Right-of-way and road building: an examination of policies and politics in the Montana Highway Department

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RIGHT-OF-WAY AND ROAD BUILDING: AN EXAMINATION
OF POLICIES AND POLITICS IN THE
MONTANA HIGHWAY DEPARTMENT

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PREFACE

Research for this study was begun when the writer was working as a Senate intern in Helena during the Fortieth Legislative Assembly. The Highway Department receives a great deal of publicity during legislative sessions, and action upon its requests for appropriations is considered by many legislators to be among the most important business conducted. This department is one of the most frequently investigated sectors of the administration, and there is, periodically, much controversy about its policies and procedures.

There are many persons without whose assistance this study could not have been completed. I am especially grateful to Dr. Thomas Payne, Dr. Douglas Chaffey, and Dr. Ross Toole for the devotion of much time to the review and editing of the manuscript. Senator Ben Stein and many officials of the Highway Department gave valuable aid in the compilation of data and in the mechanics of writing. The entire responsibility for conclusions drawn and opinions expressed rests with the author.
INTRODUCTION

"Those who cannot remember the past are condemned to repeat it."

--- Santayana

The Highway Department of the State of Montana is responsible for the expenditure of approximately one-third of the funds in the state budget. This alone would make it worthy of study. The size of the department and the importance of its functions provide additional justification for an examination of its structure and the procedures which it employs to implement its policies.

This thesis examines certain activities of the Montana Highway Department.

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1 The following table shows figures for each fiscal year from 1957 to the present. Data for FY 1957 are taken from the Legislative Budget of the State of Montana, 1959, pp. 6, 334. The first Executive Budget was prepared for the biennium 1961-63, and figures for FY 1958, 1959, and 1960 are taken from that Budget. For the FY 1961 and 1962 figures come from the Executive Budget for 1963-65; for fiscal years 1963 through 1965 the budget for 1965-67 was used; and for FY 1966 through 1968 data were drawn from the budget for 1967-69.

Expenditures of the State and the State Highway Commission

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Budget Expenditures</th>
<th>Highway Commission Expenditures</th>
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<tbody>
<tr>
<td>1956-57</td>
<td>$122,894,680</td>
<td>$43,110,618</td>
</tr>
<tr>
<td>1957-58</td>
<td>161,453,932</td>
<td>53,979,646</td>
</tr>
<tr>
<td>1958-59</td>
<td>171,388,536</td>
<td>55,868,240</td>
</tr>
<tr>
<td>1959-60</td>
<td>166,510,428</td>
<td>46,059,265</td>
</tr>
<tr>
<td>1960-61</td>
<td>155,258,035</td>
<td>49,490,241</td>
</tr>
<tr>
<td>1961-62</td>
<td>144,413,165</td>
<td>52,953,889</td>
</tr>
<tr>
<td>1962-63</td>
<td>156,240,907</td>
<td>52,979,461</td>
</tr>
<tr>
<td>1963-64</td>
<td>171,633,876</td>
<td>64,028,191</td>
</tr>
<tr>
<td>1964-65</td>
<td>189,724,087</td>
<td>75,038,072</td>
</tr>
<tr>
<td>1965-66</td>
<td>218,458,000</td>
<td>82,121,439</td>
</tr>
<tr>
<td>1966-67</td>
<td>225,613,000</td>
<td>79,564,140</td>
</tr>
<tr>
<td>1967-68 (est.)</td>
<td>251,906,000</td>
<td>86,844,383</td>
</tr>
</tbody>
</table>
Department, with particular attention given to developments in the
Right-of-Way Division from 1958-1967. Emphasis will be directed to
administrative and political relationships, with the intention of
demonstrating the desirability of attaining greater administrative
efficiency of certain structural and procedural aspects within the
Right-of-Way (R/W) Division. The political and administrative pro­
cesses here studied explore relationships between officials within the
R/W Division and landowners, between R/W personnel and the Highway
Commission, between the commission and the legislature, and between the
commission and the Bureau of Public Roads (BPR).

Administrative procedures will be evaluated to determine
whether inadequacies exist, and, if so, how widely their effects are
felt. Some of the questions which must be answered in order to determine
the presence and extent of such inadequacies follow.

1. Does the department give recognition to those members who
point out weaknesses and errors and attempt to correct them, or
is preference given to employees who simply ignore undesirable
aspects of procedure and support the status quo?

2. Are standards for employment adequate?

3. Is there effective communication between the federal and
state agencies involved in order to make the best use of available
funds?

4. Are inspections thoroughly conducted and completely reported,
to prevent inefficient acquisition and construction procedures?

5. Are lines of communication kept open between levels of
the hierarchy and to other interested parties (such as landowners
whose property lies in the path of the Interstate System)?

6. Is communication frequent enough and is participation in
policy-making wide enough that both malfeasance and honest error
are reduced to a minimal level?

*R/W is the official abbreviation for Right-of-Way.*
These are questions that the following study will attempt to answer.

Methodology

Both secondary and primary sources will be utilized in this undertaking. Many of the primary references, except for statutory material, are comprised of publications by the Highway Commission, or studies done especially for the commission at its request. A major secondary source of information was the press, and extensive use was made of news coverage of the commission's activities.\(^3\)

The primary material also includes interviews held with individuals whose associations with and attitudes toward the Highway Commission are quite diverse. Some of them are present or former members of the department; some have been members of independent investigating committees; some are federal employees; some are legislators. These persons contributed valuable information, both factual and subjective.\(^4\)

The thesis is organized around case studies which demonstrate in detail the problem to be confronted. These particular studies were chosen because: first, they illustrate developments in several different areas of concern; second, abundant material was available on each.

\(^3\)The Great Falls Tribune and The Billings Gazette constituted two principal sources of press reporting; three additional sources which proved valuable were The Livingston Enterprise, The Park County News, and The People's Voice.

\(^4\)At the request of the interviewees, names and specific positions have been omitted in most cases; however, general identification is given in each reference made to personal interviews. Interviews were held with seven persons in the State Highway Department, and three employees of the BPR in Helena; unstructured questionnaires were sent to three members of the State Highway Department, to two members of the Blatnik Subcommittee, and to three state legislators in Montana. One legislator was also contacted directly.
enabling a study of them in some depth; and third, they involved the department in much political controversy during the period considered.

The year 1958 was chosen as the starting point for research because, as will be shown subsequently, it was at this time that questions were first raised regarding the legality of certain procedures being used in the building of the Interstate System. These questions were raised on a nation-wide basis, and Montana was not exempt from the criticism.

The Case Method

The case method is one of many possible approaches to a study in public administration; it is employed here for several reasons. First, the case study is descriptive; it provides an overview of all the activities of a group of officials in any given situation. The reporting can be factual, and permits maximum exclusion of subjective evaluation within the report itself, thus insuring accuracy and fairness. Second, the case study is not per se designed to prove a hypothesis; rather, it provides a forum for the development and testing of hypotheses or generalizations about administrative structure and procedures.5

Third, the case study method provides for the construction of pictures of an event or series of related events, from which conclusions can be drawn regarding individuals, organizational hierarchy, procedures, techniques, and so on. Both formal and informal relationships can be examined. Also, this method permits the student to separate those aspects of the problem which the administrator considered relevant from other factors

which, in subsequent analysis, may appear important, but which were disregarded at the time.

This latter consideration, separation of the operational from the real environment,\(^6\) is vital to an accurate analysis of any event involving decision-making. Harold Stein states:

> ... the concept of public administration as politics ... refers to the administrator's understanding and pursuit of his objectives and his relations with the social environment outside his agency that affects or is capable of affecting its operations.\(^7\)

A parallel consideration, of course, is relations within the administration, such as power distribution.

Administrators have some leeway in making decisions, but always within limits: there are rules to which they must conform. The case method permits clarification of these rules, and also of the degree to which conformity to them exists. If there is a discrepancy between rule and practice, it is then possible to formulate conclusions regarding whether the rules or the officials are in error. Stein says:

> ... was the decision conformable to the accepted rules and precedents? Were the consequences of different alternatives duly weighed? Was the decision based on some abstract principle of good conduct?\(^8\)

Finally, the case method permits a clear view of the part played by each level of the hierarchy, which in this study consists of the U.S. Congress, the Bureau of Public Roads, the State Legislature, the Governor, the Highway Commission and various levels within the department, professional

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\(^6\)Operational environment refers to the environment as it is perceived by the individual acting within it. Real environment means the environment as it actually is, and in analyzing any situation, both of these environmental perspectives must be considered.

\(^7\)Stein, op. cit., p. xv.

\(^8\)Ibid., p. xvii.
intermediaries, and private individuals. The system under considera-
tion is generally pyramidal rather than polylithic.\(^9\) This should be-
come clear from examination of the cases, and the concept will be impor-
tant in the concluding chapter.

In summary, the case method treats a problem within the institu-
tional administrative context in which it occurred. The case method
provides a means for both objective analysis and subjective criticism;
for education in administrative techniques and generalizations about
their validity and efficiency.\(^10\) Here it is used: (1) to analyze several
different problems in terms of (a) the external environment such as
federal rules and methods of enforcing them; and (b) the personalities
involved, including both federal and state officials, with emphasis on
the State Highway Department;\(^11\) (c) the administrative structural and
procedural limitations which are found at both federal and state levels;
and (d) interactions among various levels of the hierarchy; and (2) to
point out deficiencies which are brought to light in the analysis, and
suggest ways to ameliorate these problems.

Relevance of the Thesis

Public administration, as distinguished from administration in

\(^9\) In a polylithic structure lines of communication tend to be
blurred, because each employee is responsible to more than one superior;
often it is difficult to pinpoint specific responsibility, and employees
may feel a confusing lack of direction. The opposite of this is a
pyramidal structure, in which each employee is directly responsible for
specific actions to one superior official.

\(^10\) Stein, op. cit., pp. xxiff.

\(^11\) Throughout the paper, "commission" will refer to the five-
member board at the head of the department; "department" will refer to
administrative staff positions under the commission.
general, is concerned with the processes of decision-making and policy formation in public organizations. This is a study in public administration in that it is concerned with these processes as they relate to public agencies. It will show some of the aspects of public administration that differentiate it from the private sector: its more complex environment made up of private citizens, and organizations at several levels; and the broader objectives and programs with which it is concerned. As a study in organizational efficiency, it is hoped that this thesis will contribute to the general fund of knowledge in the field of public administration at the state level, insofar as it points out certain recurring problems and attempts to provide feasible solutions to these problems.

Also, it is the intention of this study to help clarify one aspect of the federal-state relationship, and to suggest avenues of possible improvement in this area.
CHAPTER I

THE HIGHWAY DEPARTMENT: HISTORY AND THE PRESENT SITUATION

Historical Background: The Federal-State Relationship

The federal-state relationship which has been developed for the purpose of constructing and maintaining the Interstate Highway System is described by Joseph Uveges as "a system cf rather loose operating standards in general administration and personnel administration." A question to be explored throughout this study concerns the nature of these standards: are they broad enough to allow state officials sufficient discretion for maximum operating efficiency, and at the same time specific enough to prevent both dishonesty and inefficiency at both the state and federal levels? Preparatory to answering this question, let us trace the development of the highway system in the Twentieth Century, to provide a background against which to judge present problems.

