

A significant step forward came in 1944 when Congress directed in the Federal-Aid Highway Act of 1944, that the term "construction" was henceforth to include the costs of right-of-way thus confirming the need to consider acquisition of right-of-way early in the highway planning process (Labatut and Lane, 1950, 281-289).

Right-of-way title is generally conveyed by a general or special warranty deed, quit claim deed or by granting of a lesser interest such as an easement. An appraisal and title search are generally necessary to insure clear and unencumbered title and that the interest in land acquired for right-of-way is correctly described, documented and recorded. Defining and legalizing existing right-of-way continues to be a challenge for Indiana’s local street and road officials.

Federal and state financial support for local street and road projects is accompanied by a number of controls and prescriptions, ranging from monitoring and approving construction specifications and accounting procedures to mandating that, under certain conditions, local governments provide relocation assistance for individuals who provide right-of-way by donation, sale or as a result of eminent domain proceedings. The rights of citizens and interests of the local government are to be protected.
The Local Assistance Unit of The Division of Land Acquisition of the Indiana Department of Highways took action in 1985 to improve the management of right-of-way acquisition for Federal-aid highway projects. It did so by revising and publishing an updated Right-of-Way Acquisition Procedure Manual for Local Public Agencies.

Right-of-way acquisition can be a source of considerable expense for local governments. Procedures are complicated and detailed. They must be complied with in accordance with the statutes of Title 32, "Property," of the Indiana Code. In the field, local custom encourages the donation of right-of-way for road and bridge access. When projects use Federal Aid funds, property owners must be offered a fair market price based upon an appraisal made by a qualified appraiser. Owners may waive their right to an appraisal. The Indiana Department of Highways' Acquisition Procedures Manual For Local Public Agencies, dated July 1985, contains detailed guidance for local acquisition of right-of-way. Because of its value to local officials, the manual will be referred to frequently in this chapter.

METHODS OF OBTAINING RIGHT-OF-WAY

There are four methods by which state and local government entities obtain right-of-way for local streets, roads and bridges. The first is by direct purchase. The governmental unit offers to purchase a parcel of land following a fair market price appraisal, and then negotiates the acquisition in accordance with the procedures and guidance of Titles 32, "Property," Title 8, "Transportation and Public Utilities" and Title 36, "Local Government" of the Indiana Code. The governmental unit's legal counsel must be involved in the process from the outset.

Right-of-way may also be donated by the property owner. In this case an appraisal may be required to establish a valuation of the property being donated for income tax purposes.

It may be necessary for the governmental unit to exercise the power of eminent domain to acquire the property. When this power is exercised, the local government must insure that proper procedures are used in protecting both the rights of the property owner and the interests of the local government (IC 32-11-1 and 32-11-1.5).

The fourth method of acquiring right-of-way is 'by use'. A section of right-of-way may have been used as a road or street for an extended time by the public and title may thus be conferred as the result of this use. Twenty years is the period most often used in these cases (IC 8-20-1-15). "Highway By Use-Width" provides authority for highways which were used for 20 years or more to continue as originally located and at their original width until changed by law. In the case of Finley Farms, Inc. vs. Clark (Notes to Decisions, IC 8-20-1-15, Burns Statutes, Annotated), the court ruled that where a roadway was used by wagons and buggies by persons doing business with a ferry, such use amounted to a public use which established the roadway as a highway after 20 years of usage. Use of land as a highway with the owner's knowledge and consent amounts to a dedication to such use in the future or at least raises a presumption of such use. Use, therefore, is the sole test of establishment.

ACQUISITION PROCEDURES

Legal procedures governing the acquisition of real property are found in Title 32 of the Indiana Code. The governmental unit's legal advisor
should provide detailed assistance whenever the unit is making an acquisition for right-of-way purposes. Construction projects which use Federal-Aid Highway Funds must be thoroughly coordinated with the Indiana Department of Highways in accordance with procedures laid out in the Department of Highways Right-Of-Way Acquisition Procedures Manual for Local Public Agencies dated July 1985 and revised in 1987. Because of the impact of this particular topic the acquisition of right-of-way in accordance with these procedures will be discussed first.

Federal regulations (49 CFR, part 25 dated 5 March, 1985) do not distinguish between projects using Federal funds in the right-of-way phase, and in other phases of the same project. All projects using Federal funds must comply with uniform act (Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act, January 2, 1971, 84 Statutes 1894, 91st U.S. Congress) and the IDOH's Right-Of-Way Acquisition Procedures Manual for Local Public Agencies. The Department of Highways requires local public agencies to provide written assurance of compliance with the regulations. Following the completion of all right-of-way and relocation activities for the entire project, the local public agency must again certify that the right-of-way is clear for letting of construction and that all applicable Federal highway administration policies and regulations have been followed. Non-compliance with applicable laws, policies and procedures could result in a Federal Highway Administration determination that all or part of a project is ineligible for Federal aid. The Department of Highways requires that the local public agency provide an LPA-Intro form to the Division of Local Assistance with proper indication as to the intended use of Federal funds before a public hearing can be held. The LPA-Intro Form provides specific information about the project.

Programming and authorization by Federal Highway Administration precedes the right-of-way phase to insure compliance with Federal and state regulations. The Federal Highway Administration will then issue a design approval which must be received by the local government before right-of-way development activities are begun. The Indiana Department of Highways considers right-of-way engineering, appraising, review appraising, negotiating, relocation assistance and property management as part of the right-of-way phase.

The following is a list of items which are included in the IDOH definition of right-of-way engineering.

- Final right-of-way plans.
- A title search which includes one valid transfer of fee beyond a 20 year period from the certification date on the title search document.
- Metes and bounds legal description and transfer documents for all partial takings.
- Individual plats for each parcel.
- Stake-out locating the new right-of-way line for partial takings must be included in all parcels.
- Preparation of an appraisal problem analysis required only on those projects using federal funds in the right-of-way phase.
Scope of the work includes:

- A scope of the work meeting scheduled prior to the initiation of right-of-way engineering work.

- Meeting of special requirements when right-of-way engineering is performed under an agreement with a consultant using Federal aid funds and the fees.

- If right-of-way engineering is performed by local forces with reimbursement with Federal funds the local public agency must submit an estimate of the cost along with a request for authorization of Federal Highway Administration funds.

- The Indiana Department of Highways Engineering Manual must be followed if Federal funds are used in the right-of-way phase.

The "Appraisal Problem Analysis" is an examination of the proposed acquisition by a qualified appraiser to determine the appraisal techniques to be used. Detailed procedures for developing the "Appraisal Problem Analysis" are found in the Indiana Department of Highways Acquisition Procedures Manual, The Appraisal Manual, and in various professional references used by qualified appraisers. When Federal aid is used in the right-of-way phase, the "Appraisal Problem Analysis" must be approved by the Indiana Department of Highways before, or concurrently with the submission of the consultant agreement for appraisal purposes. If Federal Highway funds are to be used for preparation of "Appraisal Problem Analysis", the work cannot be performed prior to an authorization and notice to proceed.

Right-of-way services include:

- Right-of-way supervision.

- Appraising.

- Review appraising by relocation assistance.

- Buying.

- Property management.

- Legal services.

- Relocation assistance.

If Federal funds are to be used in the fees for right-of-way services, a Scope-of-the-Work Meeting must be scheduled through the Area Engineer, Division of Local Assistance, Department of Highways, prior to the initiation of the right-of-way acquisition phase. Standard agreements for services to be provided by a consultant or individual directly under contract with the local government will be made available by the area engineer prior to or at the time of the Scope-of-the-Work Meeting.
Federal regulations require that qualified personnel be used in the acquisition of property and relocation of individuals or businesses as a result of all construction projects. Required qualifications of these individuals are listed in the Department of Highways Acquisition Procedures Manual for Local Public Agencies and are also available upon request from the Local Assistance Unit, Division of Land Acquisition. When Federal aid is used in the right-of-way phase of a construction project, the persons who will be performing right-of-way services must be given prior approval by the Indiana Department of Highways. When federal aid is not being used in the right of way phase, individuals performing right of way services need not be approved by IDOH. Nevertheless, federal and state regulations must be complied with if applicable.

Standard agreement forms are required for projects which have been programmed for Federal aid for right-of-way engineering services fees or right-of-way acquisition or relocation services and legal services. These standard agreements are also made available by the Division of Local Assistance and include forms for right-of-way engineering, right-of-way services by consultant, appraising, review appraising, buying, relocation assistance, property management, legal services, and supplemental agreements for additional work not covered in the original agreement. Proposed agreements, again, are to be submitted to the Chief, Division of Local Assistance, Indiana Department of Highways for review. The Division of Local Assistance will return the agreements to the local public agency for instructions, modifications or executions, whichever are applicable.

AUTHORIZATION TO PROCEED

When the consultant agreement for right-of-way services has been approved by the Department of Highways and consummated between the consultant and the local public agency, the Division of Local Assistance will request authorization to proceed from the Federal Highway Administration. The local agency must submit a request for authorization of anticipated acquisition costs; specifically, services by local forces, costs of land improvements, and damages, relocation costs, and incidental right of way costs such as recording and property management. Upon receipt of the authorization to proceed from the Federal Highway Administration the local public agency will be given Notice to Proceed by the Division of Local Assistance of the Department of Highways.

If additional funds should be required for right-of-way costs the local agency can submit a request for these funds to the Local Assistance Division. The request must include a parcel listing with approved appraisal amounts, documentation of actual costs above the estimate, and other administrative settlement costs (ten to fifteen percent of total fair market value). The Division of Land Acquisition Local Assistance Unit will verify the request or suggest modifications. When approved by FHWA, a modified project agreement will be returned to IDOH for forwarding to the local government.

APPRASING

An appraisal of the real property to be acquired for right-of-way must be accomplished prior to any negotiation to purchase that property. To repeat a previous point, the appraisal must be made by a qualified appraiser who has specific experience or education in the type of
property in question. Qualified appraisers must have a valid Indiana Real Estate Brokers License, must have a college degree or four years verified active experience in the real estate field leading to a basic knowledge of real property valuation, should have completed some form of technical appraisal education and have experience in eminent domain appraising or the ability to acquaint themselves with the requirements and procedures for such work.

An official representing the acquiring governmental agency or LPA (Local Public Agency) must approve each parcel for purchase in writing prior to an offer being made to the property owner to purchase that property.

If the owner of property to be acquired indicates that he is willing to donate the property, that individual is to be fully informed of the right to receive just compensation based upon an appraisal. Providing information on this subject can be accomplished in a number of ways. A fact sheet or a facsimile of the IDOH pamphlet entitled "How Land is Purchased for Highways" can be used. The owner of the property must then execute a statement stating that he or she waives the right to an appraisal and compensation.

It is possible that a property owner is willing to donate right-of-way but wishes an appraisal for income tax purposes. The acquiring agency in this case must provide a review appraisal and then the property owner can waive his right to receipt of just compensation. The waiver of the right to receive compensation must be fully documented. In cases where the value of the parcel is estimated to be between $0 and $500.00 an offer to purchase can be made with a minimal appraisal (a less qualified appraiser may be used).

Purchasing

Buyers for the local government must have a valid Indiana Real Estate Brokers license or be a full-time employee of the local government. Other requirements include the ability to read and understand regulations, rules, laws, appraisals, title insurance policies, and right-of-way plans. The Indiana Department of Highways provides manuals for buyers at a nominal cost through the Local Assistance Unit of the Division of Land Acquisition. Buyers must make a prompt written offer to each property owner and personally provide this offer to each property owner or have it sent by registered or certified first-class mail. The owner is to be given a written statement of the basis for just compensation. The buyer must also insure that an accurate report of activity for each parcel is kept. This report will become part of each parcel file subject to review by both the Department of Highways and the Federal Highway Administration. The owner of the property must also be given a reasonable time to accept or reject the offer. Twenty-five days can be considered a reasonable time. When every reasonable effort to purchase or otherwise acquire right-of-way has failed, it may be necessary to advance the parcel to condemnation proceedings.

The management and retention of improvements on uneconomic remnants, administrative settlements and legal requirements are detailed in the Local Assistance Unit's Acquisition Procedures Manual for Local Public Agencies. Management, or disposal, of the land or land improvements required for any project using Federal funds must comply with Federal
Highway Administration and Department of Highways' regulations. If the acquired property is not needed immediately for construction of the project, the land and improvements may be leased back to the owner or some other party on a short-term basis or for a specific period of time subject to termination by either party on a 30 days written notice. The amount of rent shall not exceed the fair market rent for the property.

The buyer of the project must offer the retention of improvements on the property to the owner at the time the owner is contacted and an offer is made for acquisition. If the property owner elects to retain permanent structures he or she must assume the risk of moving the structures and clearing the property and, as a result, must post a performance bond to insure that the property will be cleared by a specified time. If it is determined that the acquired improvements have significant salvage value a public sale may be conducted. This also applies to excess land acquired as an uneconomic remnant.

Finally, improvements may be disposed of by demolition. A request for demolition must be submitted by the local public agency for approval by the Department of Highways, if the Federal Highway Administration has participated in the acquisition of the property.

**DISPOSAL OF PROPERTY PURCHASED WITH FEDERAL AID**

Property which is retained for public use but transferred to another public agency does not require FHWA credit, but the Local Assistance Division of the Indiana Department of Highways must be advised of the present use or transfer. In 1986, the Federal Highway Administration required that all property not needed for the use and maintenance of a road or bridge project must be disposed of and a credit issued to FHWA in the same proportion as the funds were used in the purchase. This credit must take place within two years after the final acceptance of the construction project and be based upon a current appraisal. Reasonable costs of disposal such as advertising, surveying and appraising may be deducted from the sale proceeds. The local agency may retain the property by issuing a prorata credit of the current fair market value to FHWA. Credits are sent to the FHWA through the LAU, Div. of L.A. Parcels having a current appraised value of $1,000,000 are exempt from this requirement. (See p. XIII.-5 of the Acquisition Procedures Manual for Local Public Agencies.)

**RELOCATION**

When any person, family, business, farm operator or non-profit organization is being displaced, relocation assistance must be provided by the local government acquiring the property. The Indiana Department of Highways' policy is that the local public agencies must perform their own relocation work, either with staff personnel, or through the use of consultants and with technical advice from the Indiana Department of Highways' relocation staff. The person performing the relocation services must be pre-qualified by the Indiana Department of Highways and this individual must obtain and follow the Department of Highways' Relocation Manual to insure compliance with all current Federal regulations and the Uniform Relocation Assistance and Real Property Act. If an Environmental Impact statement has been filed that adequately addresses replacement housing, a relocation plan is no longer required.
If multiple relocations are required or relocation is complicated in some other way, IDOH may require a relocation plan. If required by IDOH, the local government is responsible for preparation and submission of a relocation plan. This plan is required to indicate that adequate housing is available for the relocatees. The relocation plan must contain vital information concerning the individuals being displaced, including names, ages, types of relocation, condition of the property, description of the neighborhood, income, number of rooms and other information. Displaced persons are to be furnished written notice of their right to appeal in the event of dissatisfaction with the relocation benefit. Should no acceptable determination be reached, the individuals may request a formal hearing by the Department of Highways' Division of Land Acquisition.

RIGHT-OF-WAY CERTIFICATION

Prior to awarding any construction contract, the local government must certify to the Department of Highways that it has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Form letters are provided for this certification. Details are provided in the Acquisition Procedures Manual for Local Public Agencies. Right-of-way certification must be signed by proper authorities of the local public agency and be accompanied by supporting documentation. This certification must be received approximately three months prior to scheduled contract letting. Rights of entry on the property acquired are allowed only in extreme circumstances and a certification letter must be filed and special Federal Highway Administration permission received. When right-of-way acquisition is complete, the cost of fees and the acquisition will be audited by the contract audit section. A claims audit is to be processed through the Local Assistance Division of Land Acquisition and the forms for the claims audit must be properly filled out. Settlements which are higher than fair market value must be approved by IDOH and, in some cases, FHWA. The local public agency can request an audit of the right-of-way engineering portion of the project to finalize that portion of the project. Records are to be retained 3 years after a voucher is paid.

EMINENT DOMAIN

Eminent domain is the right of the nation or state, or those agencies to whom the power has been lawfully delegated, to condemn private property for public use and to take possession after paying the owner just compensation which will be ascertained according to law (Lusk, Law of the Real Estate Business, cited: Leonard V. Autocar Sales and Service). The power of eminent domain is an attribute of sovereignty -- an inherent power of the state which is limited by the constitution's fundamental principles. Article 1, Section 21, Constitution of Indiana states: "No person's particular services shall be demanded without just compensation. No person's property shall be taken by law without just compensation first assessed, then tendered." So, it is clear that the power of eminent domain cannot be exercised in a capricious and arbitrary manner, and that fundamental property rights are to be protected when this power is exercised.

The exercise of police power and eminent domain have much in common and distinctions are often blurred. The power of eminent domain is distinguished from other police powers by the requirement that
just compensation is required, that ownership of the condemned property is transferred to the governmental entity and that the property is taken for public use.

Eminent domain can be exercised by Federal or state government and may be delegated by Congress or the state legislature. If the property is condemned for public use the property is taken through a legislative rather than a judicial procedure (Lusk p. 462). "From an early date the courts have recognized that the taking of public property for the establishment of public transportation systems is a taking for public use" (Lusk p. 462). Counties, cities, towns and other agencies designated by statute have been delegated the power to exercise eminent domain. Specific mention of county power to acquire right-of-way and rights to lands necessary to widen, straighten or change the route of any county highway are found in Section 8-20-3-1 of the Indiana Code. The statute empowers the Board of County Commissioners with the right and power of eminent domain. IC 32-11-1 specifies the procedures for eminent domain proceedings as they apply to any unit or agency having the power of eminent domain.

The power of the Indiana Department of Highways is spelled out in the older State Highway Commission statute (IC 8-13-2-3) which provides detailed guidance concerning the acquisition of land and property rights for highway use.

**ACQUISITION BY USE**

Another way to establish or acquire right-of-way is "by use," a common law prescription. Title 8 of the Indiana Code contains the statutory guidance for the legalization of rights-of-way which have been established by long term use. The rule of twenty years is commonly used as the basis of legalizing the established public use of a roadway. IC 8-20-1-15 provides that highways laid out before April 15, 1905 or used as such for twenty years or more "shall continue as originally located and as of their original width until changed by law." The statute also specifies the width of county highways laid out after January 1, 1962 as being restricted to not less than twenty feet in width on each side of the centerline. This does not include additional widths needed for cuts and fills and, though not mentioned in the statute, ditches and drains. The use of land as a highway with the owner's knowledge and consent amounts to a dedication of that property to that use or it raises an assumption of dedication. Court decisions have supported the contention that consent is not material and that use is the sole test of establishment.

**ACQUISITION OF LAND FOR IMPROVEMENT OF EXISTING RIGHT-OF-WAY**

Though the process of land acquisition for right-of-way purposes does not change materially in cases where additional property along the right-of-way is required, the difficulties associated with such a process can be important. In many cases, landowners will take an adverse view of the taking of more private property to improve roads and streets. A careful and well thought out information program is a prerequisite to success and avoiding the need to use eminent domain powers. County roads requiring additional right-of-way for improvement of drainage or the installation of needed utilities are often not improved because owners
are reluctant to relinquish more property. Similar situations may also be encountered by municipal officials seeking to improve street maintenance in small communities. Ultimately, the secret is convincing local citizens of the need for highway improvements and that such improvements were their idea in the first place.

LEGALIZATION OF POORLY DEFINED RIGHT-OF-WAY

Poorly defined right-of-way often provides grist for the mill of litigation. What procedures should be used by local governments to insure that right-of-way is legally described and recorded? This issue has become even more pressing because of the extensive elimination of fence rows and other man-made or natural objects used in defining local right-of-way limits.

The legalization procedure clarifies the record of the right-of-way boundaries. The nature of the record to be clarified will indicate the procedures ordinarily used in clearing title to a parcel of land and/or improvements (Title 32, "Property"). Lesser interests in property can also be clarified using the same procedures. Legalization procedures should be as follows:

- Review all available records including historical maps of the county/municipal road or street system to determine the location of the right-of-way both now and in the past. Such a search of the records should reveal information of value in making determinations of the location of the right-of-way. It may also reveal right-of-way owned but abandoned by the government entity.

- Conduct a title search to update the existing abstracts of title to right-of-way. The title search can also be used to determine at least what is known about lesser right-of-way interests (Easements.)

- View the right-of-way and conduct hearings after proper notice is given.

- Once a determination is made of the location and definition of right-of-way, actions to quiet the title to right-of-way can be taken. Note that acquisition of some additional property may be necessary to complete the legalization process. In these cases, general right-of-way acquisition procedures should be used.

- Issue an order, or ordinance/resolution to publicly announce legalization of the right-of-way in question.

- Properly file and record the survey and title documents. Note: insure that provisions are made for special compensation if required for persons who own a building in the right-of-way. Payment is authorized unless that person had knowledge that the building was being built on right-of-way.

Some of the indications that right-of-way legalization actions should be taken include:

1. doubt as to the establishment or lack of evidence of establishment of right-of-way;
2. location cannot be determined with accuracy because of a number of alterations, defective surveys, or the loss or destruction of the original survey; and,

3. the road as traveled for twenty years does not conform to the location described indicating that right-of-way may have to be established by use.

Though the statute places a restriction on the minimum width of a county highway, the issue of width is much more complicated than that single prescription. The American Association of State Highway and Transportation Officials provide additional guidance in their publication, *A Policy on Geometric Design of Streets and Roads*. This publication is updated periodically and contains the most up-to-date standards for highway construction and it is a valuable tool for local highway and street officials engaged in planning and constructing these facilities. Right-of-way width may also be established by area or advisory plan commissions or by local ordinances. An interesting problem continues to be the narrow widths of older roads which makes it almost impossible to upgrade the road unless right-of-way is sold or donated to the local government in question.

**WAY OF NECESSITY - EASEMENTS**

Determining when a proposed road or street project is of public use and utility, and providing easements by way of necessity to land owners whose property has become inaccessible because of public construction projects are important and related topics. In either situation, local governments are responsible for establishing procedures which meet the statutory guidelines. In certain cases, state and local agencies may not close a road or street if the closing will result in denial of access to a public way by one or more property owners.

**Way of Necessity Procedures**

A way of necessity provides a property owner with egress and ingress rights over adjoining private or public land in order to reach property otherwise inaccessible by ground transportation. Way of necessity issues are in the realm of real estate law. The need to discuss it here lies in the realization that road and street administration and management affect the rights of property owners. The need to create easements by way of necessity for property owners often arises from right of way acquisition and related public construction projects which deny a property owner access to his or her property. Most of the key statutes are found in Title 32 "Property" of the Indiana Code. A few others are scattered in Titles 8 and 36.

Any land owner who becomes landlocked by a public stream or ditch construction project has the right of easement established by way of necessity (IC 32-5-3). The establishment of that easement is to be in accordance with IC 32-5-3-1 and 32-11-1 through 32-11-13. In cases where private property must grant the easement by way of necessity, the matter is best worked out by the parties concerned. Where public property must provide the easement, the burden is placed on the landlocked property owner to petition the local agency or agencies possessing the land which must be crossed to provide the way of necessity. When the local agency refuses to grant an easement by way of necessity to a
Modern surfacing techniques are a far cry from grading dirt roads and filling mud holes with gravel. This photo (vintage unknown) shows a Finley Surface Mixer with twin asphalt tanks. (Courtesy of HERPICC)

landlocked property owner, the property owner then has recourse by filing a complaint to establish an easement. This is a matter for the courts rather than the local government itself. One of the key tests is that the need for right of way over the land of another arises from necessity and not convenience (Anderson v. Buchanan, 8 Ind. 132 (156): Steel v. Grigsby, 79 Ind. 184 (1881)).

There are also special situations which result from the vacation of roads which cross state owned property such as state forests, parks and wildlife areas. Indiana statutes require access be provided when the closing of a road on state land potentially landlocks a property or denies access. That part of a road scheduled for vacation, which denies access or landlocks a property owner, may not be vacated by the state. In cases where the state grants easements or rights-of-way the approval of the deeds must be made by the state. In sum, state agencies may not vacate roads which would landlock a property owner or deny him access to a public way (IC 32-5-10-1).

Determination of Public Utility

Historically, the taking of private property for transportation purposes has been based upon public use and utility. A local government may not take private property and put it to other than public use. Whether or not a particular use is a public one is a judicial matter. If the legislative body has determined a use to be a public one, the courts will uphold the declaration unless the use is, in fact, of a private nature. From an early date the courts have held that the taking of private property for transportation is for public use. Property taken under the power of eminent domain must also be determined as reasonably necessary to accomplish the objective in light of the circumstances at the time (Lusk, 1974, 437).

The process and content of establishing the public utility of a highway, road or street is an important element in location, relocation or vacation actions. It is essential that the utility of the highway be shown. Utility does not depend upon the absolute need for the highway, but upon whether the public convenience requires it. The number of people inconvenienced by the highway will not deprive it of its public character or utility (Lusk, 1974, 464).

Indiana statutes govern the procedures for the establishment or location of roads or highways by Boards of Commissioners. The process is initiated by a petition of a specified number of freeholders and the petition must comply with statutory provision and be signed by the required number of qualified persons. The details of this procedure are found in the question and answer section of this chapter.

Factors to be considered by the local government in the determination of public utility include location, geography, present population and predicted trends in population, location of established roads and their proximity to proposed roads, location of public and private places and businesses, the needs of citizens and the neighborhood affected, and the damages and expenses expected to result from the construction of the proposed highway. Transportation master plan, thoroughfare plans and accessibility, should be considered. The utility of the proposed highway is limited to the route selected by the viewers and the utility of other routes is immaterial. For a more detailed discussion of this topic see West's Encyclopedia of Indiana Law.
EXISTING LOCAL ORDINANCES

A review of a number of existing local right-of-way ordinances indicates that most deal with management of right-of-way, which includes annexation, cuts and driveway permits, and control of utilities. Few local ordinances govern the local planning and procurement of right-of-way. Part of this void is filled by area or advisory plan commission regulations which specify width standards and other management issues. Local situations differ, and local decisions will be necessary to determine which method to use in managing right of way and way of necessity issues.

QUESTIONS AND ANSWERS
CONCERNING OBTAINING RIGHT-OF-WAY

EMINENT DOMAIN

Q: What is the power of eminent domain and why has the power of eminent domain been delegated to state and local governments?

A: Eminent domain has been defined as the right of a nation or a state, or those to whom the power has been delegated to condemn private property for public use, upon the payment of just compensation. The power of eminent domain is delegated by statute to local governments and other designated entities. If property is taken for public use, as it must be in the case of highways, the exercise of eminent domain is then considered a legislative act rather than a judicial one. Both Titles 8 and 36 of the Indiana Code contain statutes authorizing local governments to exercise the power of eminent domain.

IC 36-1-4-5 authorizes a unit to acquire by eminent domain or otherwise, interests in real or personal property.

IC 36-9-6-4 authorizes a city works board to condemn real or personal property.

IC 8-13-2-3 authorizes the Indiana Department of Highways to acquire land and property rights for highway use and it authorizes the IDOH to proceed in the name of the state to exercise the power of eminent domain.

IC 8-20-2. Empowers the Boards of County Commissioners to acquire land and rights necessary to straighten, change or route any highway, and should the process of negotiation fail, county commissioners are then authorized to proceed in the name of the county to exercise the power of eminent domain. (NOTE: For a detailed discussion of the topic see also Lusk and French, The Law of the Real Estate Business, Chapter 17.)

Q: What procedures are used to negotiate a purchase prior to initiating eminent domain action?

A: As a condition before filing a condemnation complaint, the condemning may enter the property and, at least thirty [30] days prior to filing such complaint, make an offer to purchase the property or
interest. The offer is to be served personally or by certified mail. If the owner cannot be found, notice of the offer is to be given by publication in a newspaper of general circulation in the county in which the property is located or where the owner was last known to reside. The notice is to be published twice, once immediately, and the next at least seven [7] days, but not more than twenty-one [21] days, after the first publication (IC 32-11-1-2.1).

Q: How is notice of eminent domain action served on an unwilling seller?

A: COUNTY - Upon showing service (of the notice) under IC 32-11-2.1 for ten [10] days or proof of publication for three [3] successive weeks in a weekly newspaper of general circulation printed in English in the county in which the land sought is situated, the clerk shall send a copy of the notice to the address of each non-resident land owner. If the post office address of such owner(s) can be ascertained by inquiry at the Office of the Treasurer, and the court or judge in the action, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint three [3] disinterested freeholders of the city to assess the damages, or the benefits and damages, as the case may be, which the owner(s) may sustain, or be entitled to, by reason of such appropriation (IC 32-11-1-4).