Around the turn of the century the states began to assume control of highway operations with the formation of state highway departments. The states gave direct assistance in road construction, while the federal government attempted to remain as much in the background as possible, offering only sketchy and indirect aid. In 1893 the Office of Road Inquiry was established, for research purposes, dealing mainly with

road construction techniques. For almost twenty years this office constituted the only official link between federal and state highway operations. In 1912 an act extended the functions of the office, and created an investigating committee "to report on the subject of federal aid in the construction of post roads and appropriation of a $500,000 post road fund."\(^2\) There still was no comprehensive program tying together the interests of the two levels.

The basic statute setting forth the federal role in highways is the Federal-Aid Highway Act of 1916, which has been in use since its enactment, with periodic amendments to bring it up to date. Uveges notes that the "keynote of the entire act was one of mutual cooperation between the states and the Federal government."\(^3\) The states were left with much power, but it must be noted that the act probably could not have passed otherwise, since the states were accustomed to rather extensive discretion in this area, and probably had no desire to relinquish their authority.\(^4\)

Of course in these early years, with automobiles still a novelty and a luxury item, there was no thought of a 41,000-mile Federal Interstate Highway System; federal regulation was limited to rulings necessary to expedite such federally controlled functions as postal deliveries. Indeed, the first indication that national legislation to prevent fraud was necessary was with regard to the supervision of post roads; it came in the Post Office Appropriation Act of 1922:

If any official, agent, or employee of the United States, any

\(^2\)Ibid., p. 10.
\(^3\)Ibid.
\(^4\)This problem of proper authority is implied in ibid., p. 11.
state, or territory, or any person, association, firm or corporation, or any officer or agent of any person, association, firm or corporation shall knowingly make any false report, statement, or representation as to the character, quality, quantity, or cost of material used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any project submitted for approval to the Secretary of Agriculture, or shall knowingly make any false statement, representation, or report or claim, for work or materials for construction of any project approved by the Secretary of Agriculture or shall knowingly make any false statement or representation in any report required to be made under said Federal highway act with the intent to defraud the United States, he shall, upon conviction thereof, be punished by imprisonment not to exceed five years or by a fine not to exceed $10,000 or both.5

Note that at this time the supervision of federal highway matters was placed with the Secretary of Agriculture; not until 1939 was the Bureau of Public Roads to be placed in a distinct category in a newly created department.

In summary, until 1916 the federal government took almost no role in regulating state highway operations, and even after 1916, until about 1930, the federal role was more that of an overseer than an administrator.6 In the act of 1916, provision was made for federal financial aid, and until the Depression funds were usually divided on a fifty-fifty basis; i.e., the states were required to match federal aid dollar for dollar. In the 1930's the federal government helped those states with too little money for road construction by providing long-term loans to ease the financial pinch of the Depression years; when the states found themselves unable to repay the loans, as happened in many cases, the debts were often forgiven, with the result that the federal government was responsible for the total financing of some federal aid projects.

5Quoted in Ibid., pp. 12-13.

6Ibid., p. 13.
Ironically, the states, which originally had scorned federal control of highways, eventually drew the federal government further and further into the center of state highway operations, as a result of their inability to repay the loans. Increased federal aid almost always brings increased federal control, and highway legislation in the 1930's and '40's was no exception.

When the federal government began supplying the states with more funds for highways, the first planned highway program came into existence with the first Hayden-Cartwright Act in 1934. This act authorized a survey of construction methods in the states with the intention of promoting the "establishment of a definite, economically and socially defensible, integrated highway improvement program in all states." In spite of the appearance of more specific legislation, however, the restrictions on appropriations were relaxed during the Depression period, and specifications relating to administrative standards were generally less stringent, although such restrictions had been extremely limited prior to this time. In 1936, however, the federal government found itself taking over more of the financial burden than was deemed feasible, and the second Hayden-Cartwright Act ended federal grants to states. Once again financing was placed on a dollar-for-dollar basis, and the states were required to match federal funds.

In 1938 the first legislation since 1916 that pertained definitely to misfeasance was enacted. The Federal-Aid Highway Act of that year "directed the Secretary of Agriculture to approve only such methods of bidding and such types of plans and specifications as would be effective

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7 Ibid., p. 16.
in securing competition and conducive to safety, durability, and economy of maintenance." It will become clear later that enforcement of such legislation as this has become a major problem in many states, especially with regard to the Interstate System.

The term "Interstate" was first used in 1939 in a report put out by the BPR. In this report it was stated that selection of road sites would be by joint action of the states and the BPR, and the relationship characterized by mutual cooperation between the federal government and the states was to remain unchanged.

With new functions came administrative changes. In 1939, under the Reorganization Plan No. 1, the BPR was transferred from the Department of Agriculture to the Federal Works Agency, a new creation of the Roosevelt Administration.

During World War II the federal government took over more control of highways, for purposes of defense transportation, and so on.

In the Defense Highway Act of 1941, states were authorized to acquire rights-of-way with reimbursement by the Federal government, but, if the Federal government Works Administrator shall determine the state as being unable to obtain such rights-of-way, the Administrator, with the approval of the Attorney-General may acquire such territory in the name of the United States. The same land may then be transferred to the states providing they accept the same and fulfill the obligation to maintain the project thereon.

During the War the BPR became the Public Roads Administration.

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8 Ibid., p. 17.
9 Ibid., pp. 18-19.
but in 1949, with the bill establishing the General Services Administra-
tion, the name was changed back to Bureau of Public Roads. In the
Reorganization Act of that year, under Reorganization Plan No. 7, the
BPR was placed in the Department of Commerce; the Commissioner of Pub-
lic Roads came under the supervision of the Secretary of Commerce.
(It remained here until January 1, 1967, when it was moved once more,
this time to the Department of Transportation).

Since 1916 the federal role had been increasing noticeably, if
not very steadily, and after 1949 greater importance was placed on both
efficiency and fairness of state action. An act of 1950 stated:

Any state highway department which submits plans for a Federal aid
highway project involving by-passing of any city or town shall
certify to the Commission of Public Roads that it has held hearings
of a public nature and considered the economic effects of the
location. 11

In 1956 this act was extended, and states were required to
hold public hearings or at least to provide opportunity for such hearings,
on unincorporated lands as well as in cities and towns. 12

The 1956 Federal-Aid Highway Act was intended to retain the
same relationship between federal and state authority, with the states
having primary control. However, in that year there was some controversy
over reimbursement for R/W acquisition. The states wished to obtain
federal aid for such acquisitions, while remaining free of federal con-
trol in this area. The bill was worded in this way. 13

1164 Statutes, Part 1, p. 791.

12Montana Highway History: Volume II, 1943-1959, Prepared by
the Planning Survey Division, Montana State Highway Commission,
September 15, 1960.

13Uveges, op. cit., p. 29.
Until 1956 the function of overseeing highway operations in the states was primarily centralized in Washington. In 1956, coincident with the commencement of the Interstate program, a move was made toward decentralizing the oversight function to the field offices in each state, both for administrative efficiency, and for the very good reason that district employees were probably better acquainted with local problems than were Washington officials.

The provision of the 1956 Highway Act that has the greatest significance for this study is the section setting out a thirteen-year program for a National System of Interstate and Defense Highways. This marked the inauguration of the Interstate System.

With this brief review of the development of federal aid for highways, let us turn for a moment to the history of the highway system in Montana during the decade of the 1950's, to establish a basis upon which to examine the cases to be studied in the following chapters.

**Historical Background in Montana**

The Montana Highway Commission was established by the Fifteenth Legislative Assembly, in 1917. The law states in part:

The object of this Act is to secure a uniform system for the construction and improvement of main highways throughout the State of Montana, and to obtain the benefits of Federal Aid under the Act of Congress approved July 11, 1916. . . . The State of Montana is hereby divided into twelve highway districts. . . . There is hereby created a State Highway Commission to consist of twelve members, of whom not more than six shall at any time belong to the same political party. . . . The members of the . . . Commission . . . shall hold office for the term of four years. . . . The . . . Commission shall . . . hold regular meetings at the State Capitol upon the first Mondays of November and May of each year. The said Commission shall also hold special meetings at any time upon the call of the Chairman of the said Commission or of the Executive Committee or of the Governor. . . . The twelve members . . . shall receive no compensation for their services except actual expenses while performing the duties of their office. . . .
The State Highway Commission shall have power and it shall be its duty to formulate all rules and regulations necessary for the governing of the State Highway Commission. The Commission is hereby authorized in its discretion to make all rules necessary to comply with the provisions of the Federal Aid Road Act of Congress, and to obtain for the State the full benefit of the said Act of Congress. The State Highway Commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction and maintenance of roads under the provisions of the said Act of Congress. For the purposes of carrying out the provisions of this Act, there is hereby created a State Highway Fund.

This act replaced a law creating a State Highway Commission, which was enacted by the Thirteenth Legislative Assembly in 1913. According to the 1913 Law there would be three Commissioners: one was to be the Professor of Civil Engineering at the Montana State College of Agriculture and Mechanic Arts; the second would be the State Engineer; and the third, a civil engineer with training and experience in road-building. The State Attorney General was to be ex-officio attorney for the commission. Meetings were to be held not less than once a month; the duties of the commissioners were set forth as follows:

It shall be the duty of the said Highway Commission and their assistants to give such advice, assistance and supervision with regard to road construction, improvement and maintenance throughout the State as time and conditions will permit, and as the rules and regulations of the commission may prescribe.

The Act of 1917 made provision for an Executive Committee, composed of three of the commissioners, selected by themselves. Members of the Executive Committee had specified two-year terms. The

1\textsuperscript{14}\textsuperscript{14}"Laws, Resolutions, and Memorials of the State of Montana passed by the Fifteenth Regular Session of the Legislative Assembly," 1917, pp. 428-429.

15\textsuperscript{15}"Laws, Resolutions, and Memorials of the State of Montana passed by the Thirteenth Regular Session of the Legislative Assembly," 1913, p. 318.
president of the committee, appointed by the commission, was to act as president of both bodies. The chief functions of this committee, as set forth in the act, were to keep the records of the commission and to proffer advice "with regard to road construction, improvement and maintenance throughout the State as time and conditions will permit and as the rules and regulations of the Commission may prescribe."  

In the 1947 Revised Codes of Montana the Act was revised. The commission was reduced to five members, and no mention was made of an executive committee. No more than three members could be from one political party. The four-year term was retained, but per diem compensation was now fixed at $15.00/day, not to exceed $1500.00/year. In 1965 this figure was changed to $20.00/day and $2000.00/year. Another alteration concerned meeting days; the commission now meets at least once a month.  

Figure I-A shows the twelve financial districts, created in 1927; figure I-B shows the five districts set up in 1947 for the purpose of selecting commissioners. 

Limited liability of the commissioners was established in Coldwater v. State Highway Commission, a case brought before the Supreme Court of the State of Montana, on appeal from the District Court of Gallatin County. The Court held that the highway commissioners are not required to personally supervise the repair and maintenance of highways, but are only required to

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16 Ibid., p. 427.

17 Section 32-1601, Revised Codes of Montana, 1947.

18 Section 32-2404, Revised Codes of Montana, 1947.
exercise general supervision through the state engineer and such other officials and employees as the commissioners deem necessary. The highway commissioners are responsible only for their own misfeasance and negligence and not for the negligence of those who are employed under them.19

This decision has relevance to discussions of administrative responsibility throughout this study.

State Highway Commissioners in Montana have authority to acquire, in any lawful way, land necessary for construction, maintenance, and improvement of the state system.20 It is shown in State et al. v. Whitcomb et al., appealed to the Montana Supreme Court from the District Court in Lewis and Clark County, that "... 'necessary' does not mean an absolute necessity, but reasonable, requisite and proper for the accomplishment, of the end in view, under the circumstances of the case."21 Responsibility for all right-of-way transactions, then, rests with the commission, along with authority to conduct such transactions.

In 1950 a Governor's Interim Highway Committee, appointed on September 13, 1949, made its recommendations on desirable changes in the highway program. The committee consisted of sixty persons from the twelve financial districts, and twenty other interested persons from industries and other groups.22

Among the recommendations of the committee was one which


20Section 32-1601, Revised Codes of Montana, 1947.

21State et al. v. Whitcomb et al., 94 Mont. 415, 424, 22 P.2d 823 (1933). See also Northern Pac. Ry. Co. v. McAdow et al., 44 Mont. 547, 554, 121 Pac. 473 (1912).

FINANCIAL DISTRICT MAP OF MONTANA
COMMISSIONER DISTRICT MAP OF MONTANA
advocated advance purchases of right-of-way for the purpose of saving state money in such acquisitions. With regard to the Highway Commission, the committee recommended that a twelve-man commission be established, with one commissioner from each of the twelve financial districts; that each district prepare a long-range highway program for the information of the citizens within the district; and that the merit system be used for recruiting and dismissing employees. Note with respect to the latter point, that no distinction was made among the types of employment within the department. Presumably all positions were to come under the merit system, except commission members.

In the 1951 Legislative Assembly the Governor's Committee's report was seriously considered, but none of the recommendations mentioned above was passed. In that year there was beginning to be felt a pressing need for more and more state revenue, due to the increased amounts of federal aid available that must be matched by state funds. But the Thirty-second Assembly did little to solve this problem.

In 1952 for the first time there was a special appropriation of $25,000,000 for the Federal-Aid Interstate Highway System. Prior to this time aid had been given to the states in a lump sum to be used for all the federal-aid highways. This change testifies to the growing size and importance of the program. Such specific allocations undoubtedly also simplified the accounting process.

In 1954 the allotment for the Interstate System was increased to $175,000,000. The formula for the apportionment of funds among the states was the following: one-half was figured on the basis of the total

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23 Ibid., pp. 19-20.
population of the state; and one-half on the basis of the formula used for Primary System funds.

The recommendation by the 1950 Governor's Interim Committee that R/W be purchased far in advance of construction had not been acted upon; as a result, the 1954 Committee reiterated the recommendation, with the added suggestion that a revolving fund be established for such a purpose. They failed once again to have this idea put into practice, and in an Analysis by the Automotive Safety Foundation in 1956 it was again suggested that a revolving fund be set up. Once again the legislature took no action in this area.24

In 1956 Congress appropriated $1,000,000,000 for the Interstate System for fiscal year 1957. The ratio of federal-state funds for Montana for fiscal year 1957 became 91.32 per cent-8.68 per cent for the Interstate program.

Also in 1956 R/W specifications were made more rigid in order to maintain adequate safety standards and to keep up with the steadily increasing amount and speed of traffic. The Secretary of Commerce and the state highway departments would work together to select standards that would not be obsolete in 1975.25 The resulting agreements set standards much higher than those formerly adhered to in Montana.26

New standards mean new specifications for construction, and thus in many cases it was necessary to consider new locations for the Interstate highways. In anticipation of this need for increased R/W,

24Montana Highway History, p. 34.
25Ibid., pp. 29-30.
26Ibid.
the Secretary of Commerce was authorized to acquire such R/W, but only by permission of the states involved. Finally, too, provision was made for setting aside funds with which to acquire R/W in advance of the contracting. These funds were to be in the form of federal aid, dispensed by the Secretary of Commerce. 27

There was considerable opposition in Montana to the changes in highway location, especially in rural areas near irrigated land, although some outcry was heard from urban residents who feared disruption of their residential areas. The controversy which subsequently arose, and which was to prove difficult to resolve, centered on the question of whether to build the Interstate close to the old roads, so that farmers and ranchers could use it in place of the old system, or to select a new and distant location, thus necessitating the maintenance of two systems of roads. With each section of the Interstate that is built, the controversy recurs; and problems regarding the acquisition of R/W, combined with rather loose administrative policies in this area, provide many of the instances of malfeasance or gross error which occur in state highway administration. Some of these are to be considered in subsequent chapters.

In 1957 there was a great increase in the number of construction contracts awarded on the Interstate System. In that year Montana caught up with the federal government on funding, and in Chapter 113 of the Laws of the Legislative Assembly, the existing Financial District Law was amended "to provide for the financing of the Interstate System as a separate entity instead of as a part of the Primary System. . . ." 28

27 Ibid., p. 30.
28 Ibid., p. 35.
This was an important year in other ways for the Montana Highway Commission. Until 1957 the tendency had been toward centralization of authority in Helena, with little absolute discretion resting with field administrators. The State Highway Engineer had been responsible for operations in all the districts, through either the State Construction Engineer or the State Maintenance Engineer, to the divisional construction engineers and the divisional maintenance engineers respectively. But in that year a move was made toward decentralization of many administrative functions from Helena to the District Engineers, who would report directly to the State Highway Engineer when the necessity arose for word from higher authority. Thus the process was both decentralized and simplified, with District Engineers given greater responsibilities and authority within their own territories. The basic assumption underlying this was that since these persons were closer to the immediate situations, their knowledge would be more complete, and thus they would be better equipped to handle problems that arose.

Concern for the economy during the business recession of 1957-58 prompted Congress to attempt to stimulate employment through the avenue of more aid for highway construction. Table I-a shows figures on a nationwide basis for federal aid allotted to the Interstate System for 1959-1961, under the Federal-Aid Highway Acts of 1956 and 1958.

<table>
<thead>
<tr>
<th>FY (Fiscal Year)</th>
<th>Aid Extended: 1956 Act</th>
<th>Aid Extended: 1958 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>$2,000,000,000</td>
<td>$2,200,000,000</td>
</tr>
<tr>
<td>1960</td>
<td>2,200,000,000</td>
<td>2,500,000,000</td>
</tr>
<tr>
<td>1961</td>
<td>2,200,000,000</td>
<td>2,500,000,000</td>
</tr>
</tbody>
</table>

\(^{29}\text{Ibid., p. 38.}\)
The 1958 Federal-Aid Highway Act also made mandatory hearings prior to R/W procedures on all rural sections of the Interstate, thus broadening the Act of 1956.\(^{30}\)

An interesting economic point to note is that in 1958 the last of the State Highway Debenture Bonds were retired (on July 15, 1958), and for the first time since 1930 the State of Montana was constructing and maintaining highways free of debt.

In the meantime, the federal government was having financial problems. Finding that the Interstate System was turning out to be a more expensive proposition than had been anticipated, federal aid increased over previous estimates by 10 per cent for fiscal years 1959, 1960, and 1961.\(^{31}\) Consequently, the Federal Highway Trust Fund was commensurately diminished.

Some of the problems of 1958 that remained for the legislature of the following year related to state financing—where to find money to pay the state's share of highway costs, and highway location—how to build good highways in places convenient both to travelers and residents of the state. The general attitude, however, was that the crises were minor, and that everything would work out well.\(^{32}\) In 1959 there was still opposition from farmers of irrigated land to the proposed routings of the Interstate, and in that year a House Investigating Committee was appointed to study the problem.

This brings us to the present decade, and to the point at which

\(^{30}\) Ibid., supra, p. 13.

\(^{31}\) Ibid., p. 39.

\(^{32}\) Ibid., p. 40.
the problems to be examined below arose. The remainder of this chapter will be devoted to a brief outline of the structure of the Montana Highway Department and the BPR in Montana, and of the Congressional Investigating Committee as it has operated throughout the nation.

The Montana Highway Department--1967: Basic Structural Aspects

The Highway Commission and its administrative staff have increased in size from approximately fifty-seven positions in the 1958-1960 biennium, to about seventy-three in 1967. It is the third largest department in the executive branch. The commission itself consists of five members (a chairman, vice-chairman, and three members) appointed by the Governor with the consent of the Senate. The commission then appoints its chief administrative officer, the State Highway Engineer. The State Highway Engineer is responsible for the hiring of those administrative officers under him, and is under the supervision of the commission in the performance of this function.

The department is so organized that each of the employees is responsible primarily to a single official above him. For example, the R/W attorneys are under the Chief R/W Attorney, who is responsible in turn to the Chief Counsel. The Chief R/W Agent supervises three subordinates: the Senior Assistant R/W Agent, the R/W Utilities Engineer, and

33Fifty-seven in 1960-62, seventy-four in 1962-64, sixty-eight in 1964-66. See Appendix for charts showing the organization of the department in each of these periods. Statistics given here cover those positions from the chairman of the commission to District Engineers. The total employment of the department is about 2400.


35This relationship will be explained further at infra, pp. 27, 113.
the Land Agent.

The state is divided into five districts: one commissioner is appointed from each district. Four of the District Engineers have under them two division engineers; the District Engineer for the Glendive District is responsible for the supervision of three division engineers. All District Engineers are themselves responsible to six higher officials, depending on the problem involved. These are the Preconstruction Engineer, the Chief R/W Agent, the Bridge Engineer, the Construction Engineer, the Maintenance Engineer, and the Materials Engineer.

In 1962 a report prepared by a management consultant firm noted that the Montana Highway Department did not have a formal policy manual. At the present time there is in existence no such instrument of guidance; there is no overall organization guide. For at least the last two decades the department has been run, according to statements by several department heads, on the basis of memoranda handed down from the State Highway Engineer, the commission, or the department heads themselves. Presently there is a move toward formal organization of administrative standards, about which more will be said below.

In spite of the lack of any written instrument for determining general procedural lines, one official who holds a high administrative post and who has been with the department for more than ten years

36 State Highway Commission, "Biennial Report," 1964-1966, p. 4. The five districts were created in 1947, as a consolidation of the eleven former districts, which now exist as divisions within the five.

confirmed that staff personnel at each level have a clear knowledge of their exact degrees of authority and responsibility. The statement is corroborated, at least partially, by the existence of an organization chart which is kept current, and on which specific lines of authority are diagrammed, from the Governor through the commission to the Division Engineers.\(^{38}\) This chart has sufficed for a definition of lines of communication, with the exception, of course, of informal or abnormal procedures to handle specific problems.