STATE - Whenever the governor shall deem it necessary to acquire any real estate to construct any public buildings or to acquire any real estate adjoining any lands of the state on which buildings may have been erected (s)he may order the attorney general to commence an action in the name of the state of Indiana, in the circuit court of the city in which the real estate is situated by petition, praying that appraisers be appointed to appraise the value of real estate (32-11-2-1). Upon the filing of such petition, the owner(s) of the real estate shall have the notice provided by law in the commencement of civil action. It shall be sufficient to make parties defendants to such petition all persons who are in possession of the real estate and those who appear to be the owners, or have any interest, by the tax duplicates and the records in the office of the auditor and recorder of such county. After the notice has been given, the court shall appoint three [3] resident freeholders of the county where the real estate is situated to appraise the value (IC 32-11-2-2).

CITIES AND TOWNS - Whenever the works board of a municipality desires to appropriate or condemn, for the use of the municipality, any real or personal property, or to open, change, lay out, or vacate any street, alley, or public place in the municipality, including proposed streets or alley crossings of subways or other Right-Of-Way, the works board shall adopt a resolution to that effect, describing the property that may be injuriously or beneficially affected. The board shall publish notice of the resolution in a newspaper of general circulation published in the municipality, once each week for two [2] consecutive weeks. The notice must name a date, at least ten [10] days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceedings (IC 32-11-1.5-3).
Q: What rights of appeal are open to property owners who are subject to eminent domain proceedings?

A: Any defendant may object to eminent domain proceedings on the grounds that the court had no jurisdiction either of the subject matter or the person, or that the plaintiff has no right to exercise the power of eminent domain for the use sought or for any reason disclosed in the complaint or set up in such objections. These objections shall be in writing, separately stated and numbered, and shall be filed not later than the first appearance of the defendant. If any objections are sustained, the plaintiff may amend his complaint or may appeal to the supreme court or court of appeals from such decision. But, if the objections are overruled, the court or judge shall appoint appraisers (IC 32-11-1-5).

Q: What action should be taken if the property owner objects to the fair market value appraisal?

A: Once a report of appraisal is filed, the owner may, within a reasonable time fixed by the court, file exceptions alleging that the appraisement of the real estate is not the true cash value. If this occurs, either party may request a trial which will be heard by either the court or before a jury. The notice of filing of the appraiser's report shall be given by the clerk of the court to all known parties in the action and their attorneys. Upon a trial, the court has the power to revise, correct, amend or confirm the appraisal (IC 32-11-1-8).

Q: Can the state exercise the power of eminent domain over other political subdivisions of the state (counties, cities, towns, municipalities)?

A: The state of Indiana has the right, power and authority to acquire land held or claimed by any county, city, town, township, school corporation, or other municipal corporation, or political subdivision of the state, public corporation, instrumentality or agency supported in whole or in part by taxation (IC 8-13-20-1).

**ACQUIRING TITLE TO RIGHT OF WAY**

Q: How does the local entity receive title to right-of-way which is acquired by any means (donation, purchase or eminent domain)?

A: It is most desirable for the local government to receive fee simple title to the right-of-way, by either warranty or quit claim deed, depending on the status of the title. Right-of-way grants or easements are also acceptable, but least desired. (See the IDOH Right-of-Way Acquisition Procedures Manual For Local Public Agencies, 1985.)

Q: When does title pass following completion of eminent domain proceedings?
A: Once the governmental unit has made payment to the clerk of the court in the amount set for the property, and has filed a certificate with the auditor of the county certifying that the amount has been paid and describing the real estate being appropriated, the auditor can then transfer the real estate being condemned to the governmental unit on the county tax records (IC 32-11-1-7).

FEDERAL AND STATE REGULATION OF RIGHT-OF-WAY ACQUISITIONS

Q: What impact does the Federal Government have on the purchase of right-of-way at the local level?

A: Whenever real property is acquired by a state agency at the request of a Federal agency for a Federal program or project, such acquisition shall be deemed as an acquisition by the Federal agency having authority over such program or project (42 U.S.C., 460-4639 Sec. 208). If the acquisition of real property will result in displacement of any person, the head of the Federal agency acquiring the property shall provide a relocation assistance advisory program for displaced persons. This program shall include such measures, facilities, or services as may be necessary in order to, but not limited to:

1. determine the need, if any, of displaced persons for relocation assistance;

2. provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and location for displaced businesses; and

3. assure that, within a reasonable period of time, there will be available in similar areas, and within the financial means of the person displaced, decent, safe, and sanitary dwellings (Sec. 205).

Q: Why is the state (Indiana Department of Highways) involved in monitoring local government right-of-way acquisition procedures?

A: When federal funds are involved, the Federal Highway Administration requires states to monitor real property acquisitions by local public agencies to insure that acquisition and relocation activities comply with state and Federal statutes and regulations. The Local Assistance Unit of the Division of Land Acquisition of the Indiana Department of Highways provides guidance, assistance, and monitoring. In the summer of 1985, the Local Assistance Unit developed a Right-Of-Way Procedures Manual which provides detailed guidance to all Local Governments/Local Public Agencies which might now or in the future, be involved in the purchase of right-of-way for roads, highways, bridges and streets. These procedures apply in all cases where Federal funds are used in any phase of a construction project. This manual is revised periodically. Contact IDOH for the most up to date information.
Q: How does the Indiana Department of Highways monitor right-of-way acquisition procedures?

A: The IDOH requires written assurance that the acquiring agency will comply with the necessary regulations and then certify at the completion of the acquisition process that the right-of-way is clear for construction (Acquisition Procedures Manual for Local Public Agencies).

Q: What is the impact of non-compliance by the Local Public Agency?

A: Non-compliance with applicable laws and procedures could result in the loss of Federal aid for all or part of the project as determined by FHWA.

Q: What alternatives are available to local officials when owners will not give right-of-way in order to widen "two-rod roads?"

A: A cost-benefit analysis will aid the local official in determining the next step. If the volume of traffic and the maintenance requirements justify additional effort and expense, the local officials can renew negotiations and, if necessary, exercise the power of eminent domain to secure the right-of-way necessary for the improvements. (See Title 32, Indiana Code.)

DONATION OF RIGHT OF WAY

Q: Can owners deduct, for Federal tax purposes, the appraised value of right-of-way donated for roads and bridge approaches?

A: Yes. An approved appraisal must be provided to the owner by the acquiring government to insure that a fair market value is clearly established. Because the income tax laws are changing, property owners should either consult a tax expert or their attorney when making final decisions concerning this matter.

Q: What process is used to select, appraise, and manage the valuation of right-of-way turned over to local government?

A: This process was discussed in detail in the body of this chapter. In sum, a qualified appraisal to determine a fair market value is required. The statute provides for an offer to purchase and procedures for initiating the exercise of the power of eminent domain should the offer to purchase be rejected (IC 32-11-1.5-3).

ROLE OF THE INDIANA DEPARTMENT OF HIGHWAYS

Q: Why must the Indiana Department of Highways play a role in the acquisition of right-of-way for local Federal aid projects?

A: The Indiana Department of Highways is required by Federal statute to insure compliance with specifications and acquisition procedures outlined in the statutes. Monitorship is maintained by the Federal
Highway Administration which approves plans and specifications for projects using Federal aid highway funds and insures that the requirements of both equal opportunity statutes and those pertaining to relocation and purchasing are complied with.

Q: What information is made available by the Indiana Department of Highways concerning future construction plans?

A: The construction cycle for highway and bridge projects takes approximately eight years. Though concept, design, and alternatives are discussed at preliminary information hearings held in the locale affected by the project, IDOH policy is to restrict information on specific right-of-way purchases to eliminate speculation on land which might be purchased or otherwise affected. The IDOH insures that needed information is made available to local officials and to the public. In the case of Federal Aid projects, the department is required to conduct both corridor hearings and design hearings to insure that the public is informed and has an opportunity to provide input on specific projects.

Q: What procedures are used by IDOH to require property owners to remove fences on property on which a public highway has been laid out?

A: Whenever a public highway has been laid out through any enclosed land, the county highway supervisor shall give the occupant of such land, or the owner if a resident of the road district, sixty [60] days notice in writing to remove the fences. No owner will be forced to remove such fences between April 1 and November 1. If the fence is not removed, the supervisor shall cause them to be removed at owner’s expense, which may be recovered in an action by the supervisor, including any costs and attorney’s fees (IC 8-20-1-14).

Q: What is the status of fenced state right-of-way which is not used?

A: If the fenced right-of-way is not to be used for a considerable time, it may be rented for temporary use under the IDOH property management system. The Indiana Department of Highways should be contacted for details.

WIDTH OF RIGHT-OF-WAY

Q: What restrictions have been placed on the width of highways laid out by a county or other public agency?

A: The statutes provide that county highways laid out before January 1, 1962, according to law, or which have been established by use and used for a period of twenty [20] years or more, can remain at the original width until changed by law (Action of the legislative body). County highways laid out after January 1, 1962 are to be twenty [20] feet on either side of the centerline with additional widths to be provided for cuts and fills (IC 8-20-15). Detailed right-of-way widths are prescribed in area or advisory plan commission regulations or set
forth in local government ordinances concerning roads and streets. In a number of counties additional prescriptions of width are laid out by county and municipal governments and by plan commissions. For instance, Dubois County mandates a right-of-way of fifty [50] feet and the Tippecanoe County Area Plan Commission specifies the right-of-way width for collectors and arterials, based upon the street type and by urban or rural cross section. The American Association of State Highway and Transportation Officials (AASHTO) book, A Policy on Geometric Design of Roads and Streets contains detailed specifications for right-of-way and road surface widths which are designed to insure that various road types are constructed to standards which will insure durability, safety, and reduce maintenance requirements.

Q: How do we fix the width of a roadway if it has not been otherwise determined?

A: IC 8-20-1-15, "Highway by use-Width," establishes the criteria from at least the state point of view by stating that all county highways laid out before April 15, 1905 by law or by use for twenty [20] years or more are to continue as originally located and as of their original width, until changed according to law. From the first of January 1962, county highway right-of-way is to be twenty [20] feet or more on each side of the centerline of the county highway exclusive of width which is required for cuts and fills. A 1981 court case, Board of Commissioners v. Hatton, -Ind. App.-, 427 NE. 2d 696 (1981), resulted in the opinion that for boundary lines which were never established by competent authority, the width of the road established by use is limited to that portion actually traveled and excludes any berm or shoulder.

Q: Can county commissioners refuse to maintain right-of-way unless it meets minimum width criteria?

A: County commissioners can, by ordinance or resolution, further stipulate the widths of rights-of-way in the county road system, and they can establish width standards as a prerequisite for significant improvements (IC 8-20-1).

Q: How is a highway established by use?

A: A highway may be established simply because it has been used as such continuously and over a period of time. All highways laid out before April 15, 1905, according to law, or used as such for twenty [20] years or more, shall continue as originally located until changed according to law (IC 8-20-1-15). Therefore, a road used for twenty [20] years or more makes it a public highway by use, regardless whether such use was with or without the consent of the landowner. The frequency of the number of users is unimportant.

**ABANDONED RIGHT-OF-WAY**

Q: How should county commissioners respond to requests that an abandoned road be re-opened?
A: IC 8-19-3-1 establishes procedures for petition by ten [10] or more resident freeholders for assistance in grading any public highway connecting at either end with a county or state highway, or any highway improved according to IC 8-19-13, or the boundaries of any city, town or village. If such petition occurs the Board of County Commissioners is required to view the highway (using a competent civil engineer) and if it makes determination of public utility, plans can proceed for grading and draining and/or otherwise improving the highway. IC 8-19-3-2 provides that the petitioners will pay for the grading and draining under the direction of a competent engineer appointed by the Board of Commissioners (IC 8-19-3-1 and IC 8-19-3-2).

Q: What is the status of highways and roads located on abandoned railroad right-of-way?
A: The statute (IC 8-11-13-1) provides that any highway located on abandoned railroad right-of-way becomes a free gravel road and part of the free gravel road system of the state and is to be kept in repair, which includes governing the repair and maintenance of these roads. The county may also find it desirable to determine the legal status of this right-of-way.

Q: What is the status of crossings over abandoned railroad right-of-way?
A: If the Department of Transportation finds a railroad to be abandoned, it may order the removal of the grade crossing and the grade separation structures and restoration of the highway or street into a reasonable and necessary condition to accommodate public and traffic safety (IC 8-3-1-21.2). Any unit of government may resurface that intersection or crossing (IC 8-3-1-22). The highway is then returned to its original status.

WAY OF NECESSITY AND PUBLIC UTILITY

Q: What are the rights of land locked property owners who petition to acquire access to a public way?
A: IC 32-5-3-1 provides that landowners who are cut off from a public way by the construction of a stream or ditch or the construction of a dam by the state or by federal authority have the right of easement established as a way of necessity under IC 32-11-1.

Q: What procedures are to be followed when abandonment of roads on state land will deny public road access to property owners?
A: The chief administrative officer of the Indiana Department of Natural Resources has the authority to abandon public ways which are not state highways whenever it is deemed necessary to the proper operation of the state park, forest, game preserve or historic site in question. The department is required to maintain an outlet for property owners who are denied access because of abandonment of the public way (IC 32-5-10-3).
Q: Who determines the question of public utility in cases where requests have been made for road improvements?

A: When a request for road improvement, location or vacation has been filed by twelve (12) freeholders of a county under IC 8-20-1-1, and the improvement is being undertaken, the board of commissioners of the county shall appoint three (3) disinterested freeholders of the county to view the road (8-20-1-1). The viewers, after taking an oath to faithfully perform their duty shall set a time to view the road in order to determine if the improvement, location, or vacation is of public utility (8-20-1-2). The viewers may not own any land or be related in any way to a person owning land along the road to be improved, located, or vacated (8-20-1-13).

In the case of county line roads the commissioners of the affected counties are to meet in joint session and by a concurrent order are to appoint one property owner from each county who are not resident owners of property affected by the improvement, and a competent surveyor or engineer to locate and view the proposed road and to determine its public utility. They are also to determine the width and depth of the gravel or other materials to be used and the estimated cost of the construction (IC 8-17-11-5).

Q: What actions are expected of joint boards in determining the public utility of a proposed road?

A: The joint board of commissioners is to determine by majority vote the public utility of the proposed highway, the necessity for bridges, culverts, approaches, and drainage. Other details concerning the beginning, ending, width, paving material, need, and the estimated cost and character of the improvement is also to be determined by the joint board (IC 8-17-1-24).

Q: Can landowners successfully oppose the construction or improvement on the grounds of failure to find that the proposed way is not a public utility?

A: Yes. Any landowner’s objection to a proposed highway as not being of public utility generates the requirement that the designated highway be examined by appointed viewers and that they are to make a report to the board of commissioners at its next session as to their opinion as to whether the highway or changes are or are not of public utility (IC 8-17-1-24).

Q: How is public utility determined in cases where citizens petition for road improvements?

A: The petition of ten or more property owners for assistance in grading any public highway connecting at either end with a county or state highway, or any city, town, or village, is the authority for the board of commissioners to employ and pay out of the general fund a civil engineer to assist them in determining the public utility of complying with the request (IC 8-19-3-1).

Q: What factors are used in determining "public utility?"

A: Many factors may be considered. Examples are the character of the soil, condition of the population, location of established ways and
their proximity to the proposed road, accessibility of these ways, the location of public places, wants and wishes of the people affected, and the damages and expense which will result from such construction (West’s Encyclopedia of Indiana Law).

Q: Who is responsible for bearing the costs of surveys, legal descriptions, and title searches associated with the exercise of a right of easement?

A: Customary practice has been for owners to bear most of these costs. In cases where a landlocked property owner sues for an easement by way of necessity, that individual should bear all or some of the costs.

REFERENCES


Indiana Department of Highways, 1978. How Land is Purchased for Highways, Indianapolis, IN.

Indiana Department of Highways. Relocation and You, Indianapolis, IN.


CHAPTER

LOCATION, RELOCATION, VACATION; AND RAILROAD ABANDONMENT

by Jim Turley

INTRODUCTION

Early Indiana legislatures directed the establishment of highways, some of which exist today as state highways. The language and procedure of these early territorial and state statutes remains in a number of sections of the Indiana Code, commonly referred to as "county road and bridge law." The changing needs of the intervening years, and the transition from "working out the road tax" to a modern system of maintaining and building local roads, resulted in these statutes being extensively revised and a number of the unquestionably outdated ones being deleted. The result is a comprehensive body of guidance which is, at times, confusing to the lay person because of a myriad of procedural guidelines and verbage. Sometimes the logic of certain location, and vacation procedures is elusive, so the explanations and the answers to the questions in this chapter may make these matters easier to understand.

The basic statutes are found in Articles 17 and 20 of Title 8 (for counties) and Article 7 of Title 36 (for local governments, generally and planning agencies). Chapter 1, Article 17, contains the County Unit Law enacted in 1919 while Article 20 statutes contain road law apparently rooted in post-1850 statutes, which were rewritten in 1905 as "An Act Concerning Highways" (Chapter 167, Laws of the State of Indiana, 1905). This early twentieth century statute established the procedures to be followed whenever county roads or county line roads are located, relocated, or vacated. The 1905 law contained seven major subdivisions, each of which was a separate chapter. Though the statutes refer primarily to location and relocation, the interpretation of the courts is that the procedures outlined in the statutes apply to the vacation of county roads as well. (See notes to decisions for IC 8-20-1-1, Burns Statutes, Annotated for a detailed discussion.)

Another vacation issue arises when the Indiana Department of Highways decides that a state highway is no longer needed and will be abandoned. Local governments have some critical choices to make in these instances.

Do these roads exist? The dotted lines may indicate that the status of the circled roads is in question and requires some attention to determine their exact situation and subsequent action required (legalization or vacation). Indiana statutes provide detailed procedures for closing and abandoning (vacating) county roads. On the other hand, the process of legalization of right of way is not so clear, but sufficient guidelines do exist in the body of road and real estate law to provide a mechanism for establishing and documenting the status of a road when origins and dimensions are vague or unknown. (Map section derived from a Dubois County map by Tom Fromme)
From the mid-nineteenth century to the early 1920's, an extensive railroad network was constructed in Indiana during the 'rail revolution.' Many of these railroads obtained rights-of-way through charters granted by the state legislature or through other authorized methods of incorporation. Today's environment differs drastically from the railroad heyday of the 1940's when large numbers of freight and passenger trains passed daily through Indiana communities. Growth of the highway system and resulting competition from other modes forced managerial and operational changes in the railroads and their place in the state's transportation mix. Bankruptcies, mergers, reorganizations, and subsequent right-of-way abandonments brought the status of right-of-way and facilities into focus at both the state and local level.

Recent revisions in federal statutes and procedures make it easier for railroads to abandon both service and facilities. Procedures are mandated by federal and state statutes, administrative rules and regulations. Being aware of these procedures, and railroad activities and plans will aid local governments in managing abandonment issues.

The nature of the title to the railroad right-of-way determines the status and disposition of that property when the right-of-way and other facilities are abandoned. Who owns the right-of-way after abandonment? Who is responsible for maintenance? Who is liable for injuries? What is the status of railroad structures and facilities along the right-of-way? What are the responsibilities of federal, state and local government? When is a railroad truly abandoned? These issues are discussed in this chapter, but are subject to legislative changes.

LOCATION, RELOCATION AND VACATION OF LOCAL STREETS AND ROADS

Two principal Title 8 statutes that have an impact on location, relocation and vacation are Chapter 1, Article 17, "County Unit Law", and Article 20, "County Roads -- Location, Relocation and Eminent Domain." County Unit Law, as amended, contains most of the sections of the 1919 Act which provided for the "construction and maintenance of county highways, culverts and bridges throughout the county and upon county lines. . ." The sections of the law pertaining to location and change have remained essentially as first written, and the statute has a county-wide orientation. Article 20, "Location, Relocation and Eminent Domain," applies to more restricted local situations and requires that a specific number of petitioners must reside in the vicinity of the road for which location, relocation or change was requested. Article 20 contains most of the sections of a 1905 law, "An Act Concerning Highways," (Acts 1905, Chapter 165.) This law is apparently based upon nineteenth century county road law and has been amended through the years to eliminate most of the horse and buggy restrictions such as requiring persons to "drive or ride across bridges at a rate no greater than a walk." Article 20 is less difficult to read if readers are familiar with the major subdivisions of the original act. Figure 6-1 contains a list of the subdivisions.

Some summary comments are in order. The Indiana statutes make detailed provisions for the change, relocation, or vacation of public highways. In most cases, a change in a public road may require the vacation of a portion of the highway and location of another portion along a different line. A vacation may become advantageous because of the changes in traffic patterns, location of other roads, and planning con-
considerations. Vacation in a number of rural areas may become necessary simply because the governmental unit is unable to fund maintenance, or because the road has become unsafe. In the past, the courts have held that the facts of actual use and necessity for the road are the main issues to be considered in a vacation action instead of the opinions of the greatest number of people. As a general rule, if a part of a highway ceases to be of utility, it may be vacated.

The Indiana statutes authorize a person through whose land a (county) highway runs to petition the Board of Commissioners to change the location (IC 8-20-1-17). The right of the public to use a public highway may also be lost because of abandonment. There must be intention to abandon, and the rules of notice, hearing and ordering the vacation must be followed. Chapter 5 of this handbook contains a discussion concerning the rights of property owners to have access to a public road. Finally, the failure to use a highway that has been previously located may result in its abandonment. A claim of abandonment is negated by "use" of the highway (Fenley Farms v. Clark). (See West’s Indiana Law Encyclopedia for a more technical treatment of this topic.)

The language of the statutes is complicated somewhat by the fact that a number of nineteenth century roads were constructed and operated as privately owned toll roads. Plank and gravel road companies often took right-of-way easements in consideration of services rendered, which included construction and maintenance for which tolls were charged. The term "free gravel road" arises from an attempt to distinguish free roads, improved with gravel, from those which were privately owned. The movement to "free" roads from private ownership was a feature of Indiana political and legislative activity during the late nineteenth century.

IC 8-20-1 contains specific requirements concerning the number of petitioners in the case of county line roads and the proportion of petitioners who must reside in each county. The county, through its board of commissioners, is required to respond to petitions for location, relocation, change or vacation by appointing "Viewers" to view and to survey the road. (Viewers are persons appointed by a court or board to make an
inquiry of matters, such as examining the location of a proposed road.) Though some statutes do not stipulate using a surveyor, a competent surveyor/engineer is recommended where existing surveys require updating or when new surveys are needed. Upon completion of their task the viewers are directed to report their findings to the board of commissioners and make a recommendation concerning the public utility/use of the proposed location or change.

The board of commissioners is also required to appoint reviewers whenever a protest (remonstrance) is made by a specified number of freeholders. This review is to confirm or refute the findings of the original viewers to insure validity of the finding and due process (IC 8-20-1-5).

AUTHORITY OF BOARD OF COMMISSIONERS TO TEMPORARILY CLOSE A ROAD

In 1979, the Indiana General Assembly enacted Public Law 97 (IC 8-20-8-1), which supplemented the power of boards of commissioners to permanently vacate a road or street. This law allows the board of commissioners to temporarily close a road based upon the board's determination or in response to a petition by one or more persons or entities who control the use of land contiguous to the entire road or a portion of the road. If a petition is being responded to, the commissioners must insure that it is specific as to the parties and that it contains a full description of the highway or road. The board of commissioners must also insure that plans for reconstruction/restoration are approved. The petitioners are required to post a security bond for payment of damages. The petitioners and the board are also required to sign a document stating the terms of the agreement. The temporary closing order may be extended in increments of not more than two years.

ABANDONMENT OF RAILROADS

During the period of 1967 to 1985, Indiana railroads experienced significant challenges. The impetus of deregulation and increased competition resulted in marked reductions in railroad mileage. In 1967 there were 6,488 miles of railroad in the state. By 1985, 1,689 route miles had been abandoned (Black, 1985, 3). Local road and street officials felt the impact of these changes in the vagueness concerning the status of the right of way, the potential revenue losses, and the added cost of maintaining or dismantling abandoned railroad structures.

Notification of intent to abandon and notice of abandonment generate important questions about ownership of right-of-way, the liability of the parties, the status of structures, and the required procedures for transfer of property. State and federal agencies have specific responsibilities in these matters. Although there are specific policies and information programs in effect, gaps in information and guidance remain. This situation has been improved by new railroad abandonment legislation enacted by the 1987 General Assembly.

For those railroads regulated by the Interstate Commerce Commission, abandonment activities generally begin at the national level. Federal statutes require that timely notice of contemplated abandonments be given to states, local officials and to customers. State agencies that have responsibilities in this process are the Indiana Department of Transportation, the Indiana Department of Highways and the Department of Natural Resources. The state is to be continually updated by
the railroads on current systems, contemplated changes of service, and on abandonment plans. Since these procedures are never perfect, state and local officials must be alert to changes in the status of railroad services and plans.

The majority of the railroad abandonment and/or discontinuance of service actions begin at the national level and are governed by the Interstate Commerce Act as amended, and administrative regulations published by the Interstate Commerce Commission. A number of specific actions are required. A railroad may abandon any part of its line or discontinue operations only if the Interstate Commerce Commission finds that present or future "Public Convenience and Necessity" requires or permits the abandonment or discontinuance. When the railroad makes application for abandonment or discontinuance, it is required to serve notice of its intent to abandon to the governor of each state affected, post the notice in each terminal and station on the line, publish notice in a newspaper of general circulation in each county in which the line is located, and mail the notice to the extent possible to all shippers who have made significant use of the line in the most recent twelve months.

The Interstate Commerce Commission is required to go beyond a determination of present or future "Public Convenience and Necessity" by considering potential future uses of the railroad right-of-way and facilities. Examples are mass transit, recreation, highways, transportation, and energy conservation. If the Commission finds that the property proposed to be abandoned is suitable for other public uses, the property may be sold, leased, exchanged, or otherwise disposed of only under the conditions provided for in the abandonment order.

The Interstate Commerce Commission also requires each railroad to prepare a map of its system and to file the map with the Commission and with the designated officials of each state in which the railroad operates. The map is to identify lines which are anticipated to be subject to abandonment applications in the next three years, lines which are under study as candidates for future abandonment, lines for which an application is pending before the Commission, lines operating under subsidy, and other lines which the carrier owns and operates, directly or indirectly. The railroads must provide a map covering the first three categories for newspaper publication in each county in which the lines are located.

The Indiana Department of Transportation is required to notify local governments of impending railroad abandonments (IC 8-3-21.1). The DOT acts upon receiving notice of intent to abandon from any railroad company and is required to notify boards of county commissioners, county surveyors, cities, towns, Indiana Department of Highways, Department of Commerce and the Department of Natural Resources.

Within one year of receipt of an Interstate Commerce Commission order authorizing abandonment, the abandoning railroad is required by Indiana statute to remove crossing control devices and railroad insignia and rails from the right-of-way which serves as a public highway and to reconstruct that portion which serves as a public highway. Counties, cities, towns or the state may restore the crossing when the railroad refuses to do so. The railroad can be billed through the property tax for its share of the work (IC 8-3-1-21.1).
Once notice of intent to abandon has been received or permission to abandon has been granted, local governments are faced with some questions that are difficult to address because of uncertainty about ownership of rights-of-way, tort liability and mounting pressure from landowner environmental groups, and from state and regional planning entities. One of the toughest questions concerns ownership of the land. Environmentalists are interested in converting railroad rights of way into hiking trails. This movement is supported at the national level by the National Trails System Act which was enacted by Congress, but had not been fully implemented by the I.C.C. as of the summer of 1986.

Some landowners are vocal in their opposition to the movement to purchase railroad rights-of-way for public purposes. 1986 legislation authorizing the state to purchase nearly 2000 miles of right of way was defeated. Landowners argue that railroads should return right of way easements to adjacent landowners and that adjacent landowners should have the first opportunity to purchase abandoned corridors. Finally, they argue that if corridors are acquired for public use they should be made safe for both users and adjoining property owners. This protection would include maintenance of corridor fences along farm property.

The 1987 General Assembly again attempted to clarify the status of abandoned or soon to be abandoned railroad right-of-way by adding a chapter to IC 8-4-35. This new chapter, entitled "Property Rights in Railroad Rights-of-Way", was specifically designed to clarify the existing procedures for the disposition of abandoned railroad right-of-way, easement or lessor interest. The emphasis of the new statute is on expediting the vesting of property rights to abandoned right-of-way.

The new statute does not apply to railroad right-of-way within the corporate limits of municipalities or right-of-way abandoned as part of demonstration projects for relocation of railroad lines. It does apply to abandonments under the jurisdiction of the Interstate Commerce Commission and those that took place early in the century before the ICC had jurisdiction over these matters.

Under the provisions of IC 8-4-35, Right-of-way is to be transferred via quitclaim deed to the owner of the property through which the right-of-way runs, or to the abutting property owners in accordance with an established set of administrative law procedures. These procedures can begin after the Department of Natural Resources has taken up to 90 days (from the date of notification by the Department of Transportation) to complete a study of the feasibility of converting the right-of-way for recreational purposes. If the DNR so finds, it is required to urge the appropriate state and local authorities to acquire the right-of-way for recreational purposes (IC 8-3-1-21.1 as amended by SEA 395, 1987).