There is at this time no long-range program for setting construction project priorities, according to the official cited above. Nor is there any kind of administrative planning board to guide management in formulating broad policies. It was suggested to the writer that the personnel board approached this concept, but that the functions of the two types of bodies are not really analogous; also, there is some question among members of the department about the efficiency of the personnel department, at least until the last year or so.

A short interview was conducted with an employee of the personnel department. Responses show that the merit system is used at the stenographic and clerical levels only, and that positions ranked above these are filled by administrative appointment. The State Highway Engineer is responsible for such appointments, except that any appointment to a position ranked above G-21 (in a system which extends from G-6 to G-35) requires consent of the Highway Commission. There is no statute regarding the hiring, disciplining, or firing of personnel,

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\(^{38}\)See Appendix for reproductions of Organization Charts.
except with regard to retirement. The writer was informed that the legislature has appropriated funds for the development of a more equalized organization with regard to standards for recruitment, salaries, and so on.

There is a training program for all engineering positions, which involves both spending time in the field and in each of the departments. Classroom instruction is held in various subjects on an optional basis for any employee who desires to attend. The only clear-cut requirement for employment apparently is that District Engineers must be registered as professional engineers. Certainly this is an important factor, but it seems that at least broad standards should be formally promulgated with regard to all administrative positions within the department.

Although performance ratings are used for employees, several officials felt that these are "somewhat ineffective" due to the variation in the judgment of different supervisors. However, the subjective factor is probably unavoidable at this point, and any changes would perhaps be most effective at the recruiting stage, in the form of more clearly defined standards for employment.

The administrative official in the personnel department indicated that until about two months prior to the interview (which was held on June 26, 1967) there was no provision for a periodic analysis of personnel needs at the managerial level, and of personnel available to fill those needs. This year, for the first time, an extensive manpower survey is being conducted, with the purpose of streamlining the personnel

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39 Montana Highway Management, p. 22.
department. Conclusions regarding the need for such a survey may be drawn from information given in subsequent chapters; judgment about the success of the current attempt is not possible at this point.

Communications can become hopelessly involved and confused in any large organization, so a question pertinent to this study involves the use of staff meetings and conferences. Staff meetings involving all department heads are held approximately once a week; it has been the practice in the past to hold a conference with District Engineers and top administrative personnel once a month. It was indicated, however, that these latter meetings may be held less frequently in the future, since there is much individual communication among levels, and there is some indication that monthly group meetings are not necessary.

The Highvray Commission itself has authority over the department and over an affiliated, although not directly connected organization, the Highway Patrol. Commission organization, as has been shown above, has changed since 1913, and today there is no body analogous to the original Executive Committee. The recommendations made in 1962 by Roy Jorgensen's firm included the suggestion that such a committee be established to "provide a means of communication and coordination among the State Highway Engineer and the functional unit heads who report directly to him."40 However, no committee has been formed; apparently it is felt that the regular staff meetings suffice.

The State Highway Engineer has functions somewhat analogous to those of the chief executive of any large organization. He is, of

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40 Ibid., p. 5.
course, the chief administrative officer. In addition to this he is the chief engineering officer (although it is not required that he be a qualified engineer); his functions include receiving delegations, handling correspondence, working with the commission, performing public relations functions, and other managerial and ministerial duties. As mentioned above, he has a major role in the recruiting process, largely under the supervision of the Highway Commission. He is aided in his tasks by the Assistant to the State Highway Engineer, whose position is somewhat analogous to that of a vice-president.

Fiscal controls, at least on the surface, are stringent. The books of the commission are audited by the State Bank Examiner every year. Beginning on July 1, 1967, the Legislative Audit Department will also perform this function. The Bureau of Public Roads checks the financial records of the State Highway Department in addition to the examinations of the state agencies.

One situation which is a thorn in the side of the Highway Department, involves the method of distributing funds throughout the state for highway construction. Each district is allotted a certain fixed amount of money. If more should be needed it may be borrowed from other districts in any amount up to 100 per cent of the original federal allotment for the indebted district. Then, the following year must be spent repaying the loan, so that construction is bound to fall behind one way or another. In 1962 a New York paper carried an article about this problem in Montana. Montana officials had recently turned to the

federal government for recommendations for changes in the financial regulations. The article stated that the poor method of financing was responsible for the "spotty construction" in the state. In 1967 no changes are forthcoming.

With regard to safety requirements in highway construction and maintenance, there are rules which are to be implemented by the Safety Department, composed of five members in Helena and field men in each district.

Concerning policy manuals, an official in the R/W Division discussed a project presently being completed in that department—the compilation of a policy and procedures manual which will cover the functions of the department quite extensively. He seemed to feel that the system of administrative memoranda had worked quite effectively, but at the same time, was pleased with the impending change, although still dubious regarding the expected time of completion of the manual.

When asked about standards and processes relating to appraising, the responses were quite general, and more specific details received from other sources will be presented later in the study. The Montana Highway Department conforms to the "required items" of appraising which are set out by the American Institute of Appraisers. It was also noted that for appraisals which may be expected to exceed $25,000 independent or "fee" appraisers are called in, to insure the impartiality of the proceedings. (Appraisers who are retained full time by the department are called "review" appraisers).

The Jorgensen report recommended that the entire department be reorganized on a functional basis, according to the geographically designated financial districts. When confronted with this possibility,
one official had no opinion, but he did point out that to some degree this is done. For example, each district has its own R/W personnel, in addition to those positioned in Helena.

An overview of the organization of the department shows that it is (or has been, until the above-mentioned attempts at reorganization) rather loosely organized. This is illustrated once again in the BPR regulations. The chief administrator has the authority to proclaim and implement policies and procedures, and, within the federal provisions and for the purpose of implementing the latter, he may take whatever action he deems necessary. The only provision in federal law concerning state action in R/W proceedings states:

The state shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project.

Before a federal grant is provided, the state program for which it will be used must be submitted. Any changes made after the project has been approved may not increase the cost to the federal government "without prior approval of the Administrator."

With this cursory sketch of the Montana Highway Department, we have a framework in which to view the ensuing case studies. Description of other structural aspects will be supplied as they are needed in the course of the study.

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44 U.S., Bureau of Public Roads, Regulations for Highways, p. 3.
The Bureau of Public Roads in the State of Montana

For administrative purposes the BPR has divided the United States into ten regions; Montana is in Region 8, comprising Washington, Oregon, Idaho and Montana, with headquarters in Portland, Oregon. Within Montana there are two areas, A and B, established for the purpose of more efficient handling of the workload. Figure I-C shows these areas.

In Helena there are thirty employees, which, according to a top administrative staff member, is about average for states with populations near that of Montana. Employees are well trained, in a three-year training program, and their performance is judged on a rating system including thirty-six factors. Employees are rated by more than one superior, to ensure fair evaluation.

In an interview with a top R/W official, it was reported that in this state every appraisal made on every parcel is furnished to the Bureau, but that they probably review no more than 20 per cent of these. Note that it is simply a review, not a formal approval. Sometimes the State Highway Department requests prior approval on a parcel if there is some doubt about the acceptability of the appraisal, but otherwise the Bureau simply spot-checks state appraisals. When asked how irregularities were noticed with such a system, the official noted that the BPR usually takes special note of condemnation cases, but otherwise there is no way, except of course by accident, of finding objectionable actions.

All the R/W employees in the Bureau office in Helena are qualified appraisers, but on federal aid projects the Bureau makes no appraisals; this is done only on exclusively federal projects. "We don't get
involved in making our own appraisals," was the comment. In some cases the Bureau will request the state to make an appraisal in addition to those already submitted, but this is only in unusual cases (an example of this will be seen later, in the case of a parcel of land owned by David Werner).

BPR officials were asked if Bureau approval was ever given on a project prior to full acquisition of R/W. The answer was, "I can think of no single instance" in which this has been the case. The state must certify that they have acquired the right to all necessary land before a project will be approved.

There is a requirement that the state reviewing appraiser establish the fair value of property before R/W negotiations are begun, for the protection of both the state and the landowner. When asked how they could enforce this rule if they only spot-checked, Bureau officials agreed that there probably would be instances of violation, but that they simply could not check every parcel, and that they thought they checked regularly enough that irregularities would be detected, if such existed.

It was admitted that the Bureau could not keep close watch on the activities of the State Highway Department, but it was felt by those interviewed that the state was bound by these regulations and that the federal officials should not get too involved in policing state action.

It was also ascertained that payments for R/W parcels are sent directly from the central office to the recipient, except in the case of condemnation actions, when money has to be deposited with the court. Payments of federal funds are made in increments as a project progresses, rather than in a lump sum. As the funds are needed, the state bills the federal government for them, by the method of concurrent
Part of the federal funds are for replacing damaged irrigation facilities or water facilities under the Interstate highway, it was learned from Bureau officials. Federal funds are also allocated for other necessities such as culverts for moving cattle.

The federal-state relationship in Montana with regard to highway matters is essentially similar to that in other states. And, like other states, Montana has had her problems in this realm.

The Blatnik Committee: A Precis

The final consideration of this chapter concerns the activities of a Congressional subcommittee that was established to investigate allegations of corruption in highway organizations throughout the nation. For nearly two years, until 1958, the Interstate program seemed to be a great success. But suddenly problems turned up regarding R/W procedures in Indiana. It was established that there were incidences of fraud in acquisition proceedings, and the Project Examination Division was set up by the BPR to investigate allegations of malpractice in the states. Congress set up the subcommittee of the House Committee on Public Works, headed by Representative John Blatnik. The subcommittee was established to "carry out investigations into the Federal highway program."\(^{45}\)

In October, 1959, Representative Blatnik stated that whenever you have a multi-billion dollar program, there's bound to be extravagance, waste, and graft, at least on the fringes. Where there is skulldruggery \[^{5}\] where we find any wrongdoing,

\(^{45}\)Uveges, op. cit., p. 66.
we are going to dispose of it with dispatch.46

In any administrative organization there are two basic types of legal foundation for the administration: rules and regulations set out by the head of the administrative unit which comply with existing statutes, and the statutes themselves. The Blatnik Committee asserted, after several months of investigations, that the problems which existed in state highway departments were caused by the absence of adequate "statutory and administrative prohibitions."47

Actions taken by this committee will have a prominent place in this study; therefore it is pertinent to note that the committee was not universally accepted as an impartial, wholly effective group. In May, 1961, in an editorial which appeared in a Montana paper, Fulton Lewis, Jr., noted that the committee had at first been composed of thirteen Democrats and six Republicans; this ratio was later changed to twelve-seven. He maintained that the minority counsel was denied access to committee records and staff reports, thereby being obliged to work without the same aids that were available to majority members. Lewis reported that when confronted with this fact, Rep. Blatnik replied, "I do not want their investigator spying on my investigators."48 Furthermore, Lewis asserted that in the two years of its existence, the committee held only two hearings, in Oklahoma and Florida, in spite of investigations in other states. There had been no hearings to date.

47 Uveges, op. cit., p. 72.
48 Montana Standard, May 22, 1961. Fulton Lewis, Jr., is not to be considered an impartial commentator; he is quoted to illustrate the dissension which existed regarding the subcommittee.
in Massachusetts, although sometime after this article appeared such hearings began. In a letter to the writer in September, 1967, Robert L. May, Minority Counsel for the subcommittee, stated:

With regard to Republican difficulties with the Special Subcommittee on the Federal-Aid Highway Program, there was a time when the Minority staff was denied access to committee records and the Minority Members and staff found it extremely difficult to learn the subject and progress of investigations. This situation has changed in recent years, however. At the present time the staff of the Subcommittee, both Majority and Minority, work closely together and maintain a full and fair exchange of information. 49

In 1963, in an article in the Saturday Evening Post, Congressman Jim Wright, member of the Blatnik Committee, made the following statement:

Yet we have not done nearly enough. Clear-cut professional standards must be set for highway-department personnel. ... Conflict of interest statutes need to be streamlined and existing loopholes plugged. And politics has to be taken out of every state highway department. As one committee member recently put it, "Simply changing the faces is not enough. You have to change the basic system that produced all these irregularities." 50

Wright noted that the BPR is a "tiny agency with an enormous responsibility," and that effective administration of a nationwide interstate program became virtually impossible, given staff and statute limitations. He commented that in four years the Blatnik Committee had held hearings for sixty-nine days, or 406 hours; they heard 284 witnesses, "of whom 101 admitted 'irregularities'." The committee compiled more than twelve thousand pages of testimony. In that time, he said, "we have found fraud or carelessness involving right-of-way acquisition in

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49 Letter from Robert L. May, Minority Counsel, Special Subcommittee on the Federal-Aid Highway Program of the Committee on Public Works, September 11, 1967.

twenty-four states, shoddy or deliberately dishonest construction practices in twenty-one states, payola accepted by highway department employees in seven states."51

Administration of the highway program has remained substantially the same since 1916. Although federal control and financial aid have grown considerably, the states still have the greater part of the initiative in highway administration, and the federal government still maintains essentially an overseeing function. This federal-state relationship seems to be based on trust of state practices, with the consequent feeling that little direct control is necessary. The question to be considered then, is: does the federal government "trust" state officials in Montana to so great a degree that they do not provide adequate inspections in this state? How much trust is really justified? Why, with an allotment of 1,180 miles of the Interstate System, had Montana completed none of the mileage by June 30, 1959, and only 97.2 miles by September 30, 1959?52 That was three years after the program was begun. The Blatnik Subcommittee, the BPR, and the State Highway Department each has a vital role in the case studies which follow, and which depict the nature of a few problems which have beset the Montana highway program in the past decade.

Summary

Having reviewed the history and sketched structural and operational aspects of the Montana Highway Department and the BPR, it is

51 Ibid., p. 20.
time to consider these agencies as they function in actual situations. The aim of the Highway Department in its road-building programs is to provide "the greatest benefit at the least cost and serving the most ... people." However, in a department having approximately 2400 employees, constructing and maintaining roads throughout a state having an area of 145,736 square miles, and using in the process an average of about 30 per cent of the state's total expenditures, some errors are bound to be made. Indeed, given human fallibility, a certain amount of corrupt practice is likely to occur along with honest error. Uveges has postulated five situations which may result in serving less people less efficiently and more expensively than is necessary. These are:

"(1) waste brought about by loose and inefficient administrative standards. (2) Political manipulation and patronage. (3) A 'crash' program instituted without planning. (4) Existing state statutes. (5) An unhealthy moral climate." To these might be added one more: simple carelessness on the part of department employees.

The following propositions about administrative practices have been formulated to serve as guidelines in the examination of the cases to follow, in order to determine whether or not the Montana Highway Department functions efficiently as an administrative agency. They are not assumptions; rather, they are questions which will be explored and, finally, answered in the following chapters. They are divided into two categories, for the purpose of order and cohesiveness.

A. Administrative Policies and Procedures

1. The organization of the Department is not defined in a

Transcript of hearing. Special Committee to Investigate the Highway Department, January 14, 1959, p. 4.

Uveges, op. cit., p. 3.
sufficiently clear manner in any written instrument, and policies are not set out in such form as to be readily available to all employees.

2. Lines of communication are blurred and need clarification.

3. Department employees are often careless in the execution of their assigned tasks, with the result that work is often inefficiently conducted and improperly done.

4. There is a great deal of political manipulation with regard to matters that should be governed by strict objectivity.

5. The Highway Department comprises a government within itself, and should be made more responsible to the electorate.

6. Methods of R/W acquisition are inefficient and sometimes unfair to the taxpayers of Montana.

B. Public Relations

1. The Highway Commission has failed to attend to the needs of the people of Montana, ignoring their desires in the interest of political expediency.

2. The Highway Commission has ignored the need for good public relations, concentrating all its energy on the actual construction of highways.

3. There is a need for an investigation of Highway Department activities, since previous attempts to satisfy this need have been ineffective, due to questions concerning their impartiality.

In this study no judgments will be ventured concerning the character or personal motivations of any person, whether private citizen, legislator, or an official of the state or national government; only factual data will be offered as evidence, and conclusions will be confined to administrative situations, not extending to individual administrators.
CHAPTER II

ROUTING, CONTRACTING, CONSTRUCTION: THE SPRINGDALE CUT

It is the purpose of the following chapter to examine a case involving specific aspects of the procedures of the Montana Highway Department (routing, contracting, construction), in order to determine which, if any, of the inefficiencies and irregularities mentioned in the questions in Chapter I may be found. Efforts by the Highway Department to alleviate such problems will be discussed, where efforts have been made.

Since 1956 and the advent of the Interstate program, the employees of the R/W Division of the Highway Department have been responsible for a job with which they had been unfamiliar prior to that time, yet which demands efficiency and excellence of performance in every case to avoid incurring both the enmity of the citizens and a great deal of unnecessary expense. This is the task of appraising land for R/W acquisition before negotiations for the R/W are begun. It is estimated that of the total cost of the Interstate System in Montana, R/W payments will account for only about 3.145 per cent.\(^1\) However, this small fraction represents a large sum of money, given the cost of the system. This factor, combined with the necessity for state officials to keep the good will of the citizens whom they serve, has made it mandatory for the R/W Division to enter an unfamiliar field of operation.

\(^1\)This estimate was made by the Highway Department, and quoted during an interview with an official in the R/W Division.
without being granted the privilege of a period of grace in which to acquire the necessary personnel, arrange time schedules, and learn by trial and error.

It may be argued that government agencies are seldom allowed time to "practice" their particular assignments, that all officials must be prepared to meet new and unexpected circumstances at one time or another, with little or no notice. The argument has merit, but the ubiquity of the problem does not justify its use as a rationalization for the difficulties that will be encountered in each specific instance.

The situation was summarized in an article which appeared in The Center Line, the house organ of the Highway Department:

Appraisal of R/W damages, resulting from highway construction, is a comparatively new field—especially in Montana. Prior to 1956 it was not necessary to have an appraisal made before starting negotiations for right-of-way. Agents suddenly found that they must show, item by item, specific damage anticipated, plus a detailed and accurate appraisal of each parcel of land purchased, based upon factual information pertaining to that land and the surrounding vicinity. These appraisals are then reviewed and approved by the highway department and the Bureau of Public Roads...

A training program in appraising was instituted for right-of-way agents.2

The personnel problem was pinpointed in a report by the Ebasco Company, which stated in part:

Highway right-of-way acquisition is perhaps the newest and least understood profession of our day. It is a unique combination of several professions and had many new requirements necessitating a different approach to the problem of trained personnel.3

The requirement that appraisals be made prior to negotiations

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2 "Highway Department Version of House of Representatives Investigation," The Center Line, II:4, April 8, 1959, p. 3.

is but one problem. Another involves the routing of the Interstate highway; this will be discussed later in this chapter. Still a third involves federal-state relations; this deserves some space in this study, since action by the BPR will inevitably affect the performance of the state agency.

It was pointed out in Chapter I that the BPR is intended to work closely with the Highway Department, exercising some control through its function of approving state plans for routing, R/W acquisition, and construction. However, various authoritative investigators have found that the Bureau fails to some degree to perform this supervisory function, not only in Montana but throughout the nation. Uveges mentioned "inadequate Federal enforcement of matters such as disposal of right-of-way improvements..." And C.W. Phillips, a BPR official, said that "neither the states nor the Bureau were adequately equipped to handle the right-of-way acquisition which an accelerated program would entail. This was evidenced by the fact that there were only 107 inspectors to cover all fifty states." That Bureau officials in Montana have stated that they can only spot check, and that most of the Interstate projects are left almost entirely in state hands, is eloquent testimony to this problem.

Officials from the General Accounting Office investigated the situation in the Montana highway program in 1959, and the Comptroller General's report was released in 1960. These disinterested observers

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5 Ibid., p. 73.
found that there were "certain conditions which adversely affect the progress and administration of the Federal-aid highway program in . . . Montana . . . and indicate the need for improvement in certain contracting and right-of-way policies and procedures."^6

The report noted that the major difficulties in Montana, as reported by the BPR Division Engineer, were a shortage of state funds and problems with the acquisition of R/W. The report stated, however, that the Division Engineer had conceded to the GAO officials that there were no "immediate financial problems," although the Bureau's most recent survey of R/W procedures in Montana had been made over three years previously, in May, 1956.

Inadequate federal supervision, then, due at least in part to a severe dearth of Bureau officials, probably accounts to some extent for the problems presently to be reviewed.7 However, while inadequacies do exist at the federal level, one must look closely at the policies and procedures of the State Highway Department to obtain a proper insight into much of the trouble that has plagued Montana's highway program, and that still exists today.

The States: Guidelines and Public Relations

If troubles that have arisen are due partly to the fact that the BPR has an inadequate staff and takes insufficient time to check on state procedures, the written guidelines from which both state and federal


^7For further comments see infra, pp. 81, 86.
officials take their cues may be partly at fault, for they are often
nothing more than generalities. The Bureau's "PFM 80," that part of
the Policies and Procedures Memoranda which deals with R/W policies,
is interpreted very generally by the R/W Division of the state,
according to a top R/W official; it is viewed as a guideline to be
followed, but not as a strict regulation. One aspect in particular of
this type of policy might result in much misunderstanding and a good
deal of functioning at cross purposes; i.e., the fact that such loosely
formulated regulations can be interpreted differently by different people.
It seems probable that without carefully conceived written guides which
determine as specifically as possible the procedures to be followed
in any given type of work, federal officials, state employees, private
citizens, investigating committees, and any other involved group may
each lend a different interpretation to "general guidelines," thus
creating havoc rather than order.