State and regional transportation planning considerations are becoming more important in railroad abandonment decisions. For instance, a number of rail corridors may be potential sites for future development of high-speed rail transportation networks. Some planners argue that these corridors should be preserved for future use from both a state and a regional/national transportation point of view.

Additional information on the subject of railroad abandonment and the re-use of abandoned right of way can be found in Recycling Railroad Rights of Way, by Professor Charles A. Sargent and published as Station Bulletin No. 500 by the Purdue University Agricultural Extension Service.
in 1986. This excellent handbook is recommended to local officials who are faced with railroad abandonment questions, or in areas in which railroad abandonment will become an issue in the future. The publication is available through the Agricultural Communication Service. The local county extension office can be contacted for the address.

![Railroad Abandonment Notification Procedures Diagram](image)

**Figure 6-2 Railroad Abandonment Notification Procedures**

**NOTES FOR ORDINANCES**

Local ordinances pertaining to location, relocation and change can adopt the state statutes by reference. If ordinances or resolutions are enacted to provide local procedures, they should not conflict with the provisions of existing laws.

A checklist or set of administrative instructions would be useful in managing petitions for location, relocation or change. An example is provided below.

**ADMINISTRATIVE GUIDE FOR LOCATION, RELOCATION, AND ABANDONMENT OF LOCAL ROADS AND STREETS**

1. Authority. IC 8-17, IC 8-20, and IC 36-7.
2. Basic Assumptions.
   A. A public right-of-way for a road or other use is a public trust and should be considered as such prior to consideration of any recommendation for approval of its vacation.
B. The agreement of property owners that a proposed vacation should take place does not necessarily mean that the vacation should be granted.

C. A right-of-way which has not been opened or maintained or used in past years should not be vacated prior to examination of possible future uses as part of the larger transportation network required to meet future requirements.

3. Items to be checked when Considering Proposed Locations, Relocations, and Vacations.

A. Qualification of petitioners.

B. Current status of the road or street.

C. Physical aspects of the site - soil, hydraulics, general geography.

D. Status of current road or right-of-way.

E. Future Development - rural, urban, potential development. (See Comprehensive Plan if one exists)

F. Relationship of the road or street to other highways, roads and streets. (See E. above)

G. Benefits versus costs. Benefits which accrue to abutting or serviced property owners.

H. Development. Plans of the petitioner(s). (See Comprehensive Plan if one exists)

I. Denial of access. Will property owners be denied access to property?

J. Growth. (See Comprehensive Plan if one exists)


L. Utilities.

M. Exchange of right of way.

N. Status of adjacent lots versus vacated streets or roadways.

O. Other special considerations.

4. On Site Investigations.

NOTE:

On site investigations must be conducted. Statutes are specific as to the appointment of viewers and their responsibilities.
QUESTIONS AND ANSWERS
CONCERNING LOCATION, RELOCATION, VACATION;
AND RAILROAD ABANDONMENT.

LOCATION, RELOCATION, CHANGE

Q: How are vacations of roads and streets legalized?

A: After the hearing on the petition of a proposed vacation, the legislative body may legalize the vacation by ordinance. The clerk of the legislative body shall furnish a copy of each vacation ordinance to the county recorder and to the county auditor (IC 36-7-3-12).

Q: How does a county determine which statute applies when faced with a petition for location, relocation or improvement of a county road?

A: County road and bridge laws are found in IC 8-17 "County Unit Law"; IC 8-18, "County Roads, Financing and Bonding;" IC 8-19, "County Roads - Petitions and Assessments"; and IC 8-20 "County Roads, Location, Vacation and Eminent Domain."

IC 8-17-1, County Unit Law, contains basic provisions for petition, notice, viewing and ordering relocation and location of county roads. The statute, which contains most of the 1919 law, as amended, has a county-wide application-hence the requirement for a petition of 250 freeholders with not less than 15 being from the majority of townships in the county (IC 8-17-1-4) to initiate action on a request to lay out, establish, change, widen or improve any public highway or highways within the county.

IC 8-20, Location, Relocation or Vacation, contains more structured provisions which apply to individual geographical situations; i.e.; petition by 12 freeholders of the county, six of whom must reside in the immediate neighborhood of the proposed or existing highway in question. Article 20 contains statutes which appeared under the following headings in the 1905 gravel road law: "Gravel Roads by Assessment" and "Gravel Roads by Taxation." (See IC 8-20-1-17 to 8-20-1-21 and 8-20-1-36 for specific requirements.)

Q: What does the term "gravel road law" mean?

A: The term "gravel road law" arises from statutes which were written during the 19th Century transition from plank, earthen toll roads, or pikes, to free roads that were purchased by local governments under authority granted by the Indiana Legislature. These roads came to be known as "free gravel roads" or just "gravel roads". Both terms are found in the statutes and in the vocabulary and writings about Indiana roads and streets. The descendants of most of these older road laws appear to have been included in IC 8-20-1 Location, Relocation, or Vacation of County Roads. Readers might also review Laws of Indiana, 1905, Chapter 167, "An Act Concerning Highways," to catch the flavor of the original statute.

Q: What rules should be followed when county commissioners are faced with the temporary vacation of county roads?
A: When the board of commissioners is confronted with either a petition or a situation which could result in the temporary closing of a county road, the procedures outlined in IC 8-20 apply. Generally, the board may order a road, or a portion of the road, to be closed for up to five years which can be extended in increments of not more than two years. If the request is made by petition, it must be specific in content, including a detailed description of the road, its location, proposed detours and the names and addresses of petitioners. The rules of notice and public hearing would appear to apply in these cases (IC 8-20-8, Temporary Closing of County Roads).

Q: What is the status of vacated state highways?

A: Basically, vacated state highways can be abandoned and the right-of-way sold to abutting property owners, if appropriate, or offered to local governments for continued use as a public way. A memorandum of understanding between the two governments is required when the abandoned state highway is transferred to the local government (IC 8-11-2-9 and 8-11-2-10).

Q: How should a vacated free gravel road be disposed of in cases where it has been abandoned as a result of placing a road along another line?

A: This question applies in cases where a free gravel road has been originally located on a "highway of the state" and then for one reason or another the line of the road has been relocated (after February 23, 1895). The statute provides that the abandoned portion of such highways are considered vacated and that landowners then have the right to fence or improve them if no other person is denied access to his land over a highway (IC 8-11-12-1).

Q: Are counties or cities required to take possession of and maintain vacated state highways?

A: It appears that local governments have a choice and that it is not mandatory that they take over an abandoned state highway (IC 8-11-2-10). IC 8-11-12-1 (see above) may have an impact on this answer.

**VACATION OF ROADS AND STREETS**

Q: What procedure is used to vacate a city street?

A: IC 36-7-3-12 provides that persons who own or are interested in any lots or parts of a public way or public place, file a petition for vacation with the legislative body of the municipality.

The petition must state the circumstances of the case, describe the property to be vacated, and give the names and addresses of all owners of land abutting the property. The unit's legislative body is then required to conduct a hearing on the petition within thirty days. The clerk is required to provide notice of the petition and the time and place of the hearing by certified mail, to each landowner whose property abuts the proposed vacation.
After the hearing, the legislative body may, by ordinance, vacate the public way or place. The clerk of the legislative body shall furnish a copy of each vacation ordinance to the county recorder and to the county auditor.

Within thirty days after the adoption of vacation ordinance, any aggrieved person may appeal the ordinances to the circuit court of the county.

Q: What statutes deal with vacations by the state of Indiana?

A: IC 32-5-10-1 to 32-5-10-4. The state of Indiana, through its proper department, can bring any action or suit for vacation of any public highway located in any state park, state forest, state game preserve, scenic or historic place.

Q: What procedures must a water utility use to request vacation or relocation of a highway?

A: Any corporation that furnishes water to any town or city which desires to vacate or to relocate a highway or part of a highway may file a petition with the circuit or a superior court in the county in which the land is located. The petition must state: the name of the petitioner; a detailed description of the highway; a statement that the petitioner has determined that such vacation is reasonably necessary or desirable in connection with construction or maintenance of an impounding water reservoir; a statement that the vacation or relocation will not increase by more than four miles the distance necessary for anyone to travel over similar highways; and in cases of vacation, the names and addresses of owners of the abutting land affected by the vacation proceedings (IC 8-1-15-1). Upon filing, the court shall set a time for hearing. If no remonstrances are filed in writing with the court before the time set for the hearing, the court shall grant the petition (IC 8-1-15-4).

Q: What actions/recourse do landowners have if they feel aggrieved by a vacation or relocation by the utility.

A: Persons who feel aggrieved by the proposed vacation or relocation may file a written remonstrance with the court at any time prior to the time set for the hearing upon any one or more of the following grounds:

a. that the highway or portion proposed to be vacated or relocated is necessary to the growth of the county or counties where it is located;

b. that the proposed vacation or relocation will leave the real estate of the remonstrant without means of entering or leaving by a public way;

c. that the proposed vacation or relocation will deny the public access to some public building, church, school or public grounds; or,

d. that the material allegations of the petition or any of them are not true (IC 8-1-15-3).
Q: How are vacations of roads and streets legalized?

A: After the hearing on the petition of a proposed vacation, the legislative body may legalize the vacation by ordinance. The clerk of the legislative body shall furnish a copy of each vacation ordinance to the county recorder and to the county auditor (IC 36-7-3-12).

Q: How are public utilities affected by a street vacation?

A: Vacation proceedings in a municipality do not deprive a public utility of the use of all or part of a public way or public ground to be vacated, if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way or ground for location and operation of its facilities. The utility may waive its rights by filing its written consent in the vacation proceedings (IC 36-7-3-16).

RAILROAD ABANDONMENT

Q: When does the abandonment of land by a railroad occur?

A: The granting of an Interstate Commerce Commission certificate to end service is considered abandonment even though the railroad may continue to operate trains over the line. One could conclude that abandonment has occurred when railroad service ceases or when rails are removed.

Q: Who holds title to the abandoned right-of-way land?

A: The critical factor in answering this question is knowing what kind of title a railroad has to the land. If the title is in fee simple, the railroad continues to own the land. If the railroad holds an easement the terms of the easement as seen in the deed specify disposition upon abandonment. The usual situation is that land reverts to the original grantor of the easement or his successor. This person will usually be the abutting land owner. If the railroad held title by a grant from the state legislature, the courts have declared this kind of title to be a title that reverts to the underlying property owner when the railroad's use ceases. The attorney general has stated in Opinion #6-1979 that a railroad's interest in real or personal property is extinguished upon abandonment of its property unless the railroad holds fee simple title to the property.

The 1987 General Assembly added a chapter to the railroad abandonment statutes. This new chapter (IC 8-4-35), entitled "Property Rights in Railroad Right-of-Way", simplifies the process of transferring property rights in abandoned right-of-way (IC 8-4-35-1 to 8-4-35-11).

Q: Are abandoned railroad lands appropriated for other public uses such as recreation, corrections, and prairie preservation?

A: Some states have extensively used this kind of property for hiking and bicycle trails. Constitutional thinking is that continuation of
public use in a different form that preserves the corridors for future rail or other transport purposes, is not a further taking without due process. The use for which the easement was granted continues, in theory. The need for alternate land-use programs in Indiana has been extensively evaluated with the emphasis on bicycle trails and preservation of unique ecological areas.

Q: What is Indiana’s policy concerning the appropriation of abandoned railroad properties for recreational purposes?

A: A new statute enacted in 1987 requires the Department of Transportation to notify the Department of Natural Resources of a railroad’s intent to abandon a railroad right-of-way. The DNR has 90 days to study the possible use of the right-of-way in question. If such use is feasible, the DNR must urge state and local authorities to acquire the property for recreational purposes (IC 8-3-1-21.1).

Q: What are the special problems of cities and towns when railroads abandon property within their jurisdiction?

A: Some of the problems which have been encountered, especially in more densely populated areas, include difficulty in locating railroad contact people to identify ownership, maintenance of crossings, weed control, chemical residues from former weed control efforts (which are public health and safety concerns), the loss of tax revenues, the loss of service which might be useful in the future and the desire to acquire the land for public uses such as commuter rail service or recreation.

NOTE: The above questions were extracted, in part, from the Final Report of the Study Committee on Abandoned Railroad Land, Legislative Services Agency, November 1985. Updated information resulting from 1987 General Assembly enactments has been added.

Q: What are the federal and state procedures for informing local road and street officials of railroad abandonment?

A: The railroad is required in most instances to make application to the Interstate Commerce Commission to abandon a line or to discontinue service. At the same time, the railroad must serve notice of its intent to abandon to the governor of each state affected, post the notice in each terminal and station on the line, publish notice in the newspaper of general circulation in each county in which the line is located, and notify shippers who have made significant use of the line in the last twelve months (Interstate Commerce Acts as Amended - Section 10903).

Upon receipt of notice of intent to abandon railroad rights-of-way from any railroad, Indiana statutes require the Indiana Department of Transportation to notify boards of county commissioners, the cities and towns affected and other state agencies, including IDOH, the Department of Commerce and the Indiana Department of Natural Resources (IC 8-3-1-21.2).

Q: In cases where information may be flowing imperfectly, what can local officials do to be informed of railroad abandonment activities in their local area?
A: Maintain communication with the Indiana Department of Highways, the Department of Natural Resources and the Department of Transportation. Establish informal procedures which require periodic review of mediums by which notice of abandonment is served -- newspapers, railroad stations and communications from the state. Also, maintain contact with local railroad employees and customers. These methods are not foolproof, but will increase the probability of being informed of intent to abandon and abandonment orders.

Q: Who is responsible for maintaining abandoned railroad structures in cities and towns?

A: A non-code section of Public Law #75, Acts, 1982, requires railroads to remove any and all bridges, overpasses, viaducts, and culverts used by the railroad on the abandoned section within one hundred eighty days. If the railroad does not comply, the local government may sue the line for having created a public hazard and nuisance. This provision expires on January 1, 1990.

REFERENCES


Title 49, U.S. Code, Sections 10903, 10926, 10933.


CHAPTER 7

JURISDICTIONAL AND FUNCTIONAL CLASSIFICATION

by Jim Turley

INTRODUCTION

This chapter focuses upon two topics which are functions of local road and street officials. Functional classification is important because of both statutory and management requirements to classify highways, roads and streets according to their use. National and state mandates require that certain local road and street classification and inventory actions be taken to meet funding requirements at both levels of government.

The succeeding discussion will clarify definitions which sometimes overlap and may be misunderstood. Indiana road and street laws and language are highlighted and explained in relation to national/FHWA definitions and classifications.

Understanding federal definitions is important because of the direct link to allocation of federal funds for local road and street projects. The doctrinal aspects of functional classification as set forth in American Association of State Highway Officials (AASHTOtm) publications are explained and compared with the statutory and administrative guidelines. Indiana statutes require county commissioners to inventory and classify highways. Local street inventories are also required. There is also a special requirement to designate preferential county highways. Municipal classification issues are also discussed.

The second topic is the important discussion relating to highway, road and street jurisdictional questions that often arise at the local level. Who is responsible for various aspects of funding, maintenance, construction, and snow removal, etc.; especially in cases where roads, streets and structures are located on boundaries or where facilities are shared by separate government entities? What guidelines exist? Who is responsible? How can needed action be taken when one or the other entity resists such action? The third aspect of classification relates to the administration of highway, road and street funds and is addressed in Chapter 8, "Road Revenues."
FUNCTIONAL CLASSIFICATION

Some roads are more important than others. Differences in geography, location, traffic volume, terrain, purpose, and attendant transportation links/facilities are major determinants. Functional classification is a means of identifying and classifying highways according to the service they provide, the American Association of State Highway and Transportation Officials (AASHTOtm) discusses highway functions in their book *A Policy on Geometric Design of Highways and Streets* which is used as the basis for this discussion.

Most major automobile trips can be divided into six recognizable stages which make use of a separate facility designed for that function. The stages of these trips are summarized in figure 7-1.

<table>
<thead>
<tr>
<th>Movement Stage</th>
<th>Highway Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Movement</td>
<td>Freeway</td>
</tr>
<tr>
<td>Transition</td>
<td>Ramps, Access Roads</td>
</tr>
<tr>
<td>Distribution</td>
<td>Distributor Arterial</td>
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<tr>
<td>Collection</td>
<td>Collectors</td>
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<tr>
<td>Access</td>
<td>Local Access Streets</td>
</tr>
<tr>
<td>Termination</td>
<td>Destination-Private Driveway</td>
</tr>
</tbody>
</table>

Figure 7-1 Stages of Movement and Required Facilities

AASHTOtm states that: "...failure to recognize and accommodate by suitable design each of the different trip stages of the movement hierarchy is a prominent cause of highway obsolescence." Local roads and streets do not serve travel independently, but are part of a network through which travel moves. Travel can be categorized in relation to these networks in a logical manner and is consistent with functional classification (*A policy on Geometric Design* etc. p. 6).

The network of roads can be superimposed on the desired lines of travel as shown in figure 7-2. The terms 'local access', 'collector' and 'arterial' describe the functional relationships.

From a local road and street point of view the role of roads of the intermediate capacity is extremely important because of their role in connecting small towns and rural communities directly to the arterial network. These roads collect or distribute traffic from or to local roads serving these areas. The same idea applies to urban and suburban areas where streets can be classified as arterials or collectors.

Inherent in the classification of roads and streets and the categorization of traffic is the idea of access to both travel mobility and to property. The conflict between these two concepts requires provision for transition from main movement to local travel. The primary function of arterials is mobility while the primary function of local roads is access.

The AASHTOtm discussion concludes with a review of functional system characteristics (Figure 7-3).
The functional concept presented in Figure 7-3 is important not only to designers, but to all who are involved in local road and street administration, planning and management. Classification provides a means of communication between the general public, local officials and highway engineering professionals and it helps all to keep in mind the overall purpose to be served. (See Chapter 1, of *A Policy on Geometric Design of Highways and Streets*, for a detailed discussion.)

**National Highway Systems**

The Federal Highway Administration uses a system of classification which is based upon the provisions of Title 23, U.S.C. The Federal Aid Highway Program Manual (HPM) sets forth the policies and procedures for designation of the national system of interstate Highways, the Federal-aid-primary system, the Federal-aid secondary system and the Federal-aid urban system. (See chapter 8 of this handbook for the revenue implications of the Federal-aid highway system.) The HPM provides that all areas of a state shall be classified as either rural or urban and it establishes procedures for the definition of urban area boundaries. All
<table>
<thead>
<tr>
<th>Rural Areas</th>
<th>Urban Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Road Type</strong></td>
<td><strong>Street Type</strong></td>
</tr>
<tr>
<td><strong>Functions</strong></td>
<td><strong>Functions</strong></td>
</tr>
<tr>
<td>Principal Arterials</td>
<td>Serve statewide and interstate travel; provide for travel between all or most urban areas.</td>
</tr>
<tr>
<td>Minor Arterials</td>
<td>Link cities, larger towns and other traffic generators that attract long distance travel; integrate interstate and intercounty services.</td>
</tr>
<tr>
<td>Major Collectors</td>
<td>Serve as links for County Seats or other larger towns not on the Arterial System to nearby larger towns and cities or with the higher Arterial Roads.</td>
</tr>
<tr>
<td>Minor Collectors</td>
<td>Accumulate traffic from local roads; link all developed areas to major collectors; provide service to the remaining smaller communities; link important local traffic generators to the more rural land areas.</td>
</tr>
<tr>
<td>Local Roads</td>
<td>Provide land access; connect land areas to major or minor collectors; provide for travel over relatively short distances.</td>
</tr>
</tbody>
</table>

**Urban Areas**

<table>
<thead>
<tr>
<th><strong>Street Type</strong></th>
<th><strong>Functions</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Arterials</td>
<td>Serve major activity centers of urbanized area; carry traffic entering, leaving, or moving through and around the city; serve inter-area travel needs of the city such as between the business districts and the residential areas or between major suburban areas; emphasize mobility instead of land access.</td>
</tr>
<tr>
<td>Minor Arterials</td>
<td>Interconnect and augment the principal arterial streets; distribute traffic to geographic areas smaller than those served by the principal arterials; connect urban areas to rural collectors; put more emphasis on land access than the higher system.</td>
</tr>
<tr>
<td>Collectors</td>
<td>Provide land access as well as travel within residential neighborhoods, commercial and industrial areas; disperse traffic from arterials, through areas, to ultimate destinations; collect traffic from local streets, connecting them to the arterials.</td>
</tr>
<tr>
<td>Local Streets</td>
<td>Provide direct access to land areas; connect land areas to the higher order systems; permit little or no service to through traffic.</td>
</tr>
</tbody>
</table>

Source: A Policy on the Geometric Design of Highways and Streets (adapted from pages 9-12)

Figure 7-3 Functional System Characteristics Adapted from p. 9-12, *A Policy on Geometric Design of Highways and Streets.*
routes of the Federal-aid primary, secondary and urban systems are to be designated on the basis of their anticipated functional use. According to the HPM, all routes of the system of interstates should be functionally classified as principal arterial routes. State highway departments are to be responsible for developing and updating statewide functional classification and to determine functional use. The states are instructed to cooperate with appropriate local officials (and/or appropriate federal agencies in cases of areas under federal jurisdiction) in developing and updating the functional classification. The results of the states functional classification are submitted to FHWA for approval and provide the basis for the designation of the Federal-aid systems.

Indiana Functional Highway Classification System.

The Indiana Functional classification system is prescribed in detail in IC 8-11-2 which contains the basics of Acts’ 1969, chapter 353 entitled “An ACT to establish various systems of highways, roads, and streets in the state of Indiana, and to establish standards and procedures for carrying out such classification and reclassification.......” The statute provides integration of public highways and streets into complete systems that could be further integrated into networks. This enhances systematic planning and orderly development of public highway systems to meet actual needs. Highways were grouped according to function to provide a means for sub-classification. (IC 8-11-2-1 is included in Volume II of this handbook.) Included in this statute is a statement designating the state highway system, a limit on its mileage (12,000 miles), and a provision that the state system is to be made up of the principal arterial highways of the state. The statute also mandates a highway to each county seat with connecting arteries and extensions through municipalities.

The highway department is also instructed to further classify the state highway system to facilitate establishment of funding and resource standards. These classifications “may conform to the department’s designation of the Indiana federal-aid system.” The counties are instructed to select a system of county arterial highways based upon general importance to the county. The statute (IC 8-11-2-5) is specific as to the criteria to be used. Once approved by the board of commissioners, the system selected is to be known as the county arterial highway system of that county. All county roads not included in the county arterial system are to be part of the county local highway system.

Likewise a system of arterial streets is to be selected and designated by the agency responsible in each city and town with a population of 5,000 or more (IC 8-11-2-6). Criteria are established for the evaluation of streets that are candidates for designation as arterials. In each municipality of less than 5,000 population, the arterial street system may be limited to extension of the county arterial system, or to those of an adjoining city. All municipal highways under the jurisdiction of the city or town and not included in the systems of the county, state, or city shall be part of the municipal local street system.

Both county and municipal systems are to be reviewed every five years and changed as required. Transfers from one system to the other are permitted. Also, changes in functions commonly trigger the requirement for review.
JURISDICTIONAL CLASSIFICATIONS

Road and street classifications are useful in separating various types of roads under a jurisdiction. Roads and streets are also classified according to the responsible jurisdiction (county, state, municipal, private, school/university, or institutional). In many cases the jurisdictional distinctions are absolute enough to solve the "who does what, when" questions. In other cases, abutting properties and facilities generate challenging questions concerning maintenance, repair, construction, snow removal and funding. Jurisdictional Classification makes it possible for both governments and citizens to know what unit or governmental entity is responsible.

Often, there are problems of definition. What is a public road? What constitutes a street? What is a forest road? How are access roads defined and used? Who is responsible for maintenance of railroad crossings? How are these crossings defined? Who decides when and under what conditions crossings are repaired? How are costs shared?

McQuillin's Municipal Corporations clarifies some of these questions. All highways are going to be private or public. "A way open to all the people is public and, in law, it is termed a highway whether called a road, street, avenue, or a public square" (McQuillin 30.02). In Indiana, the term 'Public way' includes highways, streets, boulevards, roads, lanes, and alleys (IC 36-7-1-17). The Indiana statutes also define the terms 'highway', 'street' and 'road', all of which must be public ways used for vehicular travel (IC 8-11-2-2). An essential characteristic of a highway, street or road is that it be open to public use for ordinary purposes of travel. It must be a public way.

McQuillin also takes a three dimensional view of a street: the surface, sub-surface necessary for utility foundations--sewers, mains, gas, and sewer pipes, etc.; and sufficient above-ground space to allow for traffic (McQuillin, 30.06). According to IC 36-7-1-20, a thoroughfare "includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains." Highways, streets and roads are also defined by statute to include 'the entire area within the right of way' (IC 8-11-2-2).

There are two other terms that can cause confusion. These are 'bridge' and 'subdivision'. According to McQuillin, "A bridge over waters and underneath a street is part of the street" (McQuillin, 30.07). "A municipality may build bridges across waters to connect streets on either side—even though the municipal corporation might extend its streets beyond the lawfully defined municipal boundaries" (McQuillin, 30.07). "Some statutes can be construed so as to make the term 'street' include bridges, but others must be construed in light of the intention of the legislature" (McQuillin, 30.07).

According to IC 1-1-4-1, the term 'highway', as used in the statutes, includes county bridges as well as county and state roads, "unless otherwise expressly provided" in a particular statute.

Subdivision streets may become part of the county or municipal system if they are built to the specification of those systems. The regulations for accomplishing this are spelled out in local ordinances. (See ch. 4, "Local Government Transportation Planning.")
Various types of roads and streets may be under county or municipal jurisdiction. For instance responsibility for county line roads and bridges is shared by counties according to guidelines established by the Indiana statutes (IC 8-20-1). This statute contains most of the language and sections of the 1905 Gravel Road Law, as amended through the ages. (See Chapter 6 for a more detailed discussion of this statute.) Other guidelines are found in IC 8-17 "County Unit Law." Many of the statutes important to this topic are included in Volume II of this handbook.

One or more of three major types of entities may have jurisdiction over Indiana's roads, streets, highways, and bridges located in Indiana. The issue of jurisdiction over township roads was decided long ago and since the county is the basic unit of local government in Indiana, it is now responsible for construction and maintenance of the county highway system. Municipalities are responsible for their interior street systems and the state is responsible for both the state and interstate systems.

Specific questions concerning both jurisdictional and functional classification are found in the next section of this chapter. Model ordinances and notes are not included because an excellent example was developed several years ago and published in the form of Model County Subdivision Regulations, a publication of the Highway Extension and Research Project for Indiana Counties and Cities (HERPICC). A full description of this document is listed in "references" at the end of this chapter and in the Bibliography.

Students of Indiana's road and street laws will sometimes encounter some older and little used classification terms. Two of these are discussed here. The term 'main market' road is mentioned in early 1917 legislation which authorized the organization and functions of the Indiana State Highway Commission. This legislation was enacted in response to the 1916 Federal-Aid Highway Act and instructed the highway commission to lay out a network of highways which would constitute 'main market' highways. The act was challenged successfully in 1918 and re-written to provide specifically for the laying out of a system which would include both connections with every market center, but also a state highway to reach every county seat and every city of 5,000 inhabitants or more.

The term 'farm to market' road is a designation by which funds were allocated to counties and refers to county public highways which lead directly to or intersect state highways leading to markets (Black, p. 547). The designation is not used extensively in Indiana, but may be found in a number of midwestern, western and southwestern states.

QUESTIONS AND ANSWERS CONCERNING FUNCTIONAL AND JURISDICTIONAL CLASSIFICATION

FUNCTIONAL CLASSIFICATION

Q: What is a limited access highway or street?
A: A limited access road, also known as a limited access facility, is a highway or street designed for through traffic. Owners or occupants of adjacent land or other persons therefore have no right, or a limited right of easement, direct access, light, air or view. Limited access highways or streets may be parkways, from which trucks, buses and other commercial vehicles are excluded, or they may be

Early twentieth century road workers construct what was for the time a modern road which may have been Macadam or Telford in construction. (Courtesy of HERPICC)
freeways open to use by all customary forms of street and highway traffic (IC 8-11-1-2).

Q: How is a limited access highway established?

A: Access control can be established by statute or local ordinance. IC 8-11-1-3 authorizes the state, counties, cities and towns acting alone or in concert to plan, designate, establish, vacate, alter, improve, maintain and provide limited access facilities for public use. Access can also be controlled by zoning regulations and design (AASHTO).

Q: What is the county arterial highway system and how is it established?

A: The county arterial highway system is a system of highways designated by county highway authorities as having the greatest general importance to the county. (IC 8-11-2-2). A system of county arterial highways shall be selected by the board of commissioners in each county. The system shall be selected on the basis of greatest general importance to the county. Roads may be included in, relocated, or deleted from the system under the approval of the board of county commissioners (IC 8-11-2-5).

Q: What is the municipal arterial street system? How does it impact on the county road system?

A: The municipal arterial street system is a system of arterial streets and highways designated by the municipal street authorities as having the greatest importance to the municipality. The responsibility for the system is assigned to principal street authorities (IC 8-11-2-2).

The municipal arterial street system impacts the county system by providing for the continuity of the county system into or through municipalities (IC 8-11-2-6).

Q: What responsibility does the state have for conducting local street and road inventories?

A: The Indiana Department of Highways is required by statute to make periodic inventories, as to mileage and use of the local road systems under the jurisdiction of the counties and the street systems under the jurisdiction of the cities and towns. The department is also directed to coordinate with local officials to confirm the accuracy of the inventory (IC 8-13-14.5-1).

Q: What responsibility does the county have for a street and road inventory?

A: The county highway engineer is required to prepare and publish a county-wide inventory and classification of the county highway system. The inventory is to include total county federal-aid secondary systems in the county primary or arterial road system. The county highway engineer is also required to prepare and maintain an inven-
tory of all bridges and culverts serving the county highway system. This inventory is to indicate the location, dimensions, condition and year built or installed for all bridges and major culverts (IC 8-17-5-6). In the absence of a county engineer, the board of county commissioners may have a highway inventory developed by county employees and/or a consulting engineer.

Q: Who is responsible for developing and maintaining maps of streets and roads?

A: At the state level the Indiana Department of Highways is required to maintain maps of the state showing all highways which have been designated as and constitute the state highway system, the arterial and local highway systems of each county and arterial and local streets of each municipality (IC 8-11-2-8).

The county surveyor of each county is required to make a map of all the highways in the county. The map "shall set forth the length and character of each road, and the kind and volume of traffic" (IC 8-17-3-9). (Note: This statute was written in 1933 and contains archaic language. See Chapter 7, volume II for the full text.)

The county planning commission of any county, or the board of county commissioners in counties without a plan commission, may authorize the preparation of charts or maps on which the county roads shall be designated either by name or number (IC 8-17-8-1).

In the preparation of such charts or maps, the planning commission or county commissioners shall solicit the services of the county engineer and/or the county surveyor who shall prepare such charts or maps (IC 8-17-8-2).

The charts or maps will be available to all units of government free of charge. They are to be made available to the general public at a charge determined by the plan commission or county commissioners (IC 8-17-8-3).

Q: What are county preferential highways and what type of markings are used for them?

A: According to IC 8-17-9-1, the Boards of Commissioners of the counties of the state are required to establish and designate as preferential highways those public highways in their counties which, as the most frequently traveled, constitute thoroughfares to and from cities and towns. The county highways cannot intersect state or federal highways (at the same grade level).

Non-preferential highways are to be clearly marked with stop signs at points where they intersect with preferential highways (IC 8-17-9-2).

JURISDICTIONAL CLASSIFICATION

Q: What is the procedure for transferring streets and roads between governmental units?
A: The transfer of roads or streets between governments requires a memorandum of agreement signed by both the transferring agency or unit of government and by the agency or unit assuming jurisdiction. The memorandum shall state:

1. the purpose of the transfer;
2. the effective date of the transfer; and
3. any conditions agreed to by the signers (IC 8-11-2-10)

Q: Which governmental unit has responsibility for maintaining bridges located within city limits?

A: A municipality has exclusive jurisdiction over bridges, streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside its corporate boundaries (IC 36-1-3-9).

Also, one of the decisions pertaining to IC 36-9-6-12 found that "it is the duty of cities to keep bridges and crossing places of streams within the city in good repair, no matter by whom such bridges were constructed."

The board of commissioners of any county may build or repair any bridge within the corporate limits of any city or town (IC 8-20-1-34). The authority does take away the right of a municipality to repair any bridge within its corporate limits or to take away jurisdiction regardless of the original builder.

Q: Who is responsible for maintaining streets and roads which connect state parks and forests?

A: The Indiana Department of Highways is authorized to lay out, construct and maintain, as a part of the state highway system, roadside parks and highways, if the highway will connect any state highway with any state park, state forest reserve, or state game preserve. The construction and maintenance of a state highway connecting any state park, state forest preserve, state game reserve, or state recreation area may also be done by the department of highways in cooperation with the board of county commissioners having primary responsibility for the county highway. This construction is given under the request of the Indiana Department of Natural Resources and approved by the governor (IC 8-12-9-1).

Q: Who is responsible for maintaining streets and roads in the U.S. National Forest System?

A: The state or local government agency which has jurisdiction and/or maintenance responsibility for forest highways shall have the responsibility for maintaining them unless otherwise provided for (23 CFR Part 660, Section 660.115).

Q: Who has authority over drains on state highways, and drains inside a municipality?

7-10
A: All drains, culverts and bridges on any state highway shall be con-
sidered as part of such highway and therefore are under the jurisdic-
tion of the Indiana Department of Highways (IC 8-13-5-5). A muni-
cipality has exclusive jurisdiction over bridges, streets, alleys, side-
walks, watercourses, sewers, drains and public grounds inside its cor-
porate boundaries (IC 36-1-3-9). Thus, the city works board may
prepare a uniform plan for the drainage and sewage of the city. The
board may lay out, design, order, contract and execute the construc-
tion, alteration and maintenance of all public drains or sewers neces-
sary to carry off the drainage of the city (IC 36-9-6-10).

Q: Who is responsible for establishing local service roads?

A: The department of highways and the several counties, cities and
towns of the state are authorized to plan, designate, establish, use,
regulate, alter, improve, maintain, and/or vacate local service roads
when developing a limited access facility. (IC 8-11-1-9)

Q: If a service road serves only one property owner, does that road con-
stitute a public use?

A: Under the notes to decision of IC 8-11-1-9, "in planning and provid-
ing for condemnation of service roads, the legislation properly
intended such service roads would constitute a public use whether
such roads served one property owner or many." (Andrews v. State
(1967), 248 Ind. 525, 11 Ind. Dec. 376, 229 NE. (2d) 806).

Q: How is maintenance responsibility determined for county line roads?

A: Since 1971, maintenance responsibility has been clearly spelled out in
the Indiana Code (IC 8-17-1-45), which specifically deals with this
issue by stating that each county is fully responsible for
construction, reconstruction, maintenance and operation of the
roads on its eastern and southern boundaries.

Q: How is responsibility determined for maintenance of county-line
bridges?

A: IC 8-20-1-35 contains detailed procedures for handling county-line
bridge questions. Each county is to be considered as an owner of an
interest in any bridge erected under the provisions of this statute
and shall have a voice in regulating the use of the bridge. In 1973
the Attorney General determined that the term "road" in IC
8-17-1-45 did not include bridges since the legislature had created
two procedures, one for county-line roads, and one for county-line
bridges. The opinion also stated that county-line bridges are to be
maintained by the cooperation of both counties and are not the sole
responsibility of the county upon whose eastern or southern boun-
dary they lie (1973, No. 29, p. 91).
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INTRODUCTION

Funding support provides the capability for local governments to administer and manage roads and streets. Since this is the age of limited financial resources, the apportionment of these funds for local road and streets is a more difficult task than the creation of the funding sources themselves. This tough subject is constantly before the local road and street official and is a subject of concern and discussion. The federal support provided to local governments carries with it special requirements which must be met before these funds can be received and used. Questions concerning the funding system and its administration and management are also ever-present. How does the local government apply for funds? What special requirements must be met and how are the funds provided to the local governments? Who monitors and audits what is going on to ensure that funds are properly used? These and a number of related questions will be covered in this chapter.

THE FEDERAL-AID HIGHWAY PROGRAM

Until the early twentieth century, funds and support for highways had been mostly a local matter. The agitation for improved roads often known as the "better roads movement" generated energetic support inducing Congress to enact a number of highway aid laws that culminated in the passage of the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. The federal-state cooperative relationship was defined by the 1916 act and made permanent by the 1921 act. The State's role was to select, plan, design and construct highway improvements while the Federal role was to review and approve work done with the assistance of federal funds. This relationship remains intact today. (FHWA, 1984. America on the move, p. 3).

The primary reason for the establishment of Federal-Aid for highway, road and street work is to enhance the economic growth and stability of the United States and each state within; and for national security purposes. The result continues to be a highway and road system of great efficiency and safety.

The Federal-Aid Highway Program operates on the principle of a joint highway improvement venture, with state matching based on for-
mula prescribed by law. The federal-aid funds can be used for preliminary engineering, right-of-way acquisition, construction and engineering. The Federal Highway Administration is entrusted with the execution of the Federal-Aid Highway program, and distributes Federal funds to the states upon their request and after fulfillment of certain statutory and engineering requirements.

A review of federal-aid programs will increase the store of knowledge available for local officials. At the Federal level most of these programs are found in Title 23 of the U.S. Code. Title 23 of the United States Code is the codification of the Federal aid-Highway legislation. It is changed every four years as a result of the quadrennial congressional highway bill. The quadrennial legislation usually contains provisions for the following:

- authority to begin new programs or revise existing ones;
- special programs; and
- specific funding (authorizations) for the categories of highway assistance.

An example of a current law as of August, 1987, is the Surface Transportation and Uniform Relocation Assistance Act of 1987. The 1987 Act contains the following major titles:

I. Federal-Aid Highway Act of 1987;
II. Highway Safety Act of 1987;
III. Federal Mass Transportation Act of 1987;
IV. Uniform Relocation Act Amendments of 1987; and

The Federal Government usually does not pay the entire cost of construction of Federal-aid Highways. Instead, federal funds are matched with state and/or local government funds in completing the project. The federal share is specified in the authorizing legislation. Projects are normally funded seventy-five percent (75%) Federal and twenty-five percent (25%) state. However, the Interstate System and Safety Construction Projects are normally funded ninety percent (90%) Federal and ten percent (10%) state. Bridge projects are usually funded at a ratio of eighty percent (80%) Federal and twenty percent (20%) state.

Federal legislation requires that the state set aside a certain sum of money (earmarking) for special uses. One and one half percent (1.5%) of the sums apportioned for each fiscal year can be used only for highway planning and research activities. These activities are to be state-sponsored research and planning activities. Indiana also has the option of requiring the earmarking of funds. For example Indiana can require that one-half percent (.5%) of certain apportionments be earmarked for use at the state's discretion for educating and training state and local highway department employees.

The Federal-aid Highway Act of 1956 and the Highway Revenue Act of 1956 increased authorizations for primary and secondary systems and established the Highway Trust Fund. Today, the Highway Trust Fund is used to support the Federal-aid Highway Program, and is financed by a four cent ($.04) per gallon federal gasoline tax, a fifteen cent ($.15) per
gallon federal diesel fuel tax, and other excise taxes. Indiana is apportioned funds by program categories that can be used only for projects to improve the highway system under that specific category. The following is an explanation of the types of funds available under the Federal-Aid Highway Act (and apportioned from the Highway Trust Fund).

**Urban Funds**

Urban funds provide federal aid sources to any city or town with a population over five thousand (5,000), for use on all urban system routes including city streets and state highways within an urbanized area. A street or state highway must be classified as an urban arterial or collector to qualify for urban funds. This includes all city streets (except "local streets") and all state highways not classified as Interstate or Primary Routes.

Urban funds are apportioned by one of two methods. Attributable funds are apportioned to cities and urbanized areas of over two-hundred thousand (200,000) people, after a Transportation Improvement Program has been developed. Non-attributable funds are apportioned to cities and towns with a population between five thousand and two-hundred thousand (5,000-200,000). If a city or town has a population of less than fifty thousand (50,000), a Transportation Improvement Program is not required as a qualifier.

Urban funds can be used for projects on streets, bridges, railroad crossings, street signs, pavement striping, lighting, channelization and traffic signals. The federal share for these funds is 75 percent.

**Rural Secondary Funds**

Federal-aid Rural Secondary Funds are available for use on all rural secondary systems of the state and the counties. To qualify, a state highway or county road must be classified as a major collector, which is defined as a highway that:

- provides service to county seats not on an arterial route;
- provides service to larger towns and other traffic generators;
- links traffic generators with nearby cities; and
- serves important intra-county travel corridors.

Indiana currently allocates one-half (1/2) of the funds to the state and one-half (1/2) to the counties. The counties’ share is allocated based on the following formula:

- one-third (1/3) of the money is based on the ratio of each county’s area compared to the rest of the state;
- one-third (1/3) of the money is based on the rural population of each county compared to the total rural population of the state and;
- one-third (1/3) of the money is based on the local Federal-aid Secondary mileage of each county compared to the total Federal-Aid Secondary mileage in the state.
A sheet asphalt plant at work in the Vincennes area. This plant was used during the transition from less efficient methods of financing road construction to those we know today. (Courtesy of HERPICC)

Rural Secondary Funds can be used for projects on streets, bridges, railroad crossings, street signs, pavement striping, channelization, and traffic signals. Again the federal share is 75%.

Bridge Replacement Funds

Federal funding for Bridge Replacement is available for bridge projects involving the replacement or rehabilitation of bridges on any state highway, county road, or city or town street. To qualify, a bridge must have a sufficiency rating of less than fifty (50) for replacement, and a sufficiency rating of less than eighty (80) for rehabilitation.

Funds from the federal government are apportioned to Indiana on the basis of square footage of deficient bridges and unit price of Indiana bridges compared to the total deficient bridges in the United States. Indiana portions are distributed fifty percent (50%) to the state and fifty percent (50%) to the counties. The federal matching share is 80% of the project costs.

Rail Highway Protection and Rail Highway Crossing Funds

The money allocated from these funds are apportioned to Indiana for the installation and upgrading of rail-highway protection warning devices and upgrading rail-highway crossing surfaces. One third (1/3) of the money is distributed to the Indiana Department of Highways, and two-thirds (2/3) to Local Public Agencies.

These funds are used for construction or reconstruction of minimal roadway approaches to railroad crossings, construction and reconstruction of railroad crossing surfaces, and the installation of railroad crossing signals or gates. However, the funds from this program may not be used for the railroad advance warning signs or pavement markings that are required by Indiana state law. The federal share is 90%.

Hazard Elimination Funds

Funds from this program are to be used on the Federal-Aid Highway System and off-system highways (the majority of these highways are under the jurisdiction of Local Public Agencies). These funds are apportioned to the Indiana Department of Highways and the Local Public Agencies on a seventy percent (70%) to thirty percent (30%) ratio. The funds are used for the correction and improvement of deficient characteristics at narrow bridges, on sharp curves, or at intersections with poor visibility (sight distance) or turning movements. The federal matching share is 90%.

Railroad Relocation Funds

The Federal Government funds ninety-five percent (95%) for projects involving the relocation of railroads within large cities. Funds are allocated for specific projects only.

Emergency Relief Funds

Emergency Relief Funds are available to replace, reconstruct, or repair a roadway system damaged by a natural disaster. To qualify, a large area must be declared by the Governor as a disaster area. Disasters include floods, tornados, earthquakes, or blizzards. Funding varies, but can reach one hundred percent (100%) of the cost of repair, replacement or reconstruction. Normally each state is restricted to receiving a
maximum of $30 million per year. The federal share of these projects is 100 percent.

Other Federal Programs

The Department of Defense, through the Army Corps of Engineers, offers specialized services to states and their political subdivisions or to other local agencies. Included are design and construction projects to protect highways, highway bridges, and essential public works endangered by floods and flood generated erosion. The 1986 water resources law contained a provision which will now require local governments to share costs and consequently have a greater voice in determining the size and shape of corps projects.

General Revenue Sharing

Since 1972, general revenue sharing has played an important role in local government financing. The new reality is that these funds are becoming less available thus forcing local governments to develop alternative methods of financing local road and street projects.

STATE FUNDING SUPPORT

Local governments in Indiana are faced with the problem of increased financing of road and street construction and maintenance within an environment of reduced federal support. The state of Indiana continues to be the primary source of intergovernmental aid to local governments. (See Figure 8-1, "Sources of State Revenue and Spending.") Financial assistance to local governments for road and street work is provided by and coordinated through the Indiana Department of Highways.

The revenue for the road and street assistance programs is generated from several sources, including the gasoline tax, motor vehicle registration fees and driver's license fees. This money is then divided into two funds. 75% of the revenues is placed in the Motor Vehicle Highway Account (MVHA), and 25% goes into the Special Highway User Account (Indiana Elected Municipal Officials' Handbook).

The Department of Highways administers these accounts and makes allocations from them to the various local governments around the state. Because of the numerous local agencies who are vying for this assistance and the complexities involved, problems do arise when making decisions about the distribution of these funds. To help alleviate these problems, the General Assembly decided to use formulas for making allocations to counties, cities and towns. These formulas are based on population, motor vehicle registrations, and road mileage.

Highway, road and street assistance programs are mostly formula based, but some fiscal support can be obtained through direct grants or loans. Under federal law, the Department of Highways also acts as the agent who distributes federal funds to local governments. (See Federal-aid discussion above.)

Motor Vehicle Highway Account (IC 8-14-1)

The Motor Vehicle Highway Account is a part of the general fund of the state and includes revenues collected from motor vehicle registration fees, driver's and chauffeur's license fees, gasoline taxes, excise taxes and all other similar special taxes.
Estimated for the
Indiana State Fiscal Year
July 1, 1986 to June 30, 1987

Total Net Receipts (Excluding Federal Funds) ........................................ $5,101,900,000.00

Revenue Comes from:

- Motor Vehicle Tax 6 cents
- State Income Tax 27 cents
- Motor Vehicle License and Fees 2 cents
- Other Taxes and Income 7 cents
- Gasoline Tax 4 cents
- Federal Funds (not included in above receipts) 32 cents

Total Appropriations (State Funds Only) .................................................. $5,002,700,000.00

Revenue Goes to:

- Property Tax Replacement 10.1 cents
- General Administration 4.9 cents
- Higher Education 12.7 cents
- Local Public Welfare 7.3 cents
- Other State Expenditures 11.2 cents
- Local Roads and Highways 4.4 cents
- Aid to Schools 32.6 cents
- Other Local Aid 15.0 cents

Source: Indiana State Budget Agency

Figure 8-1 Sources of State Revenue and Spending
The money in the Motor Vehicle Highway Account is budgeted for programs of traffic safety, construction, reconstruction, improvement and maintenance. MHVA funds may not be used for any toll road or toll bridge project. A distribution is made between the Indiana Department of Highways and subordinate political subdivisions having jurisdiction over highways of the state. The funds allocated to the counties, cities and towns are budgeted as provided for by law, and the county budgets are referred to the respective County Councils for approval or revision.

Not all funds in the MVHA are allocated for road and street work. Certain extraneous expenses are paid out of the account before distribution to the local agencies. The State Police Force receives half of its funding from the gas tax. The Bureau of Motor Vehicles also receives gas tax revenues as compensation for administering the registration and fees programs (Indiana Elected Municipal Officials’ Handbook).

After the extraneous expenses are deducted, The Motor Vehicle Highway Account funds are distributed as follows:

- Fifty-three percent (53%) is credited to the state highway fund for use by the Department of Highways.

- Thirty-two percent (32%) is allocated to the counties as follows:
  - Five percent (5%) of the amount is divided equally among the 92 counties,
  - Sixty-five percent (65%) is based upon the ratio of actual county road miles traveled and used in the county compared to the total mileage of county roads in the state.
  - Thirty percent (30%) is divided on the basis of the ratio of motor vehicle registrations of each county compared to the state’s total number of registered motor vehicles.

- Fifteen percent (15%) is allocated to the cities and towns based solely upon the ratio of their population to the total population of the state’s cities and towns.

The Motor Vehicle Highway Account distribution to a county constitutes a special road fund to be used under the exclusive supervision and direction of the Board of County Commissioners and is to be budgeted annually. The money can be used for construction, reconstruction and maintenance of highways. Furthermore, the money can be used for the purchase, rental and repair of highway equipment, painting of bridges, acquisition of grounds for storage buildings, acquisition of rights-of-way and the purchase of fuel oil and supplies necessary to the performance of construction, reconstruction and maintenance of highways.

The allocation of MVHA funds to cities and towns is made annually and is to be used for construction, reconstruction, repair, maintenance,
oiling, sprinkling and cleaning of highways, snow removal, weed and tree cutting and the city or town's share of the cost of grade separation of public highway/railroad crossings. In addition, the money can be used for the purchase, erection, operation and maintenance of traffic signs, signals and safety zone devices and the painting of highway structures, objects and surfaces for the purpose of safety and traffic regulation. The money can also be spent by cities and towns for law enforcement purposes if no more than fifteen percent (15%) is used for that purpose by a city or town with a population less than five thousand (5,000), or ten percent (10%) by a city or town with a population that is over five thousand (5,000).

If any MVHA funds are used for purposes other than those for which they were allocated, the local official responsible is liable in the amount that was used plus additional costs of attorney fees.

A portion of the 47% of the MVHA allocated to the local governments (counties, cities and towns) may be appropriated to the Department of Highways to pay costs incurred in providing services to these political subdivisions. Additional funds from the local governments' share and the distressed road fund may also be appropriated to the department for the purpose of maintaining working balances and to facilitate matching of federal and local money. If a surplus remains at the end of the year, it continues as part of the highway fund and is rebudgeted (IC 8-1.4-1-4).

Special Highway User Account (IC 8-14-2)

This fund is maintained through revenues from the gasoline and special fuel taxes, vehicle registration and drivers' license fees. Fifty-five percent (55%) of the money is deposited into the Primary Highway Special Account (PHSA) to be used by the Department of Highways, and forty-five percent (45%) is deposited into the Local Road and Street Account (LR&SA) to be allocated to and used by local governments.

Local Road and Street Account (IC 8-14-2)

The forty-five percent (45%) of the Highway Road and Street Fund deposited into the Local Road and Street Account is distributed monthly to units of local governments. The Auditor of the state allocates money from this account on the basis of the ratio of each county’s passenger car registrations compared to the entire state’s registration. The Auditor further determines suballocations between the county and the cities within the county as follows:

- in counties with a population of over fifty thousand (50,000), sixty percent (60%) of the money is distributed on the basis of population and forty percent (40%) is distributed on the basis of the ratio of city and town street mileage to county road mileage; and

- in counties with a population of fifty thousand (50,000) or less, twenty percent (20%) of the money is distributed on the basis of population, and eighty percent (80%) is distributed on the basis of the ratio of city and town street mileage to county road mileage.
The funds allocated from the LR&SA can be used by local governments for many of the purposes associated with the MVHA, except that these funds cannot be used for administrative salaries, expenses or equipment purchases. The money may be used by counties, cities and towns for engineering, land acquisition, construction, resurfacing, maintenance, restoration, and rehabilitation of both local and arterial road and street systems. The funds may also be used for the payment of principal and interest on bonds sold primarily to finance road, street or thoroughfare projects. If a county, city or town undertakes a recreational or reservoir road project, funds from this account can be used for that project as well.

For an overview of the distribution and allocation of the two state assistance accounts detailed above (the Motor Vehicle Highway Account and the Local Road and Street Account) see figure 8-2.

**Shortage of Money in the Motor Vehicle Highway Account**

In the event that the amount of money remaining in this account after deductions, refunds, and payments is less than twenty-two million six hundred and fifty thousand dollars ($22,650,000) in any fiscal year, the amount set aside in the next calendar year for distribution to the counties is reduced by fifty-four percent (54%) of the deficit, and the amount set aside for cities and towns is reduced by thirteen percent (13%) of the deficit. The reduced distributions begin with the January 1 distribution of each year.

**Mandatory Transfer of Funds**

A written agreement between the Indiana Department of Highways and a county, city or town may provide for a mandatory transfer of funds by the Auditor of the state if one of the parties becomes more than sixty (60) days late in making a payment required in an agreement. To obtain a mandatory transfer, the party to whom the funds were to be paid under terms of the written agreement must certify in writing to the Auditor:

1. that a written agreement between the parties authorizes the mandatory transfer of funds;
2. that the owing party was notified in writing of the amount owed;
3. that the payment is more than sixty (60) days past due;
4. the name of the parties; and
5. the amount of the payment due.

Upon receipt of the certificate, the Auditor is to notify the delinquent party of the claim, and if proof of payment is not furnished within thirty (30) days, a transfer of money from the delinquent party’s allocation from the Motor Vehicle Highway Account will made to the other party. Transfers are made until the unpaid amount is paid in full.

**Distressed Road Fund (IC 8-14-8)**

The Indiana Department of Highways administers the Distressed Road Fund, which is a nonbudgetary, nonreverting fund that provides assistance to counties, cities and towns which have serious road and street deficiencies. The main purpose of the fund is to enhance public safety and to ensure the free flow of commerce.
Revenue Generated from gas tax, excise tax, motor vehicle registration, driver's license and chauffer's license fees.

75% to Motor Vehicle Highway Account
25% to Special Highway User's Account

53% to Indiana Dept. of Highways
15% to Cities and towns
32% to Counties
55% to Indiana Dept. of Highways (primary highway special account)

Motor Vehicle Highway Account, after extraneous expenses are deducted

45% to Local Governments (local Road & Street Account)

Special Highway User's Account

Figure 8-2 Distribution of Highway User Taxes
A qualified county is one which has adopted the County Motor Vehicle Excise Surtax and the County Wheel Tax, has not issued bonds for the benefit of the local county road and bridge district, and meets the population requirements outlined in IC 8-14-8-3. Such counties may apply to the Indiana Department of Highways for a loan from the Distressed Road Fund. (This application must include a map depicting all roads and streets in the county and the county's proposed program of work). The county must notify the State Board of Tax Commissioners that an application has been made.

Within thirty (30) days of the application for a loan, the State Board of Tax Commissioners submits to the Indiana Department of Highways a financial report, which includes the amount of money available to the county for road construction and maintenance, an analysis of the use of highway money for the last five (5) years, and any other information required by the Department for processing the loan. The Indiana Department of Highways then notifies the county within sixty (60) days of the date of application of its approval or disapproval. The maximum term of repayment of the loan is ten (10) years. A loan repaid within the time specified in the agreement is not subject to interest. However, if a loan is not repaid within the time allowed, an interest charge of twelve percent (12%) annually will be fixed.

The Indiana Department of Highways can also authorize loans from the Distressed Road Fund to any city or town that is eligible to receive a distribution from the Motor Vehicle Highway Account. The application must include a map of all roads and streets in the system and a copy of the proposed work to be done. The Department will notify the applicant within sixty (60) days of its approval or disapproval. If a loan is granted, no interest or penalty is given if paid within two (2) years. If it is not paid within the time, the Auditor of the State will withhold distributions from the city or town's allocation from the Motor Vehicle Highway Account.

Money from a loan under the Distressed Road Fund can be used only for the purpose of matching federal highway funds.

Funds in the Distressed Road Fund may be appropriated to the Indiana Department of Highways to maintain a working balance in accounts that are established primarily to facilitate the matching of federal and local money for highway projects.

**County Highway Engineer Fund (IC 8-17-5)**

Each year, nine hundred twenty thousand dollars ($920,000) is withheld by the state auditor from the counties' share of the April distribution of the Motor Vehicle Highway Account, to be used exclusively to assist counties in maintaining full-time employment of a county highway engineer.

Each county employing a full-time engineer shall be allotted a grant-in-aid subsidy of $15,000 from this fund ($7,500 to each of two counties jointly employing one engineer), which is to be used exclusively for the engineer's annual salary and expenses. This salary shall be fixed by the board of county commissioners and supplemented for travel and other expenses incurred in the discharge of the engineer's duties. Any unused funds shall revert to the counties' share of the Motor Vehicle Highway Account (MVHA) at the end of the year.

8-11
The salary and expenses of the county highway engineer may also be paid from the county general funds and the county's share of the MVHA.

**Lighting of Highways, Streets and Roads (IC 8-13-6.5 and IC 36-9-9)**

The Indiana Department of Highways is required to light dangerous curves and intersections, heavily traveled sections, and bridges of the state highway system.

To accomplish this lighting, the department enters into agreements for the sharing of utility costs with counties, cities and towns where parts of the highway are located. The cost is paid by the state, counties, cities and towns in accordance with the agreement entered into before installation.

A municipality lighting its own streets is required to make payments to the utility company providing the lighting system with money from its general fund or with money set aside for street lighting purposes. Not less than thirty-five percent (35%) of the annual cost of the lighting system can be assessed against each lot or parcel of real property in front of which the lighting system is located.

**Railroad Crossings (8-6-2.1)**

The Board of Public Works of any city may enter into an agreement with any Railroad Company for the removal, relocation, or reconstruction of any track, roadbed, yard, station or other railroad facility. The total cost of improvements are kept in an account by the City Board of Public Works, and cannot exceed the estimate adopted in a resolution.

The Indiana Department of Highways shares the cost of any improvement if it involves a highway that is part of the state highway system. The County Council also provides funds to pay the county’s share of the cost, either by appropriating money from available funds or by selling bonds.

**STATE REVENUE**

**State Highway Fund (IC 8-13-5)**

The State Highway Fund provides money for construction, reconstruction, operation, maintenance, and control of the state highway system. This fund is supported from a number of sources, including money credited to the State Highway Fund, the Motor Vehicle Highway Account, portions of State Highway funds not used in the previous years, and money appropriated from the state treasury.

**State Toll Roads and Bridges (IC 8-15-2)**

The Toll Finance Authority constructs, reconstructs and operates toll road and toll bridge projects at locations approved by the Governor. The Authority fixes, imposes, collects and uses tolls for the maintenance, repair, improvement and operation of the toll road. The Authority also aids in financing for the construction of roads located near the toll roads.