The planning stage in highway construction is perhaps the most
exacting and most time-consuming part of the entire program. Loosely
formulated rules will increase the nebulous character of this preliminary
procedure from the vantage point of the department employees; equally
damaging, given the importance of public relations in the Interstate
program, are statements made by highway officials in their public capa-
city which do not accurately and specifically represent the situation
being considered. For example, this statement appeared in the Independent
Record on February 20, 1962:

Quinnell [then State Highway Engineer] reported to the commission that
something has been done on 95 per cent of all Interstate highway
mileage allocated to the state.8

8"James Wants New Highway Commission Members to Have Full
The question to be asked here is: what was it that had been done? For as was stated in Chapter I, in the Comptroller General's report of 1960 it was noted that as of June 30, 1959 none of the Interstate mileage in Montana had been completed, and as of September 30, 1959, only 97.2 miles of the total 1,180 were either completed or under construction. And a Bureau official reported that as of June 30, 1966, only 550 miles were either completed or under construction. What, then, did Mr. Quinnell intend to indicate by his statement that "something" had been done on 95 per cent of those 1,180 miles? The opinion of one Bureau official was that some preliminary surveys had probably been done; he expressed the belief that little more than thought could have been given to much of the indicated percentage. Thus Mr. Quinnell's statement was not wrong, necessarily; it was, however, ill-considered and unfortunate, for, whether consciously or not, he misrepresented the accomplishments of the Highway Department by omission of pertinent information. A private citizen, reading today that only about 50 per cent of the Interstate System in Montana is under construction, might well wonder, and understandably so, what the department had been doing since 1962. Such ambiguous statements as Mr. Quinnell's are detrimental to the department, as well as misleading and unfair to the citizens of the state.

The public hearing presents a fertile field for public relations activities. This is the time when landowners whose property is needed for R/W (and any other interested citizens) have an opportunity to

9 Supra, p. 39.

10 Report to the Congress of the United States; . . .," pp. 2, 61.
question highway officials and raise objections to proposed routes. Bureau directives require that a public hearing be held for every mile of Interstate highway that is built. The plans at the time of the hearing are supposed to be preliminary, and subject to change; the landowner may believe this to be unfair, since he cannot be assured that his objections will have any effect. However, the department insists that the opinions expressed by property owners at these hearings are taken into consideration in the final planning stage, and that, if they can be accommodated without undue expense and inconvenience to the road users, they are given great weight. Nevertheless, the practice seems to be to utilize the hearings to explain the situation to the landowners and give them an opportunity to be heard, and then to build the road where the department feels the land is best suited, and according to limitations imposed by such obstructions as railroads, and so on.

Regulations governing the holding of public hearings are scanty, and it has been frequently alleged that the hearings do not fulfill any purpose at all, unless it is to give the Highway Commission the opportunity to convince the citizens that the highway plans are the best.

In 1960 Drummond was selected as the site for a hearing. One newsman had this to say:

Will this be another "rigged" hearing as set up by Fred Quinnell, Jr., in February, 1958, through his district engineers and department heads?

Quinnell has directed his engineers and department heads to arrange "preliminary meetings" with "such interested parties . . . who are vitally interested in the proposed routings."

The state engineers said these meetings should "not be open to the public" and "newspaper publicity should be avoided if possible."
After "clearing up" misunderstandings with a hand picked few in the community they should "be encouraged to attend the hearing and give active support" if they are in favor of the proposed routings.

The preliminary secret sessions were proposed, according to Quinnell's memorandum because the public hearings were "monopolized by those persons who are opposed to the proposed routings" and the result was "leaving the impression with the newspapers and the public that there is general opposition to the proposed construction."

Evidently, one of the purposes of these hearings is to give the people of Montana the impression that the majority of the citizens in the area under examination support the highway plans. In this way at least, it is a propaganda vehicle of the Highway Commission, rather than a tool of the people.

In 1963 Ben Stein, Senator from Park County, attended a public hearing in Craig, Montana. He made the following statement.

... My original understanding of these hearings was that they were supposed to be route hearings, and all this hearing tonight is what you'd call an alignment hearing. The route is predetermined, and you're wondering whether it is going to go a few feet one way or the other.

Highway official Howard Buswell replied in part:

These public hearings are held as a requirement of Federal law and I would like to read you a section from the Policy and Procedure Memorandum that was put out by the Bureau of Public Roads on this subject. "There is no requirement under Title 23, U.S. Code, that there be a public hearing as a part of a state's action in selecting or designating a Federal Aid highway route nor for approval for such action by the Federal Highway Administrator. The objective of public hearings is to provide an assured method whereby the state can furnish to the public information concerning the state's highway construction proposals and to afford every innocent resident..."
of the area an opportunity to be heard on any proposed Federal Aid project for which a public hearing is to be held." Now we feel that we follow that law to a "T"...".

The letter of the law is indeed observed. Therefore, if the format of the hearings is to be changed, the law should be altered, or amended at the state level, to insure that such changes are implemented.

The problem seems to be whether plans presented at the hearings are preliminary in fact, or whether the final route has been chosen, but all original alternatives are presented to the audience at the hearings anyway, more as a topic for polemic than for serious choice.

It is true that it is the responsibility of the Highway Department to determine the best route, but there is no clause in Title 23, United States Code, which forbids the holding of hearings prior to final selection of a route. The Highway Department officials profess to allow the citizens some say in the matter by conducting the hearings. It appears, however, that the citizens have little power to effect changes in highway routes through the avenue of public hearings, when the route has been chosen by the time of the hearing.

About a month after the hearing at Craig, the Montana Highway Commission took this problem into consideration. Commissioner Ted James noted that at one hearing in Great Falls the commission went armed with data which explained and justified only one of the three possible routes—for the two which had been discarded they had no information.

James asked, "What is the purpose of such a hearing if the department's mind is already made up? ... A Hearing should not be aimed at convincing the people that the Highway Department is right, but to get the

\[13\] Ibid., p. 25.
ideas of the people on the route that would best serve the city.\textsuperscript{14}

This statement by James is supported by a remark by one highway official in an interview, that the public hearings probably do not serve as a "suggestion box" for the people, but that they do allow irate citizens to "blow off a little steam once in awhile."

Quinnell stated at this meeting that the department had to have some proposal to make to render the hearing worthwhile. "If we should go into a hearing without having made cost surveys and without having selected the better route, people would ask why we were holding a hearing.\textsuperscript{15} It appears, however, that this question had occurred anyway to some observers, including one commissioner.

\textbf{Construction and Routing: Improper Prior Planning?}

In 1959, at a hearing of the Special Committee to Investigate the Highway Department, Dale L. McGarvey, Acting Attorney for the committee, asked this question of Mr. Fred Quinnell, the State Highway Engineer: "Would you say ordinarily speaking that the acquisition of right-of-way would be substantially before the letting of any contract?"

Quinnell replied:

No, I would not say that, because working against deadlines, as we are, with the small amount of State funds, ... a lot of times we have to crowd these projects hard in order to get them to construction status, as the money is placed at our disposal, then we have to get it out as rapidly as possible.

... We a lot of times will have a project about ready, we can't go in the field and acquire right-of-way much in advance of the construction of these projects because if we do that we are sewing up all of our monies, our state monies to purchase right-of-way, then we don't have money to go ahead.

\textsuperscript{14} "Purpose of Highway Hearings is Aired," Billings Gazette, April 24, 1963.

\textsuperscript{15} Ibid.
and construct. 16

In the Comptroller General's report in 1960 it was mentioned that the state "awarded many construction contracts before acquiring or clearing the necessary rights-of-way." 17 Such procedures are contrary to Bureau practices, and it is possible that when landowners realize that the state must have their land within a certain amount of time in order to maintain construction schedules, they will hold out for higher prices than they could otherwise expect. The Comptroller General's report stated:

sometimes the Bureau's division engineer may waive the requirement that all necessary rights-of-way have been acquired. But "these cases will be infrequent and will be rare administrative exceptions to standard practice." In Montana 47 of the 101 construction contracts awarded by the state during the period July 22, 1958 to June 17, 1959, contained a qualification as to right-of-way clearance. The Bureau concurred in the award of one contract (project No. F-130(15), unit 1), although the state had not completed negotiations on twenty-eight parcels of rights-of-way.18

The Ebasco report made a recommendation "that no contracts be awarded on the Interstate program without full R/W acquisition." 19

This problem has been largely ameliorated in recent months, since the Bureau directives have, within the past two years, made it mandatory that full R/W be acquired before the letting of any contracts.

The PFM states:

The State's overall planning and scheduling of highway projects must allow sufficient time for the right-of-way division to acquire and clear the necessary rights-of-way in an orderly and

16"Special Committee to Investigate the Highway Department," transcript of hearing, January 14, 1959, p. 12.
efficient manner prior to the letting of a construction contract.\textsuperscript{20}

A high-ranking official in the R/W Division of the State Highway Department admitted that although R/W acquisition is supposed to be completed seven weeks ahead of the letting, the two stages are usually crowded so that the last parcel has just been taken at the time of the letting of the contract. Still, the coordination of R/W taking and construction has been substantially improved, and the poor planning of which the state was guilty for almost a decade has been largely overcome in that area, although there is still room for improvement.

What of the routing itself? The problem here seems to be mainly one of uncertainty regarding the exact nature of the federal-state relationship, and it is worthy of note, since the two levels of government are quite interdependent in their activities with regard to the Interstate System.

An example of the difficulties encountered is seen in the conflict between the Highway Commission and the BPR over the Interstate route near Billings. The Highway Commission had planned to put a road through the Bitter Creek area; the Bureau, upon reviewing the plans, rejected them and asserted that the highway should be north of the Bitter Creek route, stating that in the interest of safety this was the more feasible of the two. Kenneth Anderson, a service station operator in that area, was reported in the \textit{Billings Gazette} as saying, "We are all against federal controls, but if this proposition necessitates control on interstate highways where the federal government puts up 91 percent of funds I believe federal control is a necessity."\textsuperscript{21} The Highway

\textsuperscript{20}PPM 80-5, A-2, Bureau of Public Roads.

\textsuperscript{21}\textit{Billings Gazette}, April 26, 1962.
Commission blamed the BPR's Washington office for exercising control in an area that called for nothing more than cooperation. Their quibbling over the difference between cooperation and control appears to have been misplaced in this instance, however, since it is the job of the Bureau of approve route locations determined by the Highway Commission. If these are not approved, the routes must be changed or the Interstate System will be held up until a plan is finally agreed upon by both state and federal agencies.

On April 27 the Gazette reported that a resolution had been adopted unanimously by the Highway Commission; it was approved by Governor Babcock and sent to Washington, D.C., to protest the Bureau's rejection of the Bitter Creek Route. The resolution, as reported by the Gazette, said that the BPR had "transgressed on the spirit of cooperation" between the state and federal agencies. Further, it accused the Bureau of dictatorial practice. The following day, Highway Commission Chairman Sorrells said:

We are still of the opinion that it is our prerogative to select routings, and our determinations are made after a review of the study and recommendations of our very competent engineers. I would like to again point out that this is a determination as to whether we are operating under federal participation or federal control.