**Revenue for Highways Near Toll Roads (IC 8-15-2)**

The Toll Finance Authority can finance, develop, construct, reconstruct, improve or maintain public improvements, such as roads, streets, sewer lines, water lines, and sidewalks for manufacturing or commercial
activities within a county through which a toll road passes, if these improvements are within an area ten (10) miles on either side of the center line of a toll road project; or two (2) miles on either side of any limited access highway that interchanges with a toll road project.

In addition, the Toll Finance Authority, in cooperation with the Indiana Department of Highways or with a political subdivision, can construct, reconstruct, or finance the construction or reconstruction of an arterial highway or an arterial street that is located within four (4) miles of the center line of a toll road project or intersects with a road or street that interchanges with a toll road project.

The Toll Finance Authority also assists in the development of existing transportation corridors in Northwestern Indiana.

COUNTY, CITY, TOWN REVENUES

County Motor Vehicle Excise Surtax (IC 6-3.5-4)

(Annual License Excise Surtax)

The County Council of any county may adopt an ordinance to impose an Annual License Excise Surtax on passenger vehicles, motorcycles, and trucks (Limit: 11,000 pounds). The County Council must concurrently adopt the County Wheel Tax. The license surtax must be at the same rate for each vehicle, and cannot exceed ten percent (10%) or less than two percent (2%), but must be more than seven dollars and fifty cents ($7.50).

The surtax is collected by each branch office of the Bureau of Motor Vehicles at the time registration fees are paid. The branch office manager then remits the surtax to the County Treasurer on or before the tenth (10th) day of each month.

Before the twentieth (20th) day of each month, the County Auditor allocates the money among the county, cities and towns in the county, using the same formulas as the Local Road and Street Account. Before the twenty-fifth (25th) day of each month, the County Treasurer distributes to the county, cities and towns the money deposited in the County Surtax Fund during that month. Surtax revenues received are to be used for the construction, reconstruction, repair, or maintenance of streets and roads in the jurisdiction.

County Wheel Tax (IC 6.3.5-5)

The County Council of any county may adopt an ordinance to impose an Annual Wheel Tax on buses, recreational vehicles, semi-trailers, tractors, trailers and trucks if they are not a) used by the state or political subdivision; b) subject to the Annual License Surtax; or c) operated by a religious or nonprofit youth organization for use to transport persons to services or for the overall benefit of their members. The vehicles to be taxed must be registered in the county. In order to adopt the Wheel Tax, the County Council must concurrently adopt the Annual License Excise Surtax.

Each license branch collects the tax on each vehicle at the time it is registered. In appropriating the money, the City-County Council of a county that contains a consolidated city (Marion County) appropriates the money to the Department of Transportation for use by the depart-
ment. The City-County Council may not appropriate the money for any other purpose.

In a county without a consolidated city, the County Treasurer deposits the Wheel Tax revenue in the County Wheel Tax Fund. Before the twentieth (20th) day of each month, the County Auditor allocates the money among the county, cities and towns using the same procedures used in the Local Road and Street Account. Before the twenty-fifth (25th) day of each month, the County Treasurer distributes the money to the county, cities and towns.

A county, city or town can use the money generated from the County Wheel Tax only for the construction, reconstruction, repair, or maintenance of roads and streets under its jurisdiction.

**Revenue Bonds**

Bonds are a source of obtaining short-term revenue in exchange for long-term debt. Projects financed by bond issues must have identifiable revenue sources because they must be paid back. "Bonds are appropriate for a one-time capital expense where there is some new tax or fee that can be pledged for repayment or where the local government expects future growth sufficient to repay the bonds" (APWA, 1982, p. 14). Bonds raise money quickly, but interest rate fluctuations and political consideration make it difficult to use this method of financing routinely.

In Indiana, cities and towns can issue bonds for highway, road and bridge work, but counties can issue bonds only for bridge work. The power for counties to issue bonds for the construction of county unit roads has been suspended since June 7, 1937, (IC 8-18-14-1), and can only be reinstated by an act of the Indiana General Assembly.

**Cumulative Bridge Fund (IC 8-16-3)**

All municipalities and Boards of County Commissioners have the authority to create a Cumulative Bridge Fund to provide funds for the cost of construction, maintenance and repair of bridges, approaches and grade separations. If a county establishes such a fund, the Board of County Commissioners is responsible for providing funds for all bridges—including those in cities and towns within the county (except those bridges on the state highway system). Before the Cumulative Bridge Fund is established, a proposal from the municipality or Board of County Commissioners must first be approved by the State Board of Tax Commissioners.

In order to collect revenue for this fund, the County Commissioners, City Council, and Town Board can levy a tax annually, for up to five (5) years - with the approval of the State Board of Tax Commissioners. This tax cannot exceed thirty cents ($0.30) on each one hundred dollars ($100) of assessed valuation of all taxable personal and real property within the county, city or town. If a county leases a bridge, it may levy this tax for up to fifteen (15) years to pay its lease rental obligation. The leasing of bridges by counties is authorized under IC 8-16-3.5-1, and this statute also permits counties to pay the rental fee from the cumulative bridge fund. The full text of IC 8-16-3.5 is provided in volume 2, if more information is needed on the requirements and guidelines for the leasing of bridges.

Any tax collected under the Cumulative Bridge Fund cannot be used for any purpose other than that for which it was imposed.
Major Bridge Fund (IC 8-16-3.1)

The purpose of the Major Bridge Fund is to provide supplemental financing to counties for the construction of any county bridge that spans major obstructions and is larger than bridges ordinarily required to make a county highway system functional. A major bridge is a structure that is two hundred (200) or more feet in length and is erected over a depression or obstruction for the purpose of carrying motor vehicular traffic or other moving loads. If any second class city is located in a county with a population of not less than one hundred thousand (100,000) and not more than one hundred twenty-five thousand (125,000), then a major bridge is one which is one hundred (100) or more feet long. A major obstruction is a physical barrier which inhibits the use of normal highway construction techniques to bridge the barrier without the use of grade separation structures.

In order to collect revenue from this fund, the Board of County Commissioners of an eligible county may levy a tax. An eligible county is one which has a population of not less than one hundred thousand (100,000), but not more than seven hundred thousand (700,000), and has a major obstruction which is capable of causing an economic hardship because of excess travel required to conduct a normal level of commerce. A major obstruction that is part of the county or state boundary does not qualify. The tax levied cannot exceed ten cents ($0.10) on each one hundred dollars ($100) assessed valuation of all taxable personal and real property. This tax rate can be levied annually, but cannot exceed five (5) years and must first be approved by the State Board of Tax Commissioners.

Any tax collected under the Major Bridge Fund cannot be used for any purpose other than that for which it was imposed.

County Toll Bridge (IC 8-16-10)

The Board of Commissioners of any county bordering on a river or stream forming the boundary line between Indiana and Illinois, Kentucky, Michigan or Ohio, can establish a temporary Bridge Commission known as the Indiana Bridge Commission. This Commission prepares the necessary and proper plans for the construction of a bridge between the two states. Upon completion, a new and permanent Joint Commission is established which fixes the rate of toll for the bridge. The money collected from the toll is paid to the County Treasurer for use in meeting the interest and installments of principal on the bond. After the bond is paid, the money goes into the general fund of the county.

Property Tax (IC 6-1.1-18)

The property tax is a significant source of revenue for governmental units in the state of Indiana. It is levied directly against the assessed valuation of tangible property and may not exceed one dollar and twenty-five cents ($1.25) on each one hundred dollars ($100) of assessed valuation in territory outside the corporate limits of a city or town; or two dollars ($2) on each one hundred dollars ($100) of assessed valuation in territory inside the corporate limits. While the total amount of revenues generated by property taxes is controlled by state law, there are some exceptions to these limits.

The taxing units are required to make a budget for the fiscal year and appropriate funds from all sources of revenue in such a manner that expenditures do not exceed the budget. Outlays for road and street work
should be included in this budget. However, no ad valorem property tax may be used for county highways, except by unanimous vote of the County Council in a case of an extraordinary emergency or indispensable necessity.

**Parking Meters and Parking Fees (IC 36-9-11 and IC 36-9-12)**

By the use of parking meters, a municipality can regulate the parking or standing of vehicles on or off any public way, and provide for the collection of fees from a person parking a vehicle on or off a public way. Regulations and fees must first be established by an ordinance.

The money raised from the parking meters is deposited with the clerk-treasurer or treasurer in a special fund and can only be disbursed on orders of the Municipal Works Board or Board of Public Transportation. The money can be used to pay the cost of installing and operating the parking meters (including cost of clerks and bookkeeping), traffic signal devices; repairs and maintenance of any public way; the curbs and sidewalks where the parking meters are used and all public ways connected with them; suitable land for off-street parking facilities; the principal and interest on bonds issued to acquire parking facilities and devices; improving and maintaining land for parking purposes; purchasing, installing, and maintaining parking meters on that land; and purchasing, maintaining, operating and repairing school crossing protective facilities.

**QUESTIONS AND ANSWERS CONCERNING ROAD REVENUES**

**MOTOR VEHICLE HIGHWAY ACCOUNT**

**Q:** What is the motor vehicle highway account (MVHA) and how is it used?

**A:** The motor vehicle highway account is the account of the general fund of the state to which are credited collections from motor vehicle registration fees, licenses, driver's and chauffeur's license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or excise taxes and all other similar special taxes, duties or excises of all kinds on motor vehicles, trailers, motor vehicle fuel or motor vehicle owners or operators (IC 8-14-1-1). Funds from the MVHA are distributed monthly to local government units by the auditor of the state. The net amount in the motor vehicle highway account shall be budgeted for programs of traffic safety and for the construction, reconstruction, improvement, maintenance, and policing of the highways of the state (IC 8-14-1-2). The funds allocated to the counties shall be used for construction, reconstruction and maintenance of the highways of the respective counties (IC 8-14-1-4). All funds allocated to the cities and towns shall be used for the construction, reconstruction, repair, maintenance, oiling, sprinkling, snow removal, weed and tree cutting and cleaning of their highways and any curbs. The funds shall also be used for cities' or towns' share of the cost of the separation of the grades of crossing of public highways and railroads, the purchase or lease of highway construction and maintenance equipment, the purchase, erection, operation and maintenance of traffic signs and signals, and the painting of structures, objects and surfaces for highway safety and traffic regulation (IC 8-14-1-5).
LOCAL ROAD AND STREET ACCOUNT

Q: How does a governmental unit obtain money from the local road and street account?

A: The auditor of the state shall distribute money from the local road and street account to units of local government. This money is distributed monthly and no application is needed to obtain funding (IC 8-14-2-4).

Q: How are funds allocated from the local road and street account fund?

A: The auditor of the state is required to allocate funds in the local road and street account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. In determining the suballocation between the county and the cities within, the auditor uses the following formulation: 1) Counties with a population of more than 50,000, 60% of the money is distributed on the basis of population and 40% distributed on the basis of the ratio of city and town street mileage to county road mileage. 2) In counties having a population of 50,000 or less, 20% of the money is distributed on the basis of population, and 80% on the basis of the ratio of city and town street mileage to county road mileage (IC 8-14-2-4).

Q: How are funds from the local road and street account to be used?

A: The money from the local road and street account shall be used exclusively by the cities, towns, and counties for engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems; the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects; or for any local costs required to undertake a recreational or reservoir road project (IC 8-4-2-5).

CUMULATIVE BRIDGE FUND

Q: What is the cumulative bridge fund and how is it used?

A: All municipal corporations and boards of county commissioners are authorized to establish a cumulative bridge fund to provide funds for the cost of construction, maintenance and repair of bridges, approaches and grade separations. In the counties that have established such a fund, the boards of county commissioners are responsible for providing funds for all bridges, including those in cities and towns within the county (except those bridges on the state highway system). County commissioners are also authorized to use this fund for making county-wide bridge inspections and safety ratings of all bridges not on the state highway system. Before this fund can be established, the proposed action of any municipal corporation or board of county commissioners to establish such a fund shall first be approved by the state board of tax commissioners (IC 8-16-3-1).
Q: Can interest earned on the investment of cumulative bridge funds be diverted to the general fund?

A: The answer appears to be no.

IC 8-16-3 authorizes the establishment of cumulative bridge funds by counties and municipalities to provide for construction, maintenance and repair of bridges, approaches and grade separations. The fund can also be used to pay for bridge inspections if these inspections are accomplished by a qualified engineer and meet the Federal Highway Administration bridge inspection standards.

The fund is established by a tax levy after the requirements of notice and subsequent approval by the State Board of Tax Commissioners have been met. Counties, cities and towns have the power to levy a tax of not more than $.30 per $100 assessed valuation of all taxable real and personal property. Once collected, the statutes stipulate that the tax will be held in a special fund and will not be expended for any purpose other than that for which it was established. No expenditure can be made until a proper appropriation has been made.

IC 5-13-1 contains the provisions for the investment of public funds and the disposition of interest derived from those investments. When authorized to do so, the county treasurer may invest tax collections in accordance with the provisions of the chapter. "The interest received on such investments shall be receipted into the county general fund" (IC 5-13-1-3). This would appear to authorize the application of interest on taxes collected to the general fund, but IC 5-13-1-4 contains the stipulation that "... all interest derived from investments shall become part of the funds invested." Since the cumulative bridge fund is a separate fund for a specific purpose, it appears that interest accrued from the investment of cumulative bridge funds must become part of the fund and cannot be transferred to general funds.

**DISTRESSED ROAD FUND**

Q: What is the distressed road fund? How does a county qualify, and what are the procedures for applying for these funds?

A: The distressed road fund is a nonbudgetary, nonreverting fund created to provide financial assistance, through loan, to counties which have serious road and street deficiencies. A county must have a population over 9,000 but not more than 41,800 with variations (IC 8-14-8-3). The county must adopt the county motor excise surtax and the county wheel tax (and have not issued bonds) in order to be eligible (IC 8-14-8-4). The application for the distressed road fund must include a map depicting all roads and streets in the system of the applicant, and a copy of that county's proposed program of work covering the current and the next calendar year. The department of highways will notify a qualified county of approval or disapproval within 60 days. A county has up to ten years for repayment with no interest. If the loan is not fully repaid at the end of this period, the county is subject to a rate of interest of twelve percent (12%) per year (IC 8-14-8-4 and 8-14-8-7).
WHEEL TAX

Q: How is the wheel tax adopted and by whom?

A: The county council of any county may adopt an ordinance imposing an annual wheel tax on buses, recreational vehicles, semitrailers, tractors, trailers, and trucks that are registered in the county, and not a) owned by the state, a state agency, or a political subdivision; b) subject to the annual license excise surtax; or c) a bus owned and operated by a religious or nonprofit youth organization and used to haul persons to religious services or for the benefit of their members. The county council must concurrently adopt an ordinance imposing the annual license surtax (IC 6-3.5-5-2 to 6-3.5-5-4).

Q: How is the money collected from the wheel tax to be used?

A: Wheel tax revenues are to be allocated among the county and the cities and towns in the county by the County Auditor. The county may use wheel tax revenues it receives to construct, reconstruct, repair or maintain streets and roads under its jurisdiction. No other use is allowed (IC 6-3.5-5-15).

COUNTY MOTOR VEHICLE EXCISE SURTAX

Q: How is the Motor Vehicle Excise Surplus Tax established and applied?

A: Any county that has adopted an ordinance to impose the wheel tax (described above), may concurrently adopt an ordinance to impose an excise surtax. The surtax only applies to passenger vehicles, motorcycles and trucks with a gross weight not exceeding eleven thousand (11,000) pounds. The county council may impose a surtax of not less than two percent (2%) or more than ten percent (10%) of the annual license excise tax imposed on the registration of a vehicle. However, the total surtax on any vehicle may not be less than seven dollars and fifty cents ($7.50). The same rate must be imposed on all applicable vehicles registered in the county (IC 6-3.5-4-2 and IC 6-3.5-4-7).

Q: How is the surtax collected, allocated and used?

A: The surtax shall be collected by the branch office of the bureau of Motor Vehicles and deposited by the branch manager into a separate account to be remitted, on or before the tenth day of the month, to the county treasurer of the county imposing the tax (IC 6-3.5-4-8 and IC 6-3.5-4-9). In any county not containing a consolidated city, the county treasurer shall deposit the surtax revenues into a fund called the "County Surplus Tax Fund." Before the twentieth day of each month, the county auditor shall allocate the money in this fund to the county and the cities and towns contained in the county, using the formula for the distribution of Local Road and Street Account funds. The county treasurer shall distribute these funds by the twenty-fifth day of each month. Surtax revenues may only be used by a county, city or town to construct, reconstruct, repair, or maintain the streets in its jurisdiction (IC 6-3.5-4-13).
CUMULATIVE CAPITAL IMPROVEMENT FUND

Q: How may the cumulative capital improvement fund be used?

A: The common council of each city and the board of trustees of each town shall, by ordinance or resolution, establish a cumulative capital improvement fund for the city or town. The city or town may only use money in its cumulative capital improvement fund to: 1) purchase land, easement, or right-of-ways; 2) purchase buildings; 3) construct or improve city owned property; or 4) retire general obligation bonds issued by the city or town. Any city or town may at any time, by ordinance or resolution, transfer to its general fund any money derived which has been deposited in the city's or town's cumulative capital improvement fund (IC 6-7-1-31.1).

BONDING FOR LOCAL ROADS AND STREETS

Q: Can bonds be issued to finance local street and road work?

A: Counties may only issue bonds to finance bridge work. Cities are not quite as limited. They may issue bonds for road and street work, following these guidelines:

1. For the purpose of raising money to pay for establishing, laying out, opening, widening, changing, improving or constructing highways, the county shall issue the bonds of the county, not to exceed in amount the contract price and all expenses incurred and damages allowed prior to the letting of the contract (IC 8-17-1-13). Note that this provision has been suspended by the following.

2. Any provision which authorizes the issuance of bonds for the construction of county unit highways, and any provisions which authorize the issuance of any bonds or other evidence of indebtedness, payable by taxation for the construction or improvement of any free gravel or maximized road are currently suspended (IC-8-18-14-1).

3. Local county road and bridge boards may issue bonds in the name of the qualified county for the benefit of the local county road and bridge district. The bonds shall be issued for the purpose of raising money to acquire land or rights-of-way and to pay for any capital improvement necessary for the construction, reconstruction, or operation of roads or bridges within the district. A local county road and bridge board may issue bonds only if the county motor vehicle excise surtax and the county wheel tax are in effect and the county motor vehicle excise surtax is being imposed at the maximum allowable rate (IC 8-14-9-10).

4. The works board (board of commissioners for a county not having a consolidated city, board of public works or
board of public works and safety for a city, or board of trustees for a town) may issue bonds in anticipation of the collection of the assessments for an improvement. These bonds shall be issued and sold in the manner prescribed for other bonds of the unit (IC 36-9-18-31).

SPECIAL PROBLEMS/PROJECTS

Q: How can a city or town pay for street lights?

A: The funds allocated to cities and towns from the motor vehicle highway account may be used for the installation of street lights if it is a matter of traffic safety (IC 8-14-1-5). Concerning payment to the utility company supplying electricity, the municipality shall pay the entire annual cost of lighting of street intersections, and not less than thirty-five percent (35%) of the annual cost of lighting the entire other part of the lighting system with the exact percentage fixed by the municipal works board through its general funds or from a fund set aside for street lighting purposes. The remaining annual cost of the lighting system shall be assessed against each lot or parcel or real property in the city block or blocks in front of which the lighting system is located (IC 36-9-9-9).

Q: Under what conditions is the Indiana Department of Highways required to pay for street lights?

A: The Indiana department of highways is required to illuminate dangerous curves, intersections, and heavily traveled sections of state highway system and the bridges in the system (IC 8-13-6.5-1)

Q: Who is responsible for the installation and the utility costs of lighting on state highway systems?

A: The department of highways shall enter into an agreement for the sharing of the utility costs of illumination of street lights within cities, towns, and counties when such highway is located in part within a city, town, or county before the installation of the lights. The cost of installation of the lights may be paid by the state and the cities, towns, and counties in accordance with agreements entered into before the installation takes place (IC 8-13-6.5-1).

FEDERAL AID HIGHWAY FUNDS

Q: What type of federal-aid highway funds are available?

A: There are nine types of categorical programs available.

1. Urban funds for use on all urban systems routes including city streets and state highways. An urbanized area is any city or town over 5,000 population.

2. Rural Secondary funds for use on all rural secondary systems including county roads and state highways.
3. *Bridge Replacement fund* for use on bridge projects involving replacement or rehabilitation.

4. *Rail highway protection and rail highway crossings funds* for use on projects involving railroad crossings on or off a federal-aid system.

5. *Hazard elimination funds* for use on federal-aid highway system at high or potentially high accident areas to correct or improve the roadway deficiency.

6. *Access highways to lakes funds* for use on recreational roads to man-made lakes or reservoirs constructed by the U.S. Army Corp. of Engineers.

7. *Railroad relocation funds* for use on projects involving the relocation of railroads within large cities.

8. *Emergency relief funds* to replace, reconstruct or repair a roadway system damaged by a natural disaster.

9. *Transportation system management funds* for support of such demonstration projects as Ride Sharing, Van Pools, Bikeways, etc.

(Information supplied by IDOH, Division of Local Assistance).

**Q:** How are federal-aid highway funds apportioned to the states, and how are the funds to be used?

**A:** Federal aid highway funds are apportioned to the states through the Highway Trust Fund, which is financed by the federal fuel tax and various excise taxes. Funds are apportioned to the states by categorical programs. Funds in the categorical programs can only be used for projects to improve the highway system of the same category.

**Q:** How are Federal Aid Highway funds made available to local governments?

**A:** The Federal Highway Administration is the federal agency tasked with the implementation of the federal aid program. The Division of Local Assistance, Indiana Department of Highways, assisted and supported by other offices and divisions of the IDOH has primary responsibility for implementing the federal aid program. The division coordinates closely with the counties in program and management of the approval and distribution of federal funds which must be matched by local funds in a proportion determined by the type of project. Federal-aid projects must not be initiated without FHWA approval. Local officials contemplating projects coordinate closely with the Division of Local Assistance to avoid delays/violations as the project progresses.
GENERAL LOCAL FUNDING CONSIDERATIONS.

Q: In general, how are funds raised by the state, counties and municipalities for highways, roads and streets?

A: In accordance with statutory provisions, funds for highway construction, improvement, maintenance, repair and other highway purposes may be raised by the state and distributed to local governments, by the issuance of bonds payable from taxes or special assessments, or from revenues collected by tolls for the use of roads (West's Indiana Law Encyclopedia, Section 97 - Highways).

Q: How must the county highway fund be appropriated?

A: The county council is required to appropriate funds for the operation of the county highway department for the entire budget year. The appropriation is to be not less than the greater of 75% of the estimated highway fund or 99% if the county commissioners have filed a four year plan for construction and improvement and a one year maintenance and repair plan for county highways (IC 6-1.1-18-8).

LOCAL PUBLIC AGENCY OBLIGATION REPORT (FEDERAL AID HIGHWAY FUNDS)

Q: What report is received from the IDOH summarizing the federal-aid funds spent by each Local Public Agency, the funds available for a fiscal year, and the balance of unused funds?

A: Each quarter the Division of Local Assistance prepares and distributes a report entitled "Local Public Agency Obligation Report" for "Federal-Aid Highway Funds".

This report lists the use of federal-aid highway funds by Local Public Agencies (counties, cities, and towns) for a federal fiscal year (FFY) (October 1 through September 30) for a five year period (previous three years, current year and following year). The report includes the federal funds allocated each year with the carry over from the previous FFY, the total funds either obligated or refunded per Local Public Agency, and the balance of funds remaining. The report is divided into the different categories of federal-aid highway funds which are allocated each year.

Q: What funding categories are listed in the report.

A: The funding categories listed are as follows:

- Urban funds - Group I cities
- Urban funds - Group II cities
- Urban funds - Group III cities
- Rural Secondary funds
- Bridge Replacement funds
- Railroad Crossing funds
- Hazard Elimination funds
- Minimum Allocation funds
REFERENCES


Indiana Department of State Revenue, 1983. Indiana Gasoline Tax Regulations. Indianapolis, Indiana Department of State Revenue.


CHAPTER 9
ORGANIZING AND MANAGING THE LOCAL ROAD AND STREET EFFORT

by Jim Turley

INTRODUCTION

There are no 'final' answers to the challenge of organizing local road and street entities, whether they be large or small. Quoting from Peter Drucker: "The best structure will not guarantee results and performance. But the wrong structure is a guarantee of non performance." (Management, 1973, p. 519)

This chapter is about organizing and managing the road and street effort. It begins with a general treatment and then becomes more specific in its application to local road and street organizations.

The discussion begins with a review of management principles, then proceeds to an examination of the functions of local road and street organizations. A short review of human behavior in organizations follows. The discussion then moves into organizational considerations. The importance of training is emphasized. Development and use of administrative instructions is highlighted as is project development and management. The chapter closes with a very general treatment of the public contracting process. Questions and answers about some of these topics follows.

Management writers most heavily used as sources for this chapter are Drucker, Koontz, O'Donnell, and Weihrich, and Hersey and Blanchard. The N.A.C.E. Action Guide Series was also helpful in the development of the chapter. Space is inadequate for full treatment of these writings and others. Users are encouraged to use the works cited in the reference list which appears at the end of this chapter.

MANAGEMENT PRINCIPLES

The term "management" has been defined and redefined, but one definition which is useful, concise and combines both the operational and behavioral aspects, is proposed by Hersey and Blanchard:

"Working with and through individuals and groups to accomplish organizational goals." (Management of Organizational Behavior, p.3)

Although this definition is a product of a behavioral view of management, it reflects elements of a functional approach to management which
is well developed and discussed by Koontz, O'Donnell and Weihrich in their classic, *Management*. The authors identify a number of specific managerial functions, the study of which applies to both industrial and governmental situations. This functional approach to the study of management is useful because it describes what managers and leaders do. Koontz, O'Donnell and Weihrich use this approach because it aids in "classifying knowledge". This, they say in their writing, is an indispensible approach to developing a science of management. *(Management, p. 79)*

The functions of the manager differ from enterprise or organizational functions such as selling, accounting or manufacturing. These functions vary from one organization to another while basic manager tasks are common throughout.

**Planning**

The first management function is planning, which is the process of deciding in advance what is to be done, when to do it, and who is to do it. The essential nature of planning is described by identifying and explaining four major aspects: contribution to objectives, pervasiveness, primacy, and efficiency. Every plan exists as a guide to the accomplishment of organizational objectives, and planning logically precedes the execution of other management activities. Planning is a continuous process pervading all aspects of the organization, whether it be the long range (four to five year plan) or routine, short-range activities. The efficiency of plans is measured by the contribution to the purpose or objectives of the organization.

A data base and the ability to analyze its information are needed to provide planning information for decision making. Transportation budget, financial projections, and road and bridge inventories contain information required for planning.

Valid assumptions (premises) are necessary to deal with uncertainty. For instance, the national government's appropriation delays require state and local agencies to make assumptions about future federal funding support. Valid assumptions are those which are logical and which have a positive connection with overall objectives. Subjective consideration of the probabilities of an event occurring is sometimes necessary to complete a road and street plan formulated in an uncertain funding environment.

The ability to develop and analyze alternative courses of action is also important. It is not enough to simply state alternatives. Each should be analyzed in light of the current and projected environment to foresee advantages and disadvantages of each course of action. More informed decision making will result. The steps in the planning process are displayed in Figure 9-1.

**Organizing**

Organizing is the structuring and ordering of the association of functions necessary to attain organizational objectives. Organizational structure is effective if it facilitates the attainment of the objectives of the organization and does so at a minimum cost.

There is a limit in the structure as to the absolute number of employees a person can adequately supervise. The ability of the manager or
supervisor may well be the limiting factor in determining this span of control. This aspect of supervisory management is often referred to as the span of management.

Authority to accomplish objectives within the organizational framework is primarily conferred upon an individual as a result of the position that person occupies in the organization. This authority is sometimes referred to as position power - the power which results from occupying that position in the organization. The study of authority and power is much more complicated. Clear lines of authority will generally increase the effectiveness of decision making and internal communications. The personal leadership style and characteristics of the leader are important elements in developing subordinate supervisors, and determine leadership effectiveness.

Staffing

Staffing is the process of defining and filling roles in the organization. The process should be regarded as a system which facilitates both current and future organizational objectives. Again turning to Koontz, O'Donnell and Weihrich, there are two overriding principles which have an impact. These are quoted as follows:

"The principle of staffing objective. The objective of managerial staffing is to ensure that organizational roles are filled by those qualified personnel who are able and willing to occupy them. The clearer the definition of organization roles, their human requirements and techniques
of manager appraisal and training, the more assurance there will be of managerial quality."

Applying a systems approach to staffing will utilize the capabilities and potential of individuals.

Some principles concerning the process of staffing:

- Job definition. Define results expected as precisely as possible.
- Managerial appraisal. The more precisely the job definition principle is fulfilled, the easier it is to establish a process for measuring results.
- Open competition. Commit to the assurance of quality management which will encourage more open competition among all candidates for management positions.
- Management training and development. Integrate training and development into the management process to enhance effectiveness.
- Training objectives. Establish processes to precisely state training objectives to improve the probability of attainment.
- Continuing development. Commit to managerial competence and require managers to practice continuing self development.

Leading

One of the most descriptive single-word definitions of leadership is "influence." While management science deals more with the processes of getting things done, leadership focuses more on the human aspects and the attempt to close the gap between the expectations of the organization and those of the individual.

Koontz, O'Donnell and Weihrich amplify with some leadership principles:

- Integration of goals of claimants. The better goals of workers and managers are integrated and balanced, the more effective the enterprise.
- Harmony of objectives. Harmonize the personal goals with those of the organization.
- Unity of Command. Use a single supervisor approach to avoid conflict and confusion.
- Motivation. Examine and learn from the theories of motivation and integrate those aspects which have value into the reward structure of the organization.
- Leadership. Provide the means for managers to learn and apply leadership principles.
- Communication clarity. Communicate in a way that can be understood by the receiver.
- Communication integrity. Integrity and consistency can enhance acceptance by the receiver of communications.
• Use the informal organization. Communication tends to be more effective when managers use the informal organization to supplement formal communication channels.

Controlling

The task of control is to ensure that implementation of plans and action succeed by observing and detecting deviation and providing feedback. It implies the measurement of task accomplishment against some standard planning technique such as Gantt charts, the critical path method (CPM) and/or program evaluation review technique (PERT), all of which are excellent tools.

Some principles which describe the purpose and nature of control are:

• Assurance of the objective. Control ensures that plans succeed by detecting deviation and providing the basis for corrective action.

• Future directed controls. Work to base a control system on feedforward rather than just feedback. This provides a means to anticipate problems before they occur.

• Control responsibility. Primary responsibility should rest with the manager charged with the performance of the plans involved.

Plans should be complete, clear, and integrated and the structure should aid in assigning responsibility. To the end that structure aids control, the easier it will be to correct deviation from the plans. Controls should also be understood by managers.

Some thoughts about the process of controlling:

• Establish accurate, objective, and suitable standards.

• Pay attention to the factors central to evaluating performance against the master plan.

• Establish procedures which will ensure that controls are focused to identify exception rather than to monitor all activity.

• Controls should be flexible enough to readily adapt to change.

• Take action when deviations occur.

Coordination

Koontz, O'Donnell and Weihrich do not list coordination as a function of management, but they do admit that many authorities argue that this process should be a separate function. It is probably more useful to think of coordination as the "thread" or "essence" of management. It is also a process which is inherent and which has as its main objective the achievement of harmony and the synchronization of efforts directed toward the accomplishment of organizational and group objectives.

FUNCTIONS OF ROAD AND STREET ORGANIZATIONS

In this section, the enterprise functions of road and street organizations are explored. The most common functions are personnel administration, purchasing, financial management, maintenance management,
planning (short and long-range), design, engineering, and inspection, subdivision monitoring, right of way acquisition, service support and contract administration. Note that this list is by no means final since the functions performed will vary somewhat between organizations, and are affected by the type and scope of the political subdivision involved.

Personnel management encompasses the important function of managing the road and street personnel situation which is usually a component of the local unit's larger personnel system. Road and street managers must be involved in the definition and classification of jobs, because technical knowledge of the content of jobs is important in developing valid position descriptions.

Purchasing activities, including the development of specifications for supply and service contracts, are also important. These activities range in scope from routine purchases to the development of large scale design and construction contracts. (See contract administration, below.)

Financial Management is a critical function. Local officials are intimately involved in the management of funds, and short and long range plans must be translated into fiscal terms which provide the basis for program budgeting. Evaluation of budget execution is another inherent financial management task, and is of intense interest to elected and non-elected officials.

The maintenance effort encompasses the management of pavement and bridge maintenance operation and planning. Included is contingency planning which insures that unanticipated problems can be dealt with. Use of available computer software can increase the effectiveness of road and street maintenance programs.

Planning, which was discussed in the opening of this chapter assists the organization in ensuring that dollars and resources are available in the right amounts, and when needed, to meet requirements. Long range road and street planning is required to fulfill the requirements of existing thoroughfare plans or to ensure that federal funding requirements are met in time to initiate projects which are supported by Federal funds.

Design and engineering functions are inherent road and street organization tasks. Because of resource constraints, this function is sometimes fulfilled by approved consultants under contract to the political subdivision.

Inspections are necessary to insure that roads, streets, bridges and structures meet safety and maintenance standards. Inspections provide information which can be input into the organization's planning system. Effective training will insure that personnel have the skills required to be effective inspectors.

The management of the approval of subdivision permits is often a joint function of the road and street organization and the local planning department. Comments and evaluations of subdivision proposals and plans ensure that streets and accesses to thoroughfares meet required standards.

Right-of-way acquisition and management is an important function of road and street organizations. The procedures for accomplishing this important task are treated in detail in Chapter 5 of this handbook. The governmental entity's attorney plays a key role in right-of-way acquisi-
tion procedures. It should also be repeated that the rules are much more
detailed when use of federal funds is anticipated.

The service support function is key to the accomplishment of the
road and street mission. Signs, barriers, safety and traffic control equip-
ment must be provided to insure the operational integrity and safety of
the road or street system. Provision and maintenance of motorized road
and street equipment is also required. Service support is routine in the
day-to-day operations. Administrative procedures should be established
and written to ensure that supplies are on hand, are properly accounted
for, and are properly used.

**Contract Administration.**

Activities include development of specifications, plans, requests for
proposals, evaluation of bids and making recommendations concerning
the responsiveness and responsibility of the bidders. Administration of
road and street contracts, in effect, includes monitoring of compliance
with contract provisions, inspection of work performed, approval of
requests for payments made by the contractor and activities associated
with close-out of a contract.

**BEHAVIOR IN THE ORGANIZATION**

County and municipal road and street departments are also human
organizations. Conflict cannot be solved by technical skill alone.
Managers and supervisors should develop interpersonal skills. Required
skills vary depending upon the level at which managers are working.
There are at least three areas of skills necessary: technical, human, and
conceptual.

**Technical:** The ability to use knowledge, methods, techniques and
equipment for the performance of specific tasks. These skills are
acquired through experience, training and education.

**Human:** Ability to work with and through people. This skill requires an
understanding of motivation and leadership principles, and the ability to
apply this knowledge.

**Conceptual:** Ability to understand organizational complexities and how
the individual job, or organizational entity fits in with and contributes to
the whole. This knowledge expands the ability to contribute to the
overall objectives of the organization. (See Hersey and Blanchard, p. 6.)

Beginning supervisors and leaders use technical skills in greater
proportion to conceptual skills. As these supervisors move up the organiza-
tional hierarchy, this mix of skills changes, with a greater proportion of
conceptual skills being required and used. Figure 9-2 portrays this rela-
tionship and readily points to the common denominator critical at all
levels - human skill.

Professionally designed workshops and university training sessions in
human relations are available in various areas of the state. The Purdue
Road School sometimes provides workshops designed to provide informa-
tion about the human side of road and street management and supervi-
sion. Also, Purdue's Department of Supervision offers courses in super-
visory management at both the West Lafayette campus and at regional
campuses and other designated locations within the state. The Depart-
ment of Supervision should be contacted for detailed information and
course offerings. Call 317-494-5598 for more information.
DEVELOPING THE LOCAL ROAD AND STREET ORGANIZATION

Effective organizational practice aids in defining relationships, eliminating duplication, facilitating communication, clarifying responsibilities and providing a means of explaining the highway, road or street management function to the governmental unit executive. In short, the organizational concept and the resulting structure is an efficient means of ensuring practical and stable management. (NACE, 1987 Action Guide, Vol. I).

Drucker states that the right structure is a prerequisite for performance. Designing the building blocks, he says, is the "engineering phase" of structuring the organization. Determining the objectives (missions) and the inherent functions are critical to any work on organizational structure. (Management, p. 523)

The size, scope and complexity of the organizational structure will depend upon the mission and the available financial and physical resources. Local political and geographical considerations are variables which must also be added to this brew.

Organizational problems which require solution include job definition and description, qualifications, compensation and combinations and enlargement of jobs and definition of the organizational structure. Study of span of control theory and the efficiency of various combinations will aid in obtaining a clearer view of the structure. How will jobs be defined? What jobs must be combined? How many departments are pos-
sible? How many positions can be supervised and/or managed by a single person? For instance, a county engineer may be required to consolidate the engineering and highway departments rather than having the advantage of enough professionals to head both departments.

Once organizational structure is decided, it will be either flat (many departments/functions under the supervision of a single manager), or tall (few departments or functions for which a single staff officer is responsible). One would suspect that in most cases the highway or traffic engineer will be responsible for many functions, so a flat structure will be the inevitable result.

The astute professional manager will look at a nicely structured organizational chart and realize that it is to be effective only if it reflects the actual functioning of the organization. Informal communication processes are present and can have both positive and negative impacts on organizational performance. The grapevine, peer relationships and other cross-communication processes can be valuable and should be evaluated from time to time to determine whether or not further structural change might improve overall mission performances, efficiency and effectiveness of the organization.

Since the definition of the duties and responsibilities of road and street personnel is directly related to both mission performance and resulting structural arrangements, the following section takes a closer look at this issue.

Managers of county or municipal highway, or street departments can organize more effectively if some concepts are kept in mind. (See also Vol. I, of the 1987 NACE Action Guide Series for a more detailed discussion.)

Lines of authority can be more clearly drawn in larger organizations, but insuring that authority relationships are known and depicted will improve coordination and eliminate confusion. Authority to accomplish a task can be delegated, but the overall responsibility for accomplishment remains with management (highway engineer or traffic engineer) or, ultimately, the elected executive of the governmental unit.

When examining the delegation of authority, the manager should consider the job maturity of the individual and that person’s past performance and experience. The subordinate should be given a complete understanding (written, if possible) of the tasks to be performed, condition under which these tasks are to be performed, and the standards by which successful task accomplishment is to be measured.

Necessary authority must accompany the assignment of responsibility. A method of establishing authority-responsibility relationships is through the analysis of tasks to be accomplished, and the development of written job descriptions. Job descriptions are helpful in determining the person who should be hired and assigned.

The ideal situation is a written job description for every position in the organization. Some knowledge of the technical requirements of jobs is needed. Sometimes several members of the organization can add their expertise to the development of job descriptions. Often overlooked is the expertise and knowledge of the incumbent filling the position being studied.
A sample job description might be as follows.

**VEHICLE MAINTENANCE SUPERVISOR**

Supervises the operation and administration of the highway department vehicle maintenance facility. Plans and assigns vehicle maintenance tasks. Establishes a schedule for maintenance services and plans and orders a prescribed load of vehicle repair parts based upon historical usage data. Develops budgets and organizes the vehicle maintenance facility. Screens applicants for maintenance positions and makes hiring recommendations to the county highway engineer. Supervises and evaluates motor vehicle maintenance personnel.

In some cases, the duties and responsibilities of officials are set forth in the Indiana statutes. Two of these important statutes are found in Vol. II.

The first is IC 8-17-5, *County Highway Engineers*. This statute outlines the statutory responsibilities of the Boards of Commissioners and establishes the County Highway Engineer's responsibilities. Qualifications and licensing standards as well as conditions for state support are established in this statute. (See Ch. 9, Vol. II for the full text of the County Highway Engineer statute.)

The second statute which provides job description information is IC 36-9-7, *City Department of Traffic Engineering*. This statute describes the qualifications, powers, authority and duties of the traffic engineer and briefly describes the composition of a city department of traffic engineering.

Returning briefly to the discussion of organizational structure, efficiency is maintained and communication simplified if the number of levels in a vertical structure are kept to a minimum. This is a simple task in a smaller organization, but not so simple in a large one. Span of control (the number of persons being supervised) should be held to a number which can be effectively managed by that person. This number varies from organization to organization and is affected by such variables as the overall mission, expertise of persons and complexity.

Whenever possible, each division of the organization should be assigned a single function. Again, it may be necessary to "double hat" managers and supervisors in smaller organizations. The type of work also may vary by function, i.e. staff, line and support or auxiliary staff.

Line personnel are found mostly in the operating levels of the organization. Staff services such as administration, personnel, finance, and research, support the department. Auxiliary staff services may be provided to all agencies of the governmental unit. Most common are personnel, purchasing and controller functions which are common to all departments.

In smaller units there may be few, if any, staff employees so these tasks will be assumed by the operational personnel of the departments.

**TRAINING AND TRAINING MANAGEMENT**

Competent county or municipal highway or street departments insure that the stewardship is maintained and this competency can be
developed and increased through interesting and professionally presented training. Well-designed and implemented training programs ensure a high level of professionalism and efficiency throughout the organization. Safety awareness and compliance is enhanced, efficiency is improved, as is its by-product, quality. Espirit is established and maintained in the organization, and both internal and external liability exposure can be reduced as a result.

The County Highway Engineer or the Municipal Street Superintendent provides the impetus and leadership in designing effective training programs. Inherent are the tasks of evaluating the training needs of the organization and designing and implementing programs which will bridge the gaps identified during training needs analysis.

The first step in designing a training program is the training needs analysis. The completion of this training needs analysis is required before a truly meaningful training program can be designed and implemented. In their Action Guides, the National Association of County Engineers developed questions which require answers while developing a training program. These questions are also applicable to municipal organizations.

- What are the training needs of the department?
- What is to be accomplished?
- Which employees are to be trained?
- What will be the nature of the curriculum?
- Where will the training take place?
- What training resources are required?
- Who will provide the instruction?
- What external resources are required for success?

Initially, the answers of these questions constitute essential elements of information which will provide the basis for the training program. Figure 9-3 provides a schematic of the process of developing a training program.

**Purdue Road School**

The Purdue Road School was established by the legislature to provide a forum for the presentation of new developments and improved practices relating to Indiana's highways, roads and streets. It also allows discussion and coordination between state, county and municipalities concerning shared concerns. All segments of the industry attend and all sessions are open and without charge.

The county surveyor and county engineer of each county and any other person authorized by the county executive, as well as the civil and traffic engineer of each municipality and any other person authorized by the municipal executive may attend the annual road school at Purdue University. Expenses for attending road school, including mileage, lodging and tuition, shall be paid from the county general fund for county officials, while the municipal legislative body may appropriate funds annually to pay these expenses for municipal officials (IC 36-9-8-2 and 36-9-8-3).
1. **Identify Missions**
   Identify and state all technical and administrative missions.

2. **Analyze Missions/ Capabilities**
   Determine individual and organizational capabilities (training goals) required to accomplish the missions. Determine tasks required to accomplish each capability.

3. **Establish Performance Objectives**
   Establish criteria and standards for each individual and organizational task determined.

4. **Determine Current Level of Individual and Organizational Proficiency**
   Use pretests, past performances, subjective evaluations to determine the current level of proficiency for each performance objective established in Step 3.

5. **Determine Training Needed**
   Compare results of Step 4 with results of Step 3 to determine gaps between desired performance and current performance. Results of this comparison reveal the training needed to achieve the performance objectives established in Step 3.

6. **Identify Resources**
   Identify external and internal resources required and available. What resources are needed?

7. **Determine Training to be Conducted**
   External and/or internal? What combination of resources? Content?

8. **Program and Schedule Training**
   Program and schedule training based upon the priorities (Step 7), and resource availability (Step 6).

9. **Conduct Training**

10. **Monitor and Evaluate Training**
    Evaluate training efficiency (resource utilization and accomplishment of performance objectives) and the effectiveness (contribution of training to mission performance). Use results to revise training needs (Step 5).

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*Figure 9-3 Development of a Training Program*
DEVELOPMENT AND USE OF ADMINISTRATIVE INSTRUCTIONS

During the early stages of writing this handbook, a survey of local road and street officials was conducted to determine their perception of a number of administrative problems. One of the significant problems indicated by the results of this survey was a lack of, and/or inadequacy of administrative instructions in road and street departments.

Administrative procedures which contribute to order in the internal management and operations of the road and street department are not created overnight. Planning and structure are important in developing a master outline. In many situations, the administrative guidelines may be a simple collection of policy and procedure letters which have been developed over time, or they may take the form of a large and well defined document.

A suggested outline for administrative instructions might be as shown in Figure 9-4.

1. Organization, Missions, and Functions of the Road and/or Street Department
   - Mission
   - Organization
   - Staffing
   - Facilities
2. Personnel Operations
   - Qualification and Recruitment
   - Compensation
   - Employee Records
   - Performance Evaluation, Discipline, Separation
   - Labor Relations
3. Purchasing
   - Authority
   - Procedures
   - Specifications
   - Delivery and Payment
   - Special Situations - federally supported projects
   - Agreements and Monitoring by State of Indiana
4. Maintenance Management
   - Work Programs
   - Scheduling
   - Signs and Signing
   - Quality Assurance and Inspection
   - Vehicle Maintenance and Operation
   - Safety
5. Bridge Inspection and Inventory
   - Inspectors
   - Procedures
   - Data Collection and Analysis
   - Reports
6. Safety Programs
7. Special Training Programs
8. Interlocal Agreements
9. Emergency Notification Plan
10. Relations with the Public

Figure 9-4 Administrative Instructions
Local governments often have the option of planning the use of federal-aid funds for all or part of a project. Federal aid projects are administered by the Indiana Department of Highways in accordance with federal guidelines established by Congress and implemented by the Federal Highway Administration. Local officials and their road and street professionals need to know the rules to be followed when programming local projects. Planning which considers and evaluates the potential use of federal funds will help to insure compliance with federal guidelines from concept development to completion.

General guidelines for project development are presented here. Detailed guidance is available from the Local Assistance Division, Indiana Department of Highways. The division is responsible for programming and monitoring the expenditure of federal-aid funds at the local level.

A comprehensive planning process is required to establish procedures for local project development and to provide continuity during inevitable changes in elected personnel. A four to six year planning horizon with annual changes provides the basis for sound project planning. It is not uncommon for projects to take more than two years to complete from the time of concept and design. Some can take much longer.

Resource availability and limited funds make prioritizing of projects a reality of the planning process.

Projects which are on the approved Federal-aid system are subject to Federal support. If projects are not on the federal-aid system, a system change can be requested through the Department of Highways. Initial and early coordination should be made with the Division of Local Assistance which will provide guidance concerning current procedures.

Once projects are selected for support, the following actions can be taken by the local government.

Program federal funds for either preliminary engineering, right of way or construction phases of construction. This is done by filling out and submitting the FA 2 Forms required by the Department of Highways. The Division of Local Assistance establishes and publishes the procedures for submitting the FA 2 Forms in the annual programming letter mailed to local governments in January of each year. This letter is published in six parts as follows:

- Introduction.
- Funding balances.
- Fund Categories.
- Memorandum of Problems. (Statement and discussion of problems which have occurred in the submission of FA 2 Forms in the past.
- Instructions for providing IDOH authorization to proceed on federal-aid projects.
- Instructions for the completion of the Intro and FA 2 Forms.
Indiana Department of Highways District Coordinators are in place to assist local governments in their planning of federal-aid projects. The role of these coordinators is discussed in Chapter 3.

Some common problems with the paperwork include:

- Failure to indicate costs.
- Character of the work not indicated.
- No map attached.
- No Intro Form.
- Failure to prioritize the projects.
- No road classifications indicated.
- Missing requests for authorization to proceed.
- Insufficient number of copies.

FA 2 Forms are reviewed by the area engineers to determine status. The forms are reviewed by the Division of Local Assistance for completeness and to select projects for the annual program.

Early in the planning process, the local government must evaluate alternative methods of project development. All alternative methods require a state-local agreement. A common alternative is to use consultants rather than local forces. Available resources and expertise will indicate the proper course of action. Consultant selection and employment procedures must be in accordance with the Federal-Aid Highway guidelines which are developed and monitored by the Federal Highway Administration. The IDOH Division of Local Assistance monitors progress and informs local governments of future changes. Another method is the use of the Railroad Force account. This is a special case which requires an agreement between the railroad and the local government. Railroads will usually perform the work.

Note that special guidelines are to be followed when local forces are used on federally supported projects.

Project development will generally include the following regardless of the source of funds.

- Determination of the type of Environmental Statement required. Three categories are subject to consideration. Categorical exclusion applies to projects which have no significant impact. Environmental Assessment with a finding of no significant impact (FONSI) may be required in a number of situations. An Environmental Impact Statement is required for projects which have a significant environmental impact. These projects may involve any or all of the following: relocations, rights-of-way, historic sites, extensive public opposition, and other potentially detrimental environmental impacts.

(Note: If in doubt, the best course of action is to begin with an environmental assessment.)
- Obtaining approval of sketch plans, which will aid in smoothing the way for design concept approval and a determination of the need for a soils investigation. Preliminary plans are then submitted for review, revised and resubmitted. Design approval precedes finalized construction plans. If right of way is involved, it must be certified clear along with all utilities. The project can then be scheduled for bid letting.

If federal aid is to be used in the construction engineering phase, some additional requirements must be met. Selection of a consultant is governed by procedures which are similar to those already mentioned. If construction engineering is accomplished by local forces, the project engineer, a full time employee of the agency, must be named as project engineer and approved by the Department of Highways. Work will then proceed only after the IDOH provides notification to proceed.

Procedures must be established early to accurately maintain required records. For instance, records showing mileage, hours on the project, and classification of persons doing work must be maintained by the project engineer. Claim vouchers for federal share of the work can be submitted no more often than monthly.

Figure 9-5 Project Progress Chart. Indiana Department of Highways
Some important dates to remember when thinking about federal-aid projects (subject to change).

- Annually, in January. Local Assistance Division publishes and distributes the Annual Programming Letter for the following federal fiscal year.
- April 15. FA 2's for proposed projects must be submitted to the Indiana Department of Highways.
- Any project that is ready for construction may be added to the annual program at any time during the fiscal year.

Figure 9-5 is a highway project progress chart published by the Indiana Department of Highways. It is a useful model for local governments.

Local governments can obtain more detailed and up to date information by calling the Division of Local Assistance at 1-317-232-5314 at the Indiana Department of Highways.

PUBLIC CONTRACTS

Generally, Indiana’s public purchasing and public construction statutes apply to all political subdivisions. The statutes cover procurement and lease of materials using public funds, the source of which can be state, local or federal; and the alteration, construction, or repair of public facilities and improvements which are paid from public funds or special assessments. The applicable statutes are IC 36-1-9 and IC 36-1-12.

Change is a constant which affects the content of these statutes, so it is impossible to present information in this chapter which is not subject to change, even before publication. Road and street officials are encouraged to use the information provided by the various associations such as the Association of Indiana Counties and the Indiana Association of Cities and Towns and other organizations. Attendance at state and regional meetings of these organizations is encouraged.

Some broad comments about the purchasing and contracting statutes follow. First, specification bidding, letting and contract administration requirements differ depending upon whether the action to be taken is a purchase/lease of material or a public construction project. Requirements also differ depending upon the dollar value of each of these activities. With few exceptions, the dollar divisions are for those projects valued at $25,000 or below and those projects which are estimated to exceed $25,000 in cost or value. There are also special requirements within public construction categories.

The public purchasing and contracting statutes also contain some exceptions. One is important to local road and street officials because it places a dollar limit on the maintenance and repair of county highways - with the approval of the county commissioners. The 1987 legislature raised the limit (depending upon the classification of the county) by IC 33-13-1-26 and these limits may change in the future.

The statutes contain definitions of terms associated with the lease and purchase activities in the state and prescribe bid limits for leases and purchases of materials, rules pertaining to sole-source procurements, and purchases with public funds. Bidding procedures differ depending upon the estimated dollar value of the contract. The higher value contracts are governed by more detailed and stringent rules resulting in the requirement for more formal bidding and award procedures.
QUESTIONS AND ANSWERS
ORGANIZING AND MANAGING THE LOCAL ROAD
AND STREET EFFORT

PROJECT MANAGEMENT

Q: How is federal-aid planning and programming information passed to local governments?

A: The Local Assistance Division of the Indiana Department of Highways publishes this information in the Annual Programming Letter which is mailed to political subdivisions in December of each year. The annual letter supplements detailed guidance which is published in the division's Local Assistance Manual.

Q: What are the requirements for establishing road and street work accounts?

A: The governing body of every local government is required by law to establish and maintain an adequate system of accounting for its road and street responsibilities. This system will be established by the state board of accounts. Every December, the entity must prepare an operational report of this account including all receipts and their sources, all expenditures and their purposes, the number of employees and their work classification, all proposed works for the upcoming calendar year, and any other information the board of accounts may deem necessary. This report must be filed no later than February 15, and should be made available to the public and press. (IC 8-17-4.1-2 to IC 8-17-4.1-7)

Q: Who checks these accounts and why?

A: The State Board of Accounts is required to establish and monitor the system. Receipt of motor vehicle highway account funds is contingent upon compliance with the statute (IC 8-17-4.1-8).

Q: Why do federal and state requirements for accounting records differ?

A: Federal guidelines are mandated as a result of statutory requirements which contain strict requirements to meet federal fair employment practices, provide opportunities to minority contractors, meet national environmental protection standards, provide relocation assistance, and other requirements. The Local Assistance Division of the Indiana Department of Highways provides detailed information concerning these requirements and others in their Annual Programming Letter and the Local Assistance Manual.

Q: The term "four year road plan" sometimes appears in literature or arises during discussions. What is a "four year road plan"?

A: Earlier statutes contained a requirement for a four year road plan as a pre-requisite for receiving some forms of funding. IC 8-17-5 contains the current statutory requirement and authorization for County Highway Engineers. It also requires the County Highway Engineer to develop a long-range program (IC 8-17-5-6) which ".....shall at all times cover a period of at least four (4) years."

Q: What requirement is there to prepare local road and street inventories?
A: The Indiana Department of Highways is required to periodically inventory, by mileage and use, the local road systems under the jurisdiction of the counties and the street system under the jurisdiction of the cities and towns (IC 8-13-14.5-1).

Q: Who is responsible for such inventories?

A: The Department of Highways is responsible for such inventory and, after giving adequate notice to applicable local units of government that an inventory is underway, shall confer with local officials to confirm the accuracy of the inventory (IC 8-13-14.5-1). At the completion of the inventory the respective local officials shall receive a copy.

PUBLIC CONTRACTING

Q: What public contracting responsibilities must be met by political subdivisions?

A: The statutes which cover public purchasing and contracting are quite detailed and are changed somewhat during legislative sessions. Public agencies are generally responsible for:

- Developing plans and specifications.
- Ensuring that federal and state planning deadlines are met for projects using federal funds.
- Preparing requests for proposals.
- Ensuring that proper notice is given.
- Ensuring that proper bidding procedures are used in the process.
- Ensuring that bidders meet federal, state and local requirements for presenting evidence of financial responsibility.
- Ensuring that work is properly inspected and requests for payment are proper and detailed in accordance with the contract.
- Ensuring that contractors are paid in a timely manner.

(Note: Applicable statutes are: IC 36-1-9 and IC 36-1-12.)

Q: Are there differences in procedures when contracting for services, purchasing materials, or contracting for public construction projects, including those involving roads and streets?

A: Yes, with some exceptions. These procedures are covered in IC 36-1-9 and IC 36-1-12.

Q: What authority do local road and street officials have to enter into contracts?

A: IC 5-17-4-2 authorizes the state, any unit of local government, or any agency of a unit of local government (ie. local road and street
officials) to enter into contracts with public or private persons for the performance of a service that the local government officials deem necessary or desirable in the public interest (IC 5-17-4-2).

Q: Why are contractors required to be bonded?

A: A contractor must deposit a bond with his bid to insure execution of the contract once the bid is accepted. This execution includes the faithful performance of all work detailed in the contract and any payments the contractor must make to subcontractors or for supplies and materials (IC 5-13-5-6).

REFERENCES


Highway Extension and Research Project for Indiana Counties and Cities, May 1980. *Guidelines Purchasing and Purchase Contracts by Indiana County Highway Departments,* Purdue University, West Lafayette, IN.


Indiana Association of County Commissioners, 1985. *Handbook for Boards of County Commissioners - Guideline Series for Public Purchasing/Public Contracting for County Roads/Culverts/Bridges.* Indianapolis, IN.


CHAPTER

10

DESIGN AND SPECIFICATION FOR STREETS AND ROADS

by Gil Satterly

INTRODUCTION

Counties and cities have the authority for providing, constructing, improving and maintaining the highways and streets that are so vital in connecting the various activities in the communities (8-17-1-1, 8-17-1-2, 36-9-6-7). The local public authorities have the responsibility to provide safe and convenient local highways and streets to meet the mobility needs of their citizens.

Although some highways and streets will be built in the future on new right-of-way, most of the highway and street activity at the county and city level is involved with the maintenance and improvement of the existing network of highways and streets. Even though counties and cities generally spend more money on road maintenance than on improvements, road improvement is an important part of a road program. Roads that are substandard as to structural adequacy, capacity or safety may be more expensive to maintain than to improve through resurfacing, restoration, rehabilitation or replacement.