The point which Sorrells missed in his statement was that federal participation inevitably brings some measure of federal control, especially when that participation amounts to 91 per cent of the total cost of the program. In rejecting the Bitter Creek route and proposing a different one, the Bureau had made its own surveys, and was making a

23 Ibid., April 28, 1962.
real effort to perform effectively the function for which it was insti-
tuted. An objection by state officials to the route proposed by the
Bureau, since the objection was based simply on the fact that the Bureau
is a federal agency, was out of order. Failure to recognize the validity
of an action taken by the Bureau which was entirely in the line of duty
is, however, indicative either of a great misunderstanding of the federal
position in the state, or an attempt to get federal money with no
obligations attached. The latter is unlikely to occur.

In the Comptroller General's report mention was made of the
route in question, with the comment that the route had been selected
and construction begun prior to the economic analysis which is required
by Bureau regulations. Such an analysis, the report stated, should have
been made prior to final selection of the route, especially in view of
the large amount of local opposition to routing the highway according
to original Highway Commission plans.\textsuperscript{24}

In a letter in August, 1967, Robert E. Champion, Chief R/W
Agent, stated:

It was determined from cost estimates, the Bitter Creek route
would be the most expensive and service to adjoining communities
would not be improved by the construction of an interstate high-
way through this route. The Pinehill-Prior Creek Route is being
planned, designed, and R/W acquired at this time, as this route
is the most economical and in the greatest public interest.\textsuperscript{25}

So eventually, the Bureau officials and the citizens near Billings who
objected to the Bitter Creek route were satisfied.

\textsuperscript{24}Report to the Congress of the United States: . . . ." pp. 38,
41.

\textsuperscript{25}Letter to the writer from Champion, August 16, 1967.
The Springdale Cut: A Case of Controversial Routing and Contracting

The original construction contract for Project No. I-90-7 (3) was awarded on April 24, 1958. Several possible routes had been considered; one was the route chosen, another followed the grade of the Northern Pacific Railroad, and the third cut in back of Springdale Hill. The route behind the hill was not feasible because of the grade that would have been necessary in that location. The railroad would have required that the department not only build them a new grade, but maintain it for ten years. Consideration of these factors alone would seem to confirm the wisdom of the commission's choice.

The Dam.—Despite these apparently important considerations, the route chosen engendered much controversy. The discussions centered on the possibility of a dam being built that would inundate a section of the highway estimated to cost approximately ten million dollars. The Comptroller General's report asserted that the BPR had approved the route without apparent consideration of the possibility that the dam would be built in the Absaroka area. The report mentioned that two years after the route was approved, the Bureau acquired information from the Bureau of Reclamation regarding the status of the dam project, and that the Bureau of Reclamation reported that studies concerning the feasibility of the site would not be completed before June, 1961. Investigators from the General Accounting Office, however, found a copy...

26"Report to the Congress of the United States: . . . ." p. 11. Springdale is located on Interstate 90, about eleven miles east of Livingston.

27Ibid., p. 6.
of the "Missouri River Development Program," put out in June, 1952, in the files of the BFR, detailing the proposed Absaroka dam as it had been proposed in 1946. Another publication in the Bureau files was "The Missouri," a publication of the Missouri Basin Interagency Committee, "which shows Absaroka Reservoir as an active part of the water and land resources development program in 1958."

These facts seem to point to the necessity for an investigation by the department of the status of the dam project prior to the commencement of construction. An article appearing in October, 1960, gives further testimony to the need for such a precaution. Luke Wright, employed at the Tribune Capital Bureau, reported that Highway Commission members had asserted that a dam on the site in question would be impossible: it would inundate Livingston, as well as the highway. Wright stated further that Fred Quinnell, State Highway Engineer, said he had not heard that a part of the Interstate might be flooded. This is confirmed in the Comptroller General's report. It certainly seems that such evidence should have been considered, in view of the Interstate construction anticipated.

In 1960 William I. Palmer, Acting Commissioner of the U.S. Department of the Interior, Bureau of Reclamation, stated:

We have scheduled sufficient funds in fiscal year 1960 and, tentatively, fiscal year 1961, to complete a Division report on the Yellowstone River. One of the major features of the plan is expected to be a large storage reservoir serving the multiple purposes of irrigation, flood control, fish and wildlife, recreation,

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28 Ibid., p. 34.
and possible power development on the main stem of the Yellowstone River near Livingston, Montana. Such a reservoir was contemplated in our original plan for the Missouri River Basin Project and was designated the Missouri Dam and Reservoir Site. In the course of subsequent studies the name of this site has been changed to Absaroka and several possible alternative sites have been considered.

The studies have not proceeded far enough to determine which of the alternative dam sites is most desirable. . . .

Both interest and opposition have been expressed in this potential development which is currently under study. The opposition appears to stem primarily from the necessity to inundate improved properties or valuable lands through the construction of the reservoir.31

Two particularly important points are made in this letter:

(1) that the site was being considered as late as 1960, which confirms the argument of the opposition to the highway routing that the site had not been abandoned in 1958, when the construction contract was awarded; and (2) that such a dam would definitely flood land in that area.

All the above evidence was either unknown to Highway Department officials, or ignored by them. Assuming that the latter is not the case (there is no proof to the contrary), if those officials who were responsible for choosing the best route for the Interstate highway were ignorant of the studies being conducted for the Absaroka Dam, an examination of administrative communications is certainly in order. An article appeared in The Center Line in April, 1959, refuting the findings of the 1959 Special Committee concerning the Springdale site. The article stated that

it was contended that a dam at Mission is in the offing; that a large section of highway would be inundated; that, therefore, the funds spent would be wasted. A check with the Bureau of Reclamation will show that a survey was made prior to World War II. The Bureau stated it would be possible to have a storage reservoir

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in that area—BUT THAT IT WAS ONLY AN IDEA, NOT A PROPOSAL.32

One report contradictory to others and supporting the position of the Highway Department, appeared in a local newspaper in October, 1960. It stated in part:

The U.S. Bureau of Reclamation discarded the proposed Mission dam site of the Yellowstone river near Springdale before the Interstate 90 construction was scheduled, it was learned in Billings Tuesday from the top area spokesman for the Bureau.33

This statement is inexplicable and indefensible in the light of the above evidence, including statements made by members of the Bureau of Reclamation. However, it is interesting to note that the local news publication in the area raised a voice in support of the State Highway Department, in spite of the great volume of evidence opposed to the department's stand.

The question arises whether the differing reports presented by the Highway Department on the one hand, and the legislature, BPR, and Bureau of Reclamation on the other, were due to faulty communications among administrative agencies, or whether the Highway Department, in the interest of avoiding the other two proposed routes, which were both unfeasible, skirted the issue of the dam in order to expedite construction. (Remember that the State of Montana was behind schedule on the Interstate program at the time). No answer can be provided with assurance, but it is probable that both factors contributed to the confusion. It was certainly to the advantage of the Highway Department to avoid the issue of the dam, and if this was their intention, it was


accomplished brilliantly. Therefore, further substantiation is given the contention that both basic structural changes and alterations in regulations between state and federal agencies need to be seriously considered.34

The Construction.—For several Federal-aid highway projects, the State of Montana did not make adequate investigations of subsurface soil conditions to ascertain the type of soil that would be encountered in the actual construction of the projects. . . . This resulted in substantial underestimates of required excavation work and possibly higher unit costs for such work than might have been obtained had the quantity estimates been more accurate.35

At least half the blame for the negligence reported above was laid at the feet of the BPR. The Bureau's Montana Division office did not require that adequate subsurface soil investigations be made by the State highway department, and the records of the division office do not indicate that thorough consideration was given to determining the best course of action available to the State. . . .36

The point must still be made, of course, that the Highway Department should not have to rely on the Bureau to dictate its every move. The Bureau's function would be fulfilled with the issuance of very few regulations, so long as none were disregarded. Therefore the Bureau's responsibility in such a case as the Springdale construction controversy is only secondary; the state is primarily responsible for good construction standards.

On the Springdale project the contract was awarded on the basis

34The Absaroka Dam site is still bare, partly, according to an official of the BPR, because the Bureau of Reclamation decided it would be better to choose another site than to flood ten million dollars worth of Interstate highway that had already been built.

35Report to the Congress of the United States: . . . .", p. 3.

36Ibid., pp. 3-4.
of estimates that the cut would be made through solid rock. The amount of necessary excavation is less in this material than through a softer material (albeit more difficult in the former), but the unit cost is higher, given the nature of the labor and machinery required. The original contract was for $2,537,337. Approximately eight months later, in December, 1958, an additional work order for $1,071,504 was awarded, "to cover a change in project design and additional excavation of about 875,000 cubic yards." The necessity for this new work order resulted from the discovery, after construction had begun, that the land was not rock, but a loose shale formation that required more excavation to prevent slides, although presumably at lower unit cost. The work order was given to the original contractor, and approved by the BPR, without renegotiation; i.e., there was no competitive bidding for a million dollar increase in a construction contract. The division engineer of the Bureau did not obtain the concurrence of the Bureau's regional and Washington offices prior to approval of the extra work order. The Bureau's regional engineer acknowledged that, in view of the large amount of money involved, there could be some question as to the propriety of the division engineer's approval of the additional work without referral to a higher office, and he has so advised the division engineer.

Here is another instance in which the Bureau failed adequately to perform its duty with regard to checking on proposed state operations, but again, the primary responsibility for fair and correct procedure rests with the State Highway Department. One million dollars is not an

37 Ibid., p. 11.
38 Ibid., pp. 11-12.
exorbitant amount when viewed in terms of the total highway expenditures each year. However, it does seem to be an excessively large sum to be awarded without competitive bidding. The reason proffered by the state officials for this action was that renegotiation of the contract would result in a delay in construction, which the state could not well afford.\footnote{\textit{Livingston Enterprise}, October 8, 1960.} However, efficiency and savings to the taxpayers should be at least as important as the time schedule, which was not being met anyway.

Efficiency, as well as economy, may well be questioned here.

In his defense of the route chosen, Quinnell stated:

We did this, with the additional quantities being used to construct the other lane, changing the design from a two-lane to a four-lane highway. The material was not wasted.\footnote{\textit{Livingston Enterprise}, October 8, 1960.}

In other words, the additional "fill" that was removed in the process of making a gentler slope in the soft ground, was used to construct a four-lane highway in an area that was originally thought to need no more than two lanes. (Of course the cut through the mountain had to be made wider too, for such a change). If the four-lane road is larger than is necessary on the ranchlands in eastern Montana, the soil may not have been wasted, but the money was.\footnote{In the long run the money was not wasted, since all Interstate highway must now be four lanes (see \textit{infra}, p.106). However, this regulation did not exist at the time, so the justification for Quinnell's statement is ex post facto, therefore not really justifying his remarks.}

One way to avoid the controversy inspired by the handling of the federal aid must be utilized within two years after it is allotted; if it is not, federal-aid funds are withdrawn. Therefore it is important that the state meet its construction schedule as closely as possible.
Springdale project would have been to conduct pre-construction core drillings to determine the exact nature of the ground to be excavated. The state, prior to that time, had not purchased the necessary equipment, reportedly in the interest of economy. However, the requirement of thrift would be well served by an accurate knowledge of the type of construction to be undertaken, resulting in accurate monetary awards to contractors. This situation has been largely ameliorated now, since the state presently owns its own core-drilling equipment.