When improving roads, standards and specifications for design, construction and materials used in construction must be used to get a high quality product from engineers and contractors and to reduce the probability that local public authorities might be sued for negligence.

Concerning actions that can reduce the incidence of exposure to tort claims, the following is quoted from an article published in Technology Transfer (University of Connecticut Transportation Institute) Volume 2, No. 1, Winter 1984;

"... Decisions concerning professional plans or programs, such as the physical and geometric design of traffic facilities and the application of traffic control devices and regulations, should either be made by competent professionals or be based on the advice of such persons ...

"... All designs for facilities or traffic control devices should be in accordance with currently adopted policies, guidelines, standards, and manual specifications. Geometric designs should be predicated on criteria well above established minimum standards ...

"... Standards of performance should be adopted in the areas of design, construction, operations and maintenance. ..."
STANDARDS, SPECIFICATIONS, GUIDELINES

Various professional organizations and levels of government have developed standards, specifications, guidelines, and manuals for design, construction, maintenance, and materials for use in construction.


All highways, bridges and culverts built in the state of Indiana, not just projects involving federal funds, must use materials that equal the Standard Specifications, Indiana Department of Highways (8-17-1-39).

The design and construction of highways, bridges and culverts involving only local funds are not required to follow the AASHTO Standards but it is strongly recommended that the standards be followed to minimize tort liability.

Rather than writing standards, specifications, guidelines, and manuals following AASHTO or Indiana Department of Highways publications, a rather difficult and arduous task, the legislative body of local public agencies has the authority to incorporate this material by reference into an ordinance or code. The ordinance or code must state that two copies of the material are on file and available for public inspection in the office of the clerk of the legislative body (IC 36-1-5-4).

If AASHTO and state standards and specifications are adopted by reference, the definitions need to be adjusted to fit the county or municipality level of administration. For example:

Section _._ Definitions. Wherever the following terms appear in the Standard Specifications, adopted in section 1, they shall be modified as shown:

1. "department of highways" . . . county road department.
2. "state" . . . county, acting by and through its governing body and other authorized representatives.

Another example for including modifications:

Section _._ Modification. The standard specifications referred to in section 1 are modified as follows:

1. Section _._ is revised to read as follows:
2. Section _._ is deleted.
3. Section _._ is amended by adding a new subsection to read as follows:

This allows the local level of government to adjust the standards and specifications to reflect the local government’s administrative system and to reflect local practices or to fit a particular project.
The adoption by reference of state standards and specifications helps contractors and others in their work for the local public agencies since they are usually familiar with the state standards and specifications.

ENGINEERING SERVICES OR CONSULTATION FROM STATE

IC 8-13-14-1 authorizes and empowers the Indiana Department of Highways to cooperate with counties, cities, and towns by furnishing requested engineering services or consultation and extending the facilities of the department's testing laboratory for the testing of highway construction and maintenance materials or for any other highway purpose. The department is to be reimbursed by the government entity requesting and receiving services to the extent of the actual cost of such service including salaries or personal services.

A board of commissioners may, if they desire, submit all plans, specifications, profiles and forms of contract to the Indiana Department of Highways for their approval, recommendation and assistance. When it is proposed to improve any highway where the estimated cost is greater than $2,000 per mile, or to construct or repair a bridge where the cost is greater than $2,000 and a petition, signed by fifty (50) or more freehold electors of the county, is filed with the board of commissioners, asking that the plans and specifications be submitted to the director of the department, then the board is required by statute to do so, and is not to award any contract for the construction of the highway improvement or bridge until the plans and specifications have been approved by the director (IC 8-17-1-39).

MISCELLANEOUS STANDARDS

New Construction

All new construction or reconstruction of public roads or streets funded wholly or in part by funds of the state, a county, or any city or town shall include the installation of permanent curb ramps at crosswalks at all intersections where curbs and permanent sidewalks are constructed (IC 8-11-11.1-2).

Width

All county highways laid out before April 15, 1905, according to law, or used as such for twenty (20) years or more, shall continue as originally located and as of their original width, respectively, until changed according to law. From and after January 1, 1962, no county highway right-of-way shall be laid out which is less than twenty feet (20') on each side of the centerline of said county highway exclusive of such additional width as may be required for cuts and fills (8-20-1-15).

In the instance of a petition from two hundred and fifty (250) or more freeholders and voters of any county in the state asking that any public highway or highways within such county shall be laid out, established, changed, widened, or improved or that any public highway or highways, or part of such, already established, shall be graded, drained, resurfaced, paved, or improved, the board of commissioners shall determine the width of said highway and also the width of the part of said highway which is to be improved. This width shall not be more than 24 feet, exclusive of berms (IC 8-17-1-7).
Whenever ten (10) or more resident freeholders petition their board of county commissioners for assistance in grading any public highway connecting at either end with a county or state highway, or any highway improved according to chapter 8-19-3, or the boundaries of any city, town, or village, the natural earth roadway shall be graded to a width of twenty feet (20') between inside of ditches, except where physical conditions make such width impossible, and shall have a cross-section crown of eight inches (8"), and a grade not to exceed six percent (6%) (8-19-3-1).

Grade

In any case of grade separations under the provisions of chapter 8-6-1, no plan shall be adopted by the Indiana Department of Highways requiring a grade of any railroad track that shall exceed the established maximum grade governing the operation of that division or part of the railroad on which separation of grades is to be made without the consent of the company operating said railroad. Nor may any order be made requiring the construction of a heavier grade than two percent (2%) on such street railroad, interurban street railroad, or suburban street railroad. Also, the track or tracks of the companies concerned shall not be required to be placed below high-water mark at the point where such change is made (8-6-1-6).

Where the highway is carried over the railroad or where one railroad is carried over another railroad, the clearance from the top of the railroad track to the bottom of the superstructure over the track must be at least twenty-two feet (22'). The plans for the improvement shall not require a permanent grade of any main line railroad to exceed three tenths of one percent (0.3%) unless a greater grade is agreed upon by the railroad company affected (8-6-2.1-8).

QUESTIONS AND ANSWERS
DESIGN AND SPECIFICATION OF ROADS AND STREETS

Q: Road construction standards have varied over the years. What standards and specifications should be followed by local governments in the design and construction of roads and bridges?

A: It is recommended that the standards and specifications for design and construction of roads and bridges of the Indiana Department of Highways (IDOH) and the American Association of State Highway and Transportation Officials (AASHTO) be followed. All highways, bridges and culverts built in the State of Indiana must use materials that equal the Standard Specifications of the Indiana Department of Highways (IC 8-17-1-39).

Q: Are local governments bound by AASHTO and IDOH standards? What latitude exists for the local government to deviate from these standards?

A: Local governments must follow AASHTO and IDOH standards and specifications if federal funds are used on a project. Little or no latitude exists for the local government to deviate from these standards. Locally funded projects are not required to use the design and construction standards, although it is recommended that they do so.
Q: What authority do local governments have to set standards?

A: The county engineer shall, subject to the policies established by the board of county commissioners, prepare and publish standards of design, construction, and maintenance of the county arterial, feeder and local roads that will make the best and most economical use of local road materials (IC 8-17-5-6).

Q: Can specifications be adopted by reference?

A: Yes. Local public agencies have the authority to incorporate by reference into an ordinance or code any materials, including the Standard Specifications of the IDOH or the Policy on Geometric Design of Highways and Streets of the AASHTO (IC 36-1-5-4).

Q: What standards are set for materials used in construction of highways, bridges and culverts?

A: No material shall be used in the construction of a highway, bridge or culvert in the state of Indiana unless such material shall be equal to the material required, and shall meet all tests and standards required, by the state highway department as suitable for the building of highways, bridges or culverts by the state highway department (IC 8-17-1-39).

Q: What are the standards for handicapped access and how do these standards affect construction and planning for roads and streets by local governments?

A: All new construction or reconstruction of public roads or streets funded wholly or in part by funds of the state, a county, or any city or town after June 30, 1978 shall include the installation of permanent curb ramps at crosswalks at all intersections where curbs and permanent sidewalks are constructed (IC 8-11-11.1-2,11.1-3).

Q: Who establishes the standard for width of highways, roads and streets?

A: For roads required by petition, several statutes set forth the width (IC 8-17-1-7, 8-17-1-24, 8-1-3-1). Otherwise the width of a highway, road or street is established by the policies, guidelines and standards of the AASHTO and IDOH in the case of roads were federal funds are used. For local roads and streets where federal funds are not used, it is recommended that AASHTO and IDOH policies, guidelines and standards be followed. Determination of width is, in the final analysis, an administrative matter (West, 30, 13), but the establishment is most often accomplished by ordinance.

Q: What are the duties of the county highway engineer?

A: The county highway engineer is responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board of commissioners, and he prepares or causes to be prepared all surveys, estimates, plans and specifications which are required (IC 8-17-5-1).

Q: What is the liability of local government for alleged negligence in the planning and design of streets?
A: It appears that liability would exist when a public employee has negligently failed to follow and implement road standards that have been previously adopted by the agency. Public agencies and employees can minimize their potential liability for alleged negligence in the performance of their discretionary functions such as planning and designing of highways by acting as a reasonably prudent agency or engineer would in the performance of these duties; i.e., following the professionally accepted standards, policies, guidelines, and specifications. If a claimed loss occurs at least twenty (20) years after the highway was designed (or substantially redesigned), then the public agency and its employees are not liable for negligence in the planning and design of the highway. This does not, though, relieve the agency of its responsibility to maintain the highway in a reasonably safe condition (IC 34-4-16.5-3).

REFERENCES


CHAPTER

11

TRAFFIC
CONTROL AND
MANAGEMENT

by Gil Satterly

INTRODUCTION

The design, installation, operation, and maintenance of traffic control devices are vitally important elements of a good traffic operations program. As stated in the Manual on Uniform Traffic Control Devices, "Traffic control devices are all signs, signals, markings, and devices placed on, over or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn or guide traffic." Traffic control devices (signs, signals, markings, etc.) are the primary and, sometimes, the only means of communicating with drivers and pedestrians as to conditions on the roadway. Therefore it is important that such devices be used discriminately, uniformly and effectively to assure correct driver and pedestrian understanding and timely response so as to provide for safe operation on the highway and street system.

For this to happen the driver must receive appropriate regulatory, warning and guidance information in a uniform manner as he maneuvers his vehicle over the roadway under varying conditions of traffic, terrain and weather. It is the responsibility of the governmental unit in charge of the highway (state, county or city) to provide the traffic control devices that will provide vital information to the driver.

The need for uniformity in design, meaning, application, and location of traffic control devices is most important. Driving conditions of high speeds, heavy volumes, complex and confusing intersections and interchanges, and roadside distractions require traffic control devices that drivers can see, recognize, understand and react to quickly and appropriately to take proper actions to maneuver their vehicles safely along the roadway. Litigation arising from inattention to the basic guidelines for design and use of traffic control devices may cost counties and cities large sums of money. By following the standards and guidelines in the Manual on Uniform Traffic Control Devices and by using sound engineering judgment, the potential for adverse judgments in litigation can be minimized. A failure by government personnel to conform with the requirements of the Manual on Uniform Traffic Control Devices may be sufficient to establish negligence, and therefore liability, should an accident result from the failure to conform. However, since the Manual on Uniform Traffic Control Devices only sets forth minimum require-
ments, compliance may not in itself be sufficient to establish reasonable care. If more than a "minimum" is required by a specific situation, it should be done.

Governmental agencies can reduce tort liability suits involving traffic control devices by implementing five basic principles:

1. Know the laws relating to traffic control devices;
2. Conduct and maintain an inventory of devices;
3. Replace devices at the end of their effective life;
4. Maintain devices to assure they are readable and free of obstructions; and
5. Apply state traffic control device specifications and standards.

(Also see Chapter 2, pages 2-6 through 2-8, for practical tips for reducing agency tort liability.)

INDIANA MANUAL

The Indiana Department of Highways (IDOH) has adopted a manual and specifications for a uniform system of traffic control devices for use upon highways within the state (IC 9-4-1-30). This manual is entitled Indiana Manual on Uniform Traffic Control Devices for Streets and Highways, 1981 and is available from IDOH, Room 1313, Indianapolis, IN 46204, Attention: Contracts Engineer.

The IDOH has placed and maintains such traffic control devices conforming to its manual and specifications upon all state highways, including the state maintained routes through any incorporated city or town, as it has deemed necessary to regulate, warn or guide traffic (IC 9-4-1-31). No local authority shall place or maintain any traffic control device upon any highway in the state highway system or the state maintained routes thereof through any incorporated city or town until it has received written permission of the IDOH (IC 9-4-1-31).

LOCAL AUTHORITY

Local authorities are every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of Indiana (IC 9-4-1-13). Local authorities, in their respective jurisdictions, shall place and maintain such traffic control devices upon highways under their jurisdiction, not including state highways, as they may deem necessary to indicate and to carry out the provisions of IC 9-4-1-1 through IC 9-4-1-137 and local traffic ordinances, or to regulate, warn, or guide traffic. All such traffic control devices erected shall conform to the state manual and specifications (IC 9-4-1-32). (See figure 11-1 for some typical sign installations.)

The Indiana Manual on Uniform Traffic Control Devices for Streets and Highways shall be adhered to by all governmental agencies within the state responsible for the signing, marking and erection of all traffic control devices on all streets and highways within the state (IC 9-4-2-1). The Manual is a guide and does not impose a particular duty. Where local officials have made a determination to erect a sign, the provisions
Figure 11-1 Typical Sign Installations
Taken from Low Volume Roads in Indiana; HERPICC

of the Manual are binding and the local agency is not exempt from liability under IC 34-4-16.5-3, where it fails to follow the provisions of the Manual in erecting the sign.

Local authorities may adopt by ordinance traffic regulations, in addition to those enacted by the state, with respect to streets and highways under their jurisdiction, so long as they do not conflict with or duplicate the provisions of a statute. Fines assessed for violations of traffic ordinances adopted by local authorities may be deposited into the general fund of the appropriate political subdivision (IC 9-4-1-27).
The provisions of IC 9-4-1 do not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from doing any of the following:

1. Regulating the standing or parking of vehicles.
2. Regulating traffic by means of police officers or traffic control signals.
3. Regulating or prohibiting processions or assemblages on the highways.
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one direction.
5. Regulating the speed of vehicles in public parks.
6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersection.
7. Restricting the use of highways by weight of vehicle as outlined in IC 9-4-1-125.
8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.
9. Regulating or prohibiting the turning of vehicles at intersections.
10. Altering the maximum speed limit on a highway (or part thereof) when an engineering and traffic investigation deems that the present speed limit is greater or less than a reasonable and safe speed under the existing conditions. The new speed limit must conform to the provisions stated in IC 9-4-1-58.
11. Adopting such other traffic regulations as are specifically authorized by IC 9-4-1 governing traffic control on public school grounds when requested to do so, by the governing body of the school corporation.

Local control of the routes of state highways in cities and towns shall include only the power of enforcement of the provisions of 9-4-1 and of the regulations passed by the department of highways.

No ordinance or regulation adopted under the subsections of IC 9-4-1-28 shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

A city or town may authorize and pay for signs, by ordinance, to be erected along the routes of state highways if:

1. The sign is an information sign stating only that a famous person is or was a resident of that city or town;
2. The sign conforms to the manual on traffic control devices standards for historical signs; and,

3. A copy of the sign ordinance is sent to the director of the department of highways.

The director of the department of highways may, within sixty days after the effective date of any ordinance adopted under the above stated provisions, prohibit the erection of or cause removal of the sign if he finds that the sign:

1. Creates a traffic hazard; or
2. Expresses a commercial or a partisan political message.

The board of commissioners for the several counties may make suitable rules and regulations covering traffic upon any highway in the county and, if the highway is upon a county line, the joint board of commissioners of the respective counties may make such traffic rules and regulations as shall be suitable and the board of commissioners shall be authorized to take such steps and do such things as are necessary to enforce the rules when made (IC 8-17-1-40). Also see Chapter 2, pages 2-3 and 2-12 of this handbook for authority of the board of commissioners.

**ARTERIAL AND PREFERENTIAL HIGHWAYS**

The board of commissioners in each county shall select a system of county arterial highways (IC 8-11-2-5). A system of arterial streets shall be selected by the agency responsible for highways in each city or town with a population of 5,000 persons or more (IC 8-11-2-6).

The board of commissioners of each county shall establish and designate as preferential highways those public highways in their counties, which, as the most frequently traveled, constitute thoroughfares to and from cities and towns (IC 8-17-9-1). All highways and roads intersecting such preferential highways shall be clearly marked at every intersection with stop signs (IC 8-17-9-2). The board of commissioners shall purchase the stop signs from the Indiana State prison and pay for them from the motor vehicle highway account (IC 8-17-9-3).

The department of highways, with reference to state highways, and highway routes through cities, and local authorities with reference to other highways under their jurisdiction, may, upon an engineering and traffic investigation, designate through highways and erect stop or yield signs at specified entrances thereto or may designate any intersection as a stop or yield intersection and erect like signs at one or more entrances to such intersection. Every stop sign and yield sign shall be manufactured and installed in conformance with the Indiana Manual on Uniform Traffic Control Devices for roads and streets (IC 9-4-1-110).

**LIMITED ACCESS FACILITIES**

The department of highways and the proper authorities of any county, city or town having charge of any highway or street affected by IC 8-11-1 are authorized to design any limited access facility and to regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended (IC 8-11-1-4).
TRAFFIC SIGNALS

All traffic signal control devices on all streets and highways must conform in all respects with the standards, specifications and warrants as set forth in the Indiana Manual on Uniform Traffic Control Devices (IC 9-4-3.1-1).

All traffic signal installations on any street or highway shall be erected only after the completion of traffic engineering studies that verify that the traffic signal control is warranted as set forth in the Indiana Manual on Uniform Traffic Control Devices (IC 9-4-3.1-2).

All traffic signals upon all streets and highways within the state not conforming to the provisions of 9-4-3.1-1 shall be removed by the governmental agency having jurisdiction over the highway (IC 9-4-3.1-3).

All public and private agencies are prohibited from erecting any traffic control devices on any state-maintained highway without the written permission of the department of highways. However, the state department of highways with respect to signals on state highways in cities and towns shall install any signal that meets the standards, specifications, and warrants as set forth in the Indiana Manual. The state shall grant written permission to any city or town to erect such signal if it is not possible for the state to do so immediately (IC 9-4-3.1-4).

UNAUTHORIZED SIGNS, SIGNALS, OR MARKINGS

No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. No person shall place, maintain, or display any flashing, rotating, or alternating light, beacon, or other lighted device which is visible from any highway and which may be mistaken for or confused with a traffic control device or for an authorized warning device on an emergency vehicle. No advertising signs, signals, or devices are allowed over the roadway of any highways, nor between the curb and sidewalk, nor closer than 10 feet from the curb line. No advertising signs or devices are allowed within 100 feet of any highway outside the corporate limits of any incorporated cities or towns which obstruct the view of such highway, or of any intersecting highway, street or alley, or private driveway of a person traveling such highway for a distance of 500 feet or less from such sign or device as he approaches the same. Every such prohibited sign, signal, or marking is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice (IC 9-4-1-38).

GUIDE-POSTS

The board of commissioners of each county may cause guide-posts and guide-boards to be erected, maintained, and kept in repair at the forks, intersections, or crossing places of the most important public highways that cross the county (IC 8-17-10-1). The substance, character, form and design of posts, guide-boards, letters, figures, and devices shall be prescribed by the state highway engineer (IC 8-17-10-2).
RAILROAD CROSSING WARNING DEVICES

Railroads are required to install and maintain at each grade crossing of its railroad with any public highway, railroad crossing signs (crossbucks) and number of tracks signs, if required, placed at right angles with the highway, where possible (IC 8-6-6-1).

The Department of Transportation has the exclusive power to conduct a hearing to declare as dangerous or extra-hazardous any grade crossing in this state that said department shall find to be of such a character as that the safety of the users of such highway requires the installation of automatic train-activated warning signals or other crossing safety devices (IC 8-6-7-1).

Local authorities, with reference to highways under their jurisdiction, may designate particularly dangerous highway grade crossings of railroads. The local authorities shall erect either a yield or stop sign on the street or highway right-of-way approaching the designated crossing (IC 9-4-1-107).

SPEED LIMITS

Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under 9-4-1 is greater or less than reasonable and safe under the conditions found to exist on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum speed thereon which:

1. Decreases the limit within urban districts but not to less than 20 miles per hour; or,
2. Increases the limit within an urban district but not to more than 60 miles per hour during daytime and 50 miles per hour during nighttime; or,
3. Decreases the limit outside an urban district, but not to less than 35 miles per hour.

Local authorities shall determine by an engineering and traffic investigation the proper maximum speed for all local streets and shall declare a reasonable and safe maximum speed permitted under IC 9-4-1 for an urban district.

Local authorities do not have power to alter speed limits on state highways except that they may establish speed limits on state highways upon which a school is located subject to several provisions (IC 9-4-1-58).

Whenever local authorities determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the local authorities may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law. Appropriate signs or signals

The snow creates a lonely, solitary atmosphere as this horse, buggy and riders make their way 'through' a snow covered road in Allen county (Circa 1918). (Courtesy of HERPICC)
must be erected along the highway giving notice of the minimum speed limit (IC 9-4-1-59).

HIGHWAY CLOSINGS AND DETOURS

A board of county commissionners can close a county highway if in its opinion it is impractical or unsafe for traffic to use the highway because of obstructions or interruptions resulting from erosion, changes in natural or artificial drains or any other cause. Traffic will be diverted from the closed highway by suitable detours if in the board’s judgment such detours are necessary (IC 8-17-14A-1).

Whenever it is necessary to close a state highway and use a county highway as a detour, it shall be the duty of the state highway department to keep the county highway in a reasonable state of repair at all times while such highway is being used as a detour and when the state highway is reopened to traffic, the department shall place such county highway so used as a detour in as good condition as such highway was in when designated as a detour highway (IC 8-13-16-1). Minor maintenance that does not warrant a detour (such as linepainting or pothole filling) may require a temporary diversion of the normal traffic flow. Figure 11-2 depicts the various areas needed to establish this diversion.

SHOPPING CENTERS

A county, city, or town (referred to as "unit") and the owner or lessee of a shopping center located within the unit may contract to empower the unit to regulate by ordinance the parking of vehicles and the traffic at the shopping center, subject to approval by the fiscal body of the unit by ordinance. The unit may adopt an ordinance providing for punishment of violations of the parking and traffic regulations in effect at any shopping center under the contract (IC 9-4-14-1).

TRAFFIC SAFETY

The board of county commissionners or the board of public works, board of public works and safety, or the department of transportation of any city may contract with any non-profit organization to promote traffic safety and study traffic accident problems with the approval of the county council or the common council (IC 9-6-5.5-1).

WEIGHTS AND LOADS

A local authority when charged with the repair or maintenance of any bridge, causeway, or viaduct is authorized to reduce the gross load weight allowed thereon below the maximum load prescribed in IC 9-8-1-12 (overall gross weight, calculated by the formula in IC 9-8-1-12, of 80,000 pounds; total concentrated weight of each axle, in a tandem axle assembly, of 17,000 pounds; wheel weight of 800 pounds per inch width of tire; axle weight of 20,000 pounds) whenever the authority may determine that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage or with safety to itself (IC 9-8-1-15).
TERMINATION AREA
-- lets traffic resume normal driving.

WORK AREA

BUFFER SPACE
-- provides protection for traffic and workers.

TRANSITION AREA
-- moves traffic out of its normal path.

ADVANCE WARNING AREA
-- tells traffic what to expect ahead.

Figure 11-2 Areas in a Traffic Control Zone (9-2)
Taken from Low Volume Roads in Indiana; HERPICC
Local authorities having jurisdiction over any public highway or street and being responsible for the repair and maintenance thereof, upon proper application in writing and upon good cause shown, may grant permits for transporting heavy vehicles and loads, or other objects, not conforming to IC 9-8-1-2 and 9-8-1-12, whenever in the discretion of any such officer or body other traffic will not be seriously affected and the highway or bridge will not be seriously damaged (IC 9-8-1-16).

The load limits described in IC 9-8-1 do not apply to machinery or equipment used in highway construction or maintenance by the state department, counties, or municipalities, farm drainage machinery or implements of husbandry. Nor do the width and height limitations apply to farm vehicles loaded with farm products. These exceptions apply only if the vehicles can be moved or operated without causing any material damage to the highway or unreasonable interference with other highway traffic (IC 9-8-1-19.9).

A local unit authorized to issue permits under IC 9-8-1-16, may issue permits for transporting semitrailers (or trailers designed to be used with semitrailers) from the manufacturing facility to the person taking title of the vehicle (or any other destination in the marketing cycle), even if these vehicles exceed the width and length limitations imposed under IC 9-8-1 (IC 9-8-1-25).

Local authorities may create "snow ordinances" that prohibit the operation or impose weight restrictions of vehicles on any highway (except highways in the state highway system and the state-maintained routes through cities and towns) whenever the highway, by reason of deterioration, rain, snow, or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles is prohibited or the permissible weights reduced. These restrictions may not be in effect for more than a total of ninety (90) days in any one calendar year.

Local authorities may also create ordinances that prohibit the operation of trucks and other commercial vehicles or impose weight, size or use limitations on the designated highways mentioned above. These prohibitions and limitations must be marked by appropriate signs placed on the highways (IC 9-4-1-125).

COUNTY HIGHWAY ENGINEER

The board of county commissioners of any county or any two or more counties may employ a full time county highway engineer who shall be responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board (IC 8-17-5-1).

TRAFFIC ENGINEER

The city legislative body may, by ordinance, establish a department of traffic engineering (IC 36-9-7-2). The duties of the traffic engineer include directing the use of all traffic signs, traffic signals, and paint markings, recommending all necessary parking regulations, recommending the proper control of traffic movement, and studying accident records in order to reduce accidents (IC 36-9-7-5).
MODEL TRAFFIC ORDINANCE

The National Committee on Uniform Traffic Laws and Ordinances, an independent, non-profit, voluntary association, has developed a *Model Traffic Ordinance*. The *Model Traffic Ordinance* is a specimen set of motor vehicle ordinances for a municipality and is consistent with the recommended state law embodied in the *Uniform Vehicle Code*, another document of the National Committee. The provisions of the Ordinance are designed as a guide or standard for municipalities to follow in reviewing their traffic ordinances or considering the development or revision of a traffic ordinance. The Ordinance was first published in 1928 and has been revised and republished at two to six year intervals since then.

The National Committee is a group of more than 100 representatives of federal, state, and local governmental units (legislators, police officers, traffic engineers, highway officials, motor vehicle administrators, governors' highway safety representatives, judges, prosecutors, city attorneys, educators, physicians, mayors, county officials, and attorney generals).

Following is a list of the contents of the *Model Traffic Ordinance*:

- Article I Words and Phrases Defined
- Article II Traffic Administration
- Article III Enforcement and Obedience to Traffic Regulations
- Article IV Traffic Control Devices
- Article V Speed Regulations
- Article VI Turning Movements
- Article VII One-Way Streets and Alleys
- Article VIII Stop and Yield Intersections
- Article IX Miscellaneous Driving Rules
- Article X Streetcars
- Article XI Pedestrian Rights and Duties
- Article XII Regulations for Bicycles
- Article XIII Angle Parking
- Article XIV Stopping, Standing or Parking Prohibited in Specified Places
- Article XV Stopping for Loading or Unloading Only
- Article XVI Stopping, Standing, or Parking Restricted or Prohibited on Certain Streets
- Article XVII Regulating the Kinds and Classes of Traffic on Certain Highways
- Article XVIII Traffic Violations Bureau
- Article XIX Penalties and Procedure on Arrest
- Article XX Effect of and Short Title of Ordinance
- Article XXI Schedule of Designated Streets Referred to in Ordinance
QUESTIONS AND ANSWERS
CONCERNING TRAFFIC CONTROL
AND MANAGEMENT

Q: What is the authority for the establishment of traffic rules and regulations by boards of commissioners?

A: The board of commissioners may make suitable rules and regulations covering traffic upon any highway in the county (IC 8-17-1-40).

Q: What specific right-of-way use and traffic control powers remain in the hands of local authorities?

A: With respect to streets and highways under their jurisdiction, local authorities can:

1. regulate the standing or parking of vehicles;
2. regulate traffic by means of police officers or traffic control signals;
3. regulate or prohibit processions or assemblages on the highways;
4. designate particular highways as one-way highways;
5. regulate speed of vehicles in public parks;
6. designate any highway as a through highway;
7. restrict the use of highways by weight or class of vehicles;
8. regulate the operation of bicycles;
9. regulate or prohibit the turning of vehicles at intersections;
10. alter the prima facie speed limits; and,
11. adopt such other traffic regulations as are specifically authorized by IC 9-4-1 (IC 9-4-1-28).

Q: Who is responsible for signing all state highways?

A: The Department of Highways (IC 9-4-1-31).

Q: Can local authorities sign highways under their jurisdiction?

A: Yes, provided the signs are in conformance with the Indiana Manual on Uniform Traffic Control Devices (IC 9-4-1-32 and IC 9-4-3.1-1).

Q: What is the basis for installing traffic signals?

A: All traffic signal installations on any street and highway within the state shall be erected only after the completion of traffic engineering studies which verify that the traffic signal control is warranted as set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways (IC 9-4-3.1-2).

Q: What actions are to be taken when it is discovered that a traffic signal is found to be in nonconformance with the Indiana Manual?
A: All traffic signals upon all streets and highways within the state not conforming to the provisions of the Indiana Manual on Uniform Traffic Control Devices shall be removed by the governmental agency having jurisdiction over the highway (IC 9-4-3.1-3).

Q: Can local public agencies adopt ordinances that change the basic requirements of the traffic control devices manual?

A: No. The Indiana Manual on Uniform Traffic Control Devices for Streets and Highways shall be adhered to by all governmental agencies within the state responsible for the signing, marking, and erection of all traffic control devices on all streets and highways within the state (IC 9-4-2-1).

Q: Can local authorities adopt ordinances concerning traffic regulations?

A: Yes. Local authorities may adopt, by ordinance, additional traffic regulations with respect to streets and highways under their jurisdiction, so long as they do not conflict with or duplicate the provisions of a statute (IC 9-4-1-27).

Q: Who is responsible for installation and maintenance of signs on roadways under railroad overpasses?

A: The governmental authority which has jurisdiction over the roadway (IC 9-4-1-32).

Q: If a utility company closes a street with or without the permission of the municipality; must they comply with the Indiana Manual on Uniform Traffic Control Devices regarding signs and detours? Do they assume liability for accidents or damage caused by construction?

A: Yes, they must comply with the Indiana Manual (IC 9-4-2-1). The question of liability is difficult to answer, but the municipality has ultimate responsibility for safety on the streets and highways under their jurisdiction.

Q: What are the statutory guidelines governing access to limited access roads and streets?

A: IC 8-11-1-4 states that the department of highways and the proper authorities of any county, city, or town in charge of any highway or street affected by IC 8-11-1 are authorized to design any limited access facility and to regulate or prohibit access as to best serve the traffic for which such facility is intended (IC 8-11-1-4).

Q: How do local authorities change or alter speed limits?

A: Whenever local authorities, in their respective jurisdictions, determine on the basis of an engineering and traffic investigation that the maximum speed permitted under IC 9-4-1 is greater or less than reasonable and safe under the conditions found to exist on a highway, the local authority may determine and declare a reasonable and safe maximum limit subject to several limitations (IC 9-4-1-58).

Q: Can a local government regulate shopping center parking?

A: Yes. A county, city, or town and the owner or lessee of a shopping center located within the county, city, or town may contract to empower the county, city, or town to regulate, by ordinance, the parking of vehicles and the traffic at the shopping center (IC 9-4-14-1).
A late nineteenth century iron bridge spans Hog Creek in the Eastern part of Scott County near Lexington, Indiana. This type of floored bridging was a common sight on county roads until replacement programs eliminated most of them in the 1960's, 70's and 80's. This bridge was constructed in 1898 and replaced with a culvert in June 1975. (Photo by Jim Turley, 1955.)

Q: How are truck load limits set? What role can local government play in the establishment of load limits?

A: The local authority when charged with repair or maintenance of any bridge, causeway, or viaduct is authorized to reduce the gross load weight allowed below the maximum prescribed in IC 9-8-1-12 whenever the authority may determine that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage or with safety to itself (IC 9-8-1-15).

Local authorities having jurisdiction over any public highway or street and being responsible for its repair and maintenance may, upon proper written application showing good cause, grant permits for transporting heavy vehicles and loads or other objects not conforming to the dimensions and weights specified in IC 9-8-1-2 and 9-8-1-12 respectively. Local authorities also have the authority to enact "snow ordinances", as explained in the narrative of this chapter.

Q: Is there a state law regulating privately owned construction equipment on public streets?

A: Yes. IC 9-8-1-2 governs dimensions of vehicles on highways and IC 9-8-1-12 governs weights of vehicles on highways.

REFERENCES


INTRODUCTION TO ROAD
AND STREET REFERENCES

At first glance, the statutes and administrative regulations relating
to local road and street work are formidable obstacles. Yet understand-
ing the content and organization of these documents can expediate their
use in quickly answering a number of questions that daily confront the
road and street official. A number of important sources are listed below
along with background information and tips on how to search for the
statutes or regulations. Figure 1 is a quick reference to these sources
and also has examples of citations. The documents are found in Federal
Depository Libraries located at selected locations throughout Indiana. A
list of these libraries is provided.

THE UNITED STATES CODE

The United States Code (U.S.C.), published by the Office of the Law
Revision Counsel of the House of Representatives, contains general and
permanent laws in force in the United States as of a specified date (e.g.,
U.S.C. is re-published every six years and is supplemented yearly.

Each volume of the U.S. Code contains a list of title names by
number as well as a complete table of titles and chapters. A general
index volume is included, listing all major headings of a general nature in
bold capital letters, followed by more specific subtopics with citations to
their location in the Code.

An example of an index citation is: 46 § 747, which refers to Title 46,
Section 747. By checking first under very general headings and then
moving to more specific topics, it is easy to pinpoint the required statute.
The supplements to the Code are also indexed in the same general
manner.

A volume of tables in the U.S.C. listing Revised Titles, Statutes at
Large, Executive Orders and Internal References is also provided. The
Statutes at Large Table indicates the location of all acts of Congress
from 1802 to 1983. The Executive Orders Table contains all Executive
Orders and their location.
THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations (CFR) contains general and permanent rules established by executive departments and federal government agencies. The CFR is divided into 50 titles, which are further divided into chapters and parts. Each chapter contains regulations for a single agency or department and the parts contain the regulations issued by that agency.

The index to the CFR is published annually. This index contains five sections offering different ways to access information. The Subject Index is the easiest to use since it offers general headings in bold caps (much like the index to the U.S.C.), followed by more specific terms along with citations. Each regulation is cross referenced under many different general headings, making it easier to find specific material. Each entry in the index is cited by title chapter and part. For example "T23 Ch1-H Pt720-B" refers to "Title 23, Chapter 1, Subchapter H, Part 720, Subpart B."

FEDERAL REGISTER

The Federal Register, published daily (Monday through Friday), is used to circulate new (proposed) Federal Agency regulations for comment, and publishes final versions of regulations in the interim between

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**Figure 12-1 Local Road and Street Official’s Quick Reference Guide to Statutes and Administrative Regulations**
CFR publications. Presidential proclamations, Executive Orders, and other Federal Agency documents and legal notices of public concern are also provided.

The Federal Register is indexed monthly in cumulative form. Each issue also contains a list of the CFR parts affected during the month. Also published monthly is the LSA (List of CFR Sections affected). The LSA lists the Federal Register page number of the latest amendment to any rule. Checking the LSA after reading a rule in the CFR provides the location of the latest rule revisions in the corresponding Federal Register.

THE INDIANA CODE

The Indiana Code (IC) is published every six years. The IC comprises 33 major divisions of laws called titles. For example, Title 8 contains laws about Transportation and Public Utilities. Each title is divided into articles, chapters and sections. Each volume contains a list of titles as well as a table of contents.

The two-volume index to the Indiana Code is cross-referenced four ways:

1. Topical citations, which group all references concerning a field of law (e.g. Eminent Domain) under one heading;
2. Descriptive citations, (e.g. Highways and Roads);
3. Conceptual citations, which are grouped according to a single concept or mental image (e.g. Improvements); and
4. Colloquial citations, which list subjects according to their common names (e.g. Jaywalking).

Annual supplements to the IC are generally formatted like the Indiana Code, and should be checked for any new developments in the law.

THE INDIANA ADMINISTRATIVE CODE (IAC)

The Indiana Administrative Code (IAC) is organized in much the same way as the Indiana Code, but with a more complex system of titles. The IAC contains administrative policies issued by the numerous Indiana Government rule making agencies.

One hundred titles make up the IAC. Included are administrative policies of the various state agencies organized by article, chapter, and section. The 100 titles are grouped into ten categories:

(00) General Government
(100) Transportation and Public Utilities
(200) Corrections and Police
(300) Natural Resources, Environment, and Agriculture
(400) Human Services
(500) Education and Libraries
(600) Labor and Industrial Safety
(700) Business, Finance, and Insurance
(800) Occupations and Professions
(900) Miscellaneous

Each volume of the IAC contains a Table of contents listing all the titles and their location. A general index is also provided. The index
refers to the text by the full IAC citation. Any series of three or more entries will be cited in this form: 120 IAC 3-3-1 to 120 IAC 3-3-16. The main headings are bold faced and capitalized. Cross references under the main headings refer to other relevant citations in the index.

Supplements to the IAC are published regularly and follow the same general format.

THE INDIANA REGISTER

The Indiana Register is a monthly publication of the Indiana Legislative Council. It provides a complete text of rules and amendments to rules recently proposed and/or approved, as well as other new documents, such as executive orders and legal notices issued by state departments or agencies.

A topical index lists page locations. A list of the affected rules is also provided. These references are printed quarterly as cumulative tables. Monthly issues are organized into annual volumes dating from 1978 to the present. The Register is a companion to the Indiana Administrative Code. Users should consult the IAC, the current cumulative supplement to the IAC, and the current issues of the Indiana Register to determine current rules of the state agencies.

WEST'S AND BURN'S ANNOTATED INDIANA STATUTES

These two sets of annotated statutes, published by The West publishing Company (West’s) and the Michie Bobbs-Merrill Company (Burn’s), provide complete source material concerning Indiana law. Both publications contain the entire Indiana Code as well as references to the original acts and amendments. Both publications also contain compiler’s notes, law journal citations, relevant court decisions and opinions of the Attorney General pertaining to specific statutes.

Both publications offer a variety of tables to aid the user in finding specific statutes and each publication is supplemented annually.

WEST’S INDIANA LAW ENCYCLOPEDIA

This Encyclopedia is another source of Indiana law published by the West Publishing Company. It contains much of the same information as the West’s Annotated Code. The Encyclopedia does not include the compiler’s notes, but does have references to applicable federal court decisions. The Encyclopedia is a summary discussion of the law and contains references to the original material.

The volumes of the Encyclopedia mirror the Titles of the Indiana Code. Each Title is preceded by a section analysis for quick reference. A detailed subject index is included in each volume along with a separate comprehensive index.

MCQUILLIN’S LAW OF MUNICIPAL CORPORATIONS

This work contains a discussion of municipal law. Volume 1 contains a complete table of all chapters. This table lists volume numbers and the chapters contained therein. Each volume contains a detailed contents, which is repeated at the beginning of the respective chapters. The pages of McQuillin’s are conveniently numbered to indicate the section discussed on that page. The McQuillin’s index uses descriptive headings and major headings are printed in bold faced type followed by distinct
subjects. Citations to the volumes are by chapter and section number. Cumulative supplements to McQuilllin's are provided annually.

FEDERAL DEPOSITORY LIBRARIES IN INDIANA

Federal Depository Libraries should contain most of the legal sources discussed in this section. A list of Indiana Federal Depositories Libraries follows:

ANDERSON
- Anderson Public Library
- Charles E. Wilson Library; Anderson College

BLOOMINGTON
- Indiana University Law Library
- Indiana University Library

CRAWFORDSVILLE
- Lilly Library; Wabash College

EVANSVILLE
- Evansville and Vanderburgh County Public Library
- Indiana State at Evansville Library

FORT WAYNE
- Allen County Public Library
- Helmke Library; Indiana U. - Purdue U. at Fort Wayne

FRANKLIN
- Franklin College Library

GARY
- Gary Public Library
- Indiana University, Northwest Library

GREENCASTLE
- Roy O. West Library; De Pauw University

HAMMOND
- Hammond Public Library

HANOVER
- Duggan Library; Hanover College
HUNTINGTON
- Loew Alumni Library; Huntington College

INDIANAPOLIS
- Indianapolis, Marion County Public Library
- Indiana State Library (REGIONAL DEPOSITORY)
- Indiana Supreme Court Law Library
- Indiana University, School of Law Library
- Indiana U. - Purdue U. at Indianapolis Library
- Irwin Library; Butler University

KOKOMO
- Indiana U. at Kokomo Learning Resource Center

LAFAYETTE
- Purdue University Libraries

MUNCIE
- Alexander M. Bracken Library; Ball State University
- Muncie Public Library

NEW ALBANY
- Indiana University, Southeast Library

RENSSELAER
- St. Joseph's College Library

RICHMOND
- Lilly Library; Earlham College
- Morrison-Reeves Library

SOUTH BEND
- Indiana University at South Bend Library
- University of Notre Dame Memorial Library

TERRE HAUTE
- Cunningham Memorial Library; Indiana State University

VALPARAISO
- Moellering Memorial Library; Valparaiso University
- Valparaiso University Law Library
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- Requirements for Motorcyclists Safety Helmets, 23 USC § 402

TRAFFIC SIGNS AND CONTROL

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- Traffic Control Devices, 23 USC §§ 101, 114, 120, 142
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- Construction Costs, 23 C.F.R. § 1.140 (1985)
- Contracting Procedures for Appraisers, 23 C.F.R. § 1.720(B) (1985)
- Material Requirements, 23 C.F.R. § 1.635(D) (1985)
- Preconstruction Procedures, 23 C.F.R. § 1.630 (1985)
- Quality Control, 23 C.F.R. § 1.637(B) (1985)
- Railroad Grade Crossings, 23 C.F.R. § 1.646(B) (1985)
- Special Programs, 23 C.F.R. § 1.660 (1985)
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- Highway Planning Allocations, 23 C.F.R. § 1.420(A) (1985)


- Payment Procedures, 23 C.F.R. § 1 (1985)

- Penalties--Size and Weight Enforcement, 23 C.F.R. § 1.657 (1985)

- Penalties--Speed Limit Enforcement, 23 C.F.R. § 1.659 (1985)


- State Highway Department Reimbursement, 23 C.F.R. § 1.140 (1985)

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Highway Planning

- Community Development, 23 C.F.R. § 1.490(A) (1985)

- Metropolitan Planning Organizations, 23 C.F.R. § 1.450 (1985)

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- Discontinued Operations, 43 C.F.R. § 2.2800-2803 (1985)

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- Uniform Manual, 120 IAC 4-3-1

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Indiana Department of Highways, 1978. How Land is Purchased for highways. Indianapolis, IN.

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Indiana Planning Association, 1986. "Recent Developments in Planning and Zoning Statutes."


Michie, Bobbs Merrill, 1986 Burns Statutes Annotated: Charlottesville, VA. Michie - Bobbs Merrill.


Patterson, T. William, 1983. *Model County Subdivision Regulations.* West Lafayette, IN: Purdue University.


Abandonment (of right-of-way) - Cessation of use of right-of-way activity upon a site with no intention to reclaim or use it again for highway purposes. (IC 8-11-2-2)

Administrator - Federal Highway Administrator. (Federal-Aid Highway Program Manual)

Advisory Plan Commission - "... a municipal plan commission, a county plan commission, or a metropolitan plan commission." (IC 36-7-1-2)

Appropriate local officials - (a) in urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization [that organization designated by the Governor as being responsible, together with the state, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of 49 U.S.C. 1602(a)(2) and (3)(1), 49 U.S.C. 1603(a), and 49 U.S.C. 1604(g)(1) and (1). This organization is the forum for cooperative decision making by principal elected officials of general purpose local governments designed by the Governor (includes the Mayor of the District of Columbia), or

(b) in rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments. (Federal-Aid Highway Program Manual)

Arterial highway or arterial street - A highway or street primarily for through traffic, usually on a continuous route. (IC 8-11-2-2)

Board - The governing body of a county acting directly or through its authorized agents. (IC 8-11-2-2)

Board of Zoning Appeals - "... unless preceded by a qualifying adjective, refers to a board of zoning appeals under either the advisory planning law, the area planning law, or the metropolitan development law." (IC 36-7-1-4)

Bonds - "Bonds" means any evidences of indebtedness, whether payable from property taxes, revenues, or any other source, but does not
include notes or warrants representing temporary loans that are payable out of taxes levied and in the course of collection. (IC 36-1-2-2)

City - "City" refers to a consolidated city or other incorporated city of any class, unless the reference is to a school city. (IC 36-1-2-3)

Clerk - "Clerk means:

(1) Clerk of the circuit court, for a county;

(2) County auditor, for a board of county commissioners or county council;

(3) Clerk of the city-county council, for a consolidated city;

(4) City clerk, for a second-class city;

(5) Clerk-treasurer, for a third-class city;

(6) Clerk-treasurer, for a town. (IC 36-1-2-4)

Comprehensive Plan - "... a composite of all plans of land use, of thoroughfare, of sanitation, of recreation, and of other related matters. It includes a master plan adopted under any prior law." (IC 36-7-1-5)

Control area - As it pertains to the Interstate System, means a metropolitan area, city or industrial center, a topographic feature such as a major mountain pass, a favorable location for a major river crossing, a road hub which would result in material traffic increments on the interstate route, a place on the boundary between two states, agreed to by the states concerned, or other similar points of significance. (Federal-Aid Highway Program Manual)

Control point - (a) As it pertains to the Federal-aid primary system, a city, or major route junction, or other similar point of significance, or

(b) as it pertains to the Federal-aid secondary system, an important town, an important route junction, or other similar point of significance such as a consolidated school, shipping point, county park, important mining or agriculture center to which intracounty service is provided. (Federal-Aid Highway Program Manual)

County arterial highway system - A system of highway designated by the county highway authorities having the greatest general importance to the county and for which responsibility is assigned to the county highway authorities. (IC 8-11-2-2)

How it is selected: A system of county arterial highways shall be selected by the board of county commissioners in each county. Such system shall be selected on the basis of greatest general importance to the county, after an evaluation of each road in the county including municipal connecting links and the state highway system. In selecting such system, the board shall consider the kind and amount of traffic, the length and condition of each particular highway, the mileage which can be effectively improved to specified standards with funds available, together with any other data considered applicable in this connection. (IC 8-11-2-5)

Addition, relocations, deletions: Roads may from time to time be included in, relocated, or deleted from the county arterial highway sys-
tem of any county by the board in the same manner and by the same procedure as provided hereinbefore for the adoption of the county arterial highway system in the first instance. (IC 8-11-2-5)

**County local highway system** - Those roads and streets used primarily for access to residence, business, farm, or other abutting property and for which responsibility is assigned to the county highway authorities. (IC 8-11-2-2)

**Department** - Refers to the state department of highways. (IC 8-11-2-2) (A unique department may be referred to in specific Indiana statute. Examples are "Department of Corrections, Department of Natural Resources, etc.)

**Development Plan** - "... specific plans for the residential, commercial, or industrial development of property setting forth certain information and data required by the plan commission." This required information and data is outlined in IC 36-7-1-6. (IC 36-7-1-6)

**Division Administrator** - The chief FHWA official assigned to conduct business in a particular state. A state is as defined in 23 U.S.C. 101. (Federal-Aid Highway Program Manual)

**Eminent Domain** - The power to take private property for public use by the state, municipalities and private persons or corporations authorized to exercise functions of a public character. (Black's Law Dictionary)

**Executive** - "Executive" means:

1. Board of commissioners, for a county not having a consolidated city;
2. Mayor of the consolidated city, for a county having a consolidated city;
3. Mayor, for a city;
4. President of the board of trustees, for a town;
5. Trustee, for a township;
6. Superintendent, for a school corporation; or
7. Chief executive officer, for any other political subdivision. (IC 36-1-2-5)

**Executive director** - The chief administrative officer of the department (Indiana Department of Highways), acting directly or through his authorized agents. (IC 8-11-2-2)

**Federal-aid primary system** - Shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas. (Federal-Aid Highway Program Manual)

**Federal-aid secondary system** - Shall consist of rural major collector routes. (Federal-Aid Highway Program Manual)

**Federal-aid urban system** - Shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system. (Federal-Aid Highway Program Manual)
**Fiscal body** - "Fiscal body" means:

1. County council, for a county not having a consolidated city;
2. City-county council, for a consolidated city or county having a consolidated city;
3. Common council, for a city other than a consolidated city;
4. Board of trustees; for a town;
5. Advisory board, for a township; or
6. Governing body or budget-approval body, for any other political subdivision. (IC 36-1-2-6)

**Fiscal Officers** - "Fiscal officer" means:

1. Auditor, for a county;
2. Controller, for a consolidated city or second-class city;
3. Clerk-treasurer, for a third class city;
4. Clerk-treasurer, for a town; or
5. Trustee, for a township. (IC 36-1-2-7)

**Highway, street, or road** - A public way for purposes of vehicular travel, including the entire area within the right-of-way. (IC 8-11-2-2)

A road or way established and adopted (or accepted as a dedication) by the proper authorities for use of the general public and over which every person has a right to pass and to use it for all purposes of travel or transportation to which it is adapted and devoted. (Black's Law Dictionary)

A free and public roadway or street which every person has a right to use. In popular usage, refers to main public road connecting towns or cities. In a broader sense refers to any main route on land, water or in the air. Its prime essentials are the right of common enjoyment on the one hand and the duty of public maintenance on the other. Robinson v. Faulkner, 163 Conn. 365, 306 A 2d 857, 861. (Black's Law Dictionary)

The word "highway" includes county bridges and state and county roads unless otherwise expressly provided. (IC 1-1-4-1)

**Legislative body** - "Legislative body" means:

1. County council, for a county subject to IC 36-2-3.5 [36-2-3.5-1 - 36-2-3.5-6];
2. City-county council, for a consolidated city or county having a consolidated city;
3. Common council, for a city other than a consolidated city;
4. Board of trustees, for a town; or
5. Advisory board, for a township. (IC 36-1-2-9)

**Limited Access Facility** - . . ."a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or
only a limited right or easement of direct access, light, air or view by reason of the fact that their property abuts upon such limited access facility. Such highways and streets may be parkways from which larger vehicles such as buses and trucks are excluded. They may also be freeways open to use by all customary forms of traffic." (IC 8-11-2)

Metropolitan Development Commission - "... the plan commission established by IC 36-7-4-202(c) for a county having a consolidated city. The term does not include a metropolitan plan commission established under IC 36-7-4-202(a)." (IC 36-7-1-10)

Metropolitan Plan Commission - "... an advisory plan commission cooperatively established by a county and a second class city under IC 36-7-4-202(a). The term does not include the metropolitan development commission established by IC 36-7-4-202(c)." (IC 36-7-1-11)

Minority Contractor - A minority business enterprise at least 50 percent of which is owned by minority group members or in the case of publicly owned businesses at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition minority group members are Negroes, Spanish-speaking American persons, American Orientals, American Indians, American Eskimos, and American Aleuts. (Federal-Aid Highway Program Manual)

Municipal arterial street system - A system or arterial streets and highways designated by the municipal street authorities as having the greatest importance to the municipality, and for which responsibility is assigned to principal street authorities. (8-11-2-2)

Municipal corporation - "Municipal corporation" means unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued. The term does not include special taxing district. (IC 36-1-2-10)

Municipality - A city, town, or other municipal corporation organized under the laws of this state. (IC 36-1-2-11)

Municipal local street system - Those roads and streets used primarily for access to residence, business, or other abutting property and for which responsibility is assigned to the municipal street authorities. (IC 8-11-2-2)

National System of Interstate and Defense Highways - Shall consist of routes of highest importance to the Nation, which connect as direct as practicable the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in Canada and Mexico. (Federal-Aid Highway Program Manual)

Plan Commission - "... unless preceded by a qualifying adjective, means an advisory plan commission, an area plan commission, or a metropolitan development commission. The term does not include a regional planning commission established under IC 36-7-7." (IC 36-7-1-14)

Planning Department - "... an area planning department under the area planning law." (IC 36-7-1-15)
Prequalifying Prospective Bidders - A process by which a contracting agency in advance of considering, opening, or accepting bids, or in advance of issuing bid proposals, establishes limitations on amounts and types of work contractors are permitted to bid on and to have underway at one time. (Federal-Aid Highway Program Manual)

PS&E - Plans, specifications and estimate. (Federal-Aid Highway Program Manual)

Public road - Any road under the jurisdiction of and maintained by a public authority and open to public travel. A primitive road (surface type a) defined in the Federal-Aid Highway Program Manual, Volume 6, Chapter 3, Section 1, Subsection 2, is not a "public road" as the term is defined in the directive. For purposes of the HPM, the term "public road" may include projected roads that are anticipated to be open to public travel within a 5- to 10-year period. (Federal-Aid Highway Program Manual)

Public Way - "... includes highway, street, avenue, boulevard, road, lane, or alley." (IC 36-7-1-17)

Qualifying Low Bidders - A process by which a contracting agency proceeds, after bid opening, to consider the qualifications of the apparent low bidder to perform the work. (Federal-Aid Highway Program Manual)

Railroad line - The decisions of the Interstate Commerce Commission indicate that "line of railroad" is used in its ordinary sense to denote a permanent road providing track for freight and passenger cars and other rolling stack or the equivalent of such road. (Guandolo Transportation Law.)

Redevelopment - The acquiring, relocating, laying out, repairing and maintaining, rehabilitating, or disposing of property, buildings, streets or roads so as to enact the statutory powers and duties of a redevelopment commission. (IC 36-7-1-18)

Road. A highway; an open public way or public passage; a line of travel, or communication extending from one town or place to another; a strip of land appropriated and used for purposes of travel and communication between different places. (Black's Law Dictionary) See Highway.

Rural area - All areas of a state not included in the boundaries of urban areas. (Federal-Aid Highway Program Manual)

Rural arterial routes - Those public roads that are functionally classified as a part of the rural principal arterial system or the rural minor arterial system as described in Volume 20, Appendix 12, Highway Planning Program Manual. (Federal-Aid Highway Program Manual)

Rural major collector routes - Those public roads that are functionally classified as a part of the major collector subclassification of the rural collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual. (Federal-Aid Highway Program Manual)

State-aid director - The chief administrative officer of that office of the department that administers programs of state and federal aid to local units of government, acting directly or through his agents. (IC 8-11-2-2)
**State highway agency** - That department, commission, board, or official of any state charged by its laws with the responsibility for highway construction. The term "state" should be considered equivalent to "state highway agency" if the context so implies. (Federal-Aid Highway Program Manual)

**State highway system** - A system of highways and streets which are of general economic importance to the state as a whole, and for which responsibility is assigned to the department. (IC 8-11-2-2)

How it is selected: The state highway system shall be designated by the department and its total extent shall not exceed twelve thousand [12,000] miles. The state highway system shall be made up of the principal arterial highways in the state, and shall include a highway to the seat of government in each county and connecting arteries and extensions through municipalities. (IC 8-11-2-4)

**Subdivision** - "... the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by the legislative body under IC 36-7-4." (IC 36-7-1-19)

**Supervising agency** - The state highway agency has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other local public agency. (Federal-Aid Highway Program Manual)

**Taxing district** - "Taxing district" means a geographic area within which property is taxed by the same taxing entities and at the same total rate. [IC 3-1-2-20, as added by Acts 1980, P.L. 211, § 1.] (IC 36-1-2-20)

**Thoroughfare** - "... means a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains. (IC 36-9-1-8.5)

"... a street or passage through which one can fare (travel); that is, a street or highway affording an unobstructed exit at each end into another street or public passage." (Black's Law Dictionary)

**Town** - "Town" refers to an incorporated town, unless the reference is to a school town. (IC 36-1-2-21)

**Township** - "Township" refers to a civil township, unless the reference is to a congressional township or school township. (IC 36-1-2-23)

**Unit** - "Unit" means county, municipality, or township. (IC 36-1-2-23)

**Urban area** - An urbanized area, or in the case of an urbanized area encompassing more than one state, that part of the urbanized area in which such state, or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. (Federal-Aid Highway Program Manual)
Urban arterial routes - Those public roads that are functionally classified as a part of the urban principal arterial system or the urban minor arterial system as described in Volume 20, Appendix 12, Highway Planning Program Manual. (Federal-Aid Highway Program Manual)

Urban collector routes - Those public roads that are functionally classified as a part of the urban collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual. (Federal-Aid Highway Program Manual)

Vacate - To put an end to; as, to vacate a street. (Black's Law Dictionary)

View - The act or proceeding by which tribunal goes to an object which cannot be produced in court because it is immovable or inconvenient to remove, and there observes it. (Black's Law Dictionary)

Viewers - Persons appointed by a court to make an investigation of certain matters, or to examine a particular locality (as the proposed site of a new road), and to report to the court the result of their inspection, with their opinion on the same. (Black's Law Dictionary)

Watercourse - "... includes lakes, rivers, streams and any other body of water." (IC 36-9-1)

Works board - "Works board" means:

(1) Board of commissioners, for a county not having a consolidated city;

(2) Board of public works or board of public works and safety, for a city; or

(3) Board of trustees, for a town. (IC 36-1-2-24)
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