One more project, exemplary of sloppy state procedures, will be mentioned briefly at this point, as further evidence of the poor standards set for Interstate construction. This was Project No. F-333 (15), at Grass Range, Montana, discussed in the Comptroller General's report.\textsuperscript{43} The original contract was awarded on September 29, 1954, for $680,304. Slides occurred during construction, so an extra work order was awarded for $59,784 in July, 1955. Then the state cancelled the contract when the project was 70 per cent completed, to study the slide problem. The state had accomplished this study by November, 1956. Another contract was awarded on April 24, 1958, for $451,000. (Note that this is almost two-thirds of the original contract, although the project was 70 per cent completed). More slides occurred, but construction was completed by May, 1959. The Comptroller General's report stated:

\begin{quote}
We are concerned that the Bureau approved a construction contract on this project without requiring preliminary subsurface exploration; since it was known that the site of the highway was through the "Breaks of the Missouri" which are composed of steep shale hills, many of which are susceptible to movement when disturbed.
\end{quote}

\textsuperscript{43}\textit{Report to the Congress of the United States: . . . ."," p. 15.}
desirable to take such calculated risks in order to get jobs under way that otherwise might be unduly delayed. Considering that almost six years has \[\text{elapsed since the initial contract was awarded}\] \[\text{it appears that little was accomplished by proceeding without the benefit of subsurface explorations.}\]

It is noteworthy that the project was being constructed long before the Springdale cut was news; therefore, both the excuse that construction delays would be caused by pre-construction core drilling, and the possibility that such a situation had not occurred before to set a precedent for Springdale are invalid. The old aphorism "penny-wise and pound foolish" applied to both time and money, seems to be applicable in more than one case to the members of the Montana State Highway Commission.

The Springdale cut and related events which have been described above have dealt with only three phases of the Interstate construction program—contracting, routing, and construction. Prior to the commencement of these processes, land must be acquired. It is to that part of the activities of the Highway Department that the following chapter is devoted.

\[\text{Ibid., p. 16.}\]
CHAPTER III

THE FINE ART OF APPRAISING: ACQUIRING THE WERNER PARCEL

This chapter will center on a brief exploration of the techniques and problems of appraising, and some of the troubles which may be encountered will be illustrated in an account of one of the more controversial R/W transactions in the State of Montana since the Interstate System was inaugurated. Some desirable changes in the methods used by the Highway Department should become apparent as the case unfolds.

In State et al, v, Whitcomb et al. the Montana Supreme Court ruled that in all appraisals a "reasonable offer" is supposed to be made, and then a "reasonable attempt" to negotiate. Land is appraised according to its value at the time of the appraisal, and the value is considered to be the sum that could be obtained on the open market, with a willing buyer and a willing seller, with neither under any pressure or obligation to buy or sell. The apparent simplicity of this explanation is deceptive, however, since there are numerous ramifications which enter into almost any transaction; a few of these are severance damage, depreciation, and perhaps the most difficult to handle, the owner's own conception of the value of his land, based on what he can get from it as an individual, and on his opinion of the amount of

1State et al. v. Whitcomb et al., 94 Mont. 415, 424, 22P.2d 823 (1933).

2This is called "manager value," and will be discussed further at infra, p. 66.
damage being done.

The actual price to be paid to the landowner is the difference between the before-taking value (i.e., the value of the land as it stands at the time of the appraisal), and the after-taking value (or the value of the land after the Highway Department has acquired its share). The EPR Policy and Procedures Memoranda set out guidelines for the latter:

The after value estimates, both as to land and improvements, should be supported by one or more of the following methods as applicable: Sales of comparable properties from which there have been takings for like usage. Sales of properties comparable to the remainder. Land economic studies of previously acquired partial takings. . . . The economic loss or gain brought about by the change in land usage, changes in units of production, costs of operation, changes in rentals, etc., as supported by the market. 3

Several factors are considered in making cost estimates of land values: the cost of different lines of construction and R/W, the mileage and road users' cost. 4 One important distinction is that between actual value and speculative or "manager" value. Manager value is not included in appraisals, because of its highly subjective nature. It refers to that part of the value that is due to the particular business being conducted. For instance, a piece of land that ipso facto is worth very little may be extremely valuable to its present owner because it is particularly well suited to his business. Since this speculative factor depends on both owner estimate and a certain type of business which will be destroyed when the highway is built, the Highway Department will


4Information received in an interview with a R/W official of the State Highway Department, June, 1967.
pay only the price of the land without the business. These transactions are among the most difficult to negotiate, since department practices which in this area are comprehensible and fair to a disinterested observer, may seem unfairly weighted in favor of the department to a disgruntled landowner.

The suggestion was made in the Auditors' Report of the 1959 Special Committee that insurance coverage and property taxes be taken into account in appraisals. This is not done, due to the fact that both may vary according to the assessor involved. It is impossible to eliminate subjectivity entirely, as will be seen, but factors such as these two and manager value can be excluded to insure more objective procedures.

Two types of appraiser are employed by the Highway Department: fee appraisers, who are independent and are hired for one particular job with a fixed fee which is not dependent upon the value of the land; and review appraisers, who are full-time staff members of the department, and whose job includes determination of the fair case market value of real property, which amount is used to guide negotiations for R/W.

With this brief background, it is now pertinent to discuss a few general problems that have arisen, preparatory to the case study that will follow.

One complaint voiced by the Comptroller General's report deals with the relations between the BPR and the Highway Department. The subject of lack of proper supervision by the Bureau has arisen before and will again in the course of this study; it is one of the more

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5"Report of the Special Investigating Committee of the State Highway Department, Auditors' Report," 1959, p. 16.
frequently criticized aspects of the Interstate program. Of course it may be pointed out that state officials should handle their affairs in such a way that poor supervision will not foment carelessness or dishonesty. Unfortunately, however, laxity of Bureau employees, whether due to lack of time and staff or to simple failure to carry out their appointed tasks, has coincided with controversy regarding the status of several Interstate projects in the State Highway Department. Therefore the practices of both agencies have been called into question.

Investigators from the General Accounting Office noted that often the Bureau approved state plans without knowing enough about them to answer "ordinary inquiries" by the regional office. The report stated that "the Bureau agreed that as a general rule the division office should be so familiar with a proposed interstate project as to be able to answer most questions relating to design that may be raised by the regional office." If a larger staff is needed, or if the facilities of the Bureau need to be expanded, it would be worth the expense to ensure efficient execution of their tasks.

The burden of the problems, however, seems to rest with the state. There had been serious questioning of appraisal methods, especially when two or more appraisals on one parcel recommend substantially different payments. It is inevitable that a certain amount of subjectivity will enter into any appraisal, especially where such considerations as severance damage are involved. However, widely divergent appraisals suggest either error in appraisal techniques or misrepresentation of the

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nature of the parcel.

Any of several methods may be used in appraising land for R/W takings, and this may lead to different conclusions as a result of different approaches. In the eleventh meeting of the Special Committee on Highway Affairs Attorney Mahan called for continuity of appraising.7 No changes have been made in this direction to date.

At the tenth meeting of the Special Committee, Commissioner Ted James asserted that

... regardless of the low or high appraisal, we offer what is the most equitable appraisal, and I think in most cases we offer the high appraisal. The highest supportable appraisal.8

Lewis Chittim, then the Chief R/W Engineer, confirmed James' comments:

We establish the highest supportable value—never do we go out and offer that man the lowest amount. We have never since I have been in this office... We give him the highest supportable amount that we can.9

The stated policy has not changed since the 1963 investigation: recently a top R/W official stated that "negotiators are not instructed to get the lowest value."10

Condemnation proceedings are expensive, and even though, according to figures quoted by department officials, less than 10 percent of the Interstate parcels go to court for settlement, great pains are taken to avoid even these. After a final offer is made and rejected,

10This statement was made in an interview in July, 1967.

Emphasis supplied.
and before condemnation proceedings are begun, a R/W attorney may go to the landowners and may settle the parcel if the department can justify the settlement to the Bureau. This is more economical than taking the landowner to court, in terms of both time and money. Settlements of this type are very rare, however, since the landowner will usually demand a court hearing to see if he can get a higher price for his property. 11

By the time condemnation proceedings are initiated, the R/W plans are final; however, during the initial negotiations with the landowner, the plans are preliminary, and very general. All involved landowners always see R/W plans, according to department policy, and up until the time of payment or condemnation they are shown any changes made in the plans. The legislative investigating committee in 1963 questioned the status of plans at the condemnation stage, since these may be marked "preliminary." The reply given at that time by Chief R/W Engineer Chittim was confirmed by an official in the R/W Division recently: the plans are labelled preliminary, even though they are actually final, so that they will not be used by a contractor for construction plans before the appointed time. This helps to insure effective competitive bidding, and prevents one contractor from taking advantage of others.

Appraisals of comparable properties are not shown to a landowner whose land is being taken for R/W, to justify the amount offered, since department officials feel that if this were done only trouble could result. Very few properties are similar, therefore there is no point in showing other appraisals to the landowner. 12

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11 Ibid.
12 Ibid.
noted here, however, that when appraisals are made, they must be justified by the use of sale figures from "comparable properties from which there have been takings for like usage.\textsuperscript{13} If there are properties which may be considered comparable for appraising purposes, why cannot these same parcels be used to show the landowner the reasons for the price paid him? One answer might be that the bases of comparison are technical; another, that they are ambiguous, and difficult to explain to anyone who is not a competent appraiser. However, in the interest of fostering good will, the effort could be made, and it might be discovered that cold figures will be more easily accepted than some other explanations.

One of the unknown factors in appraising, one which causes widely differing appraisals on the same parcel, and which may cause disillusionment to the landowner, is severance damage. This refers to the damage done to a parcel when the Highway Department takes a strip of land from the middle of the property, severing it into two pieces, possibly leaving no access at all to one piece, or perhaps cutting off all irrigation facilities to one side.

There is a great deal of latitude given appraisers in this area, due mainly to the nebulous and scanty regulations pertaining to it. Also, it is difficult for highway officials to check this aspect of an appraisal. One R/W official commented, "Being laymen ourselves, we have to rely a great deal on our appraisers.\textsuperscript{14} Severance damage


\textsuperscript{14}Statement made in an interview at the State Highway Department, Helena, July, 1967.
will be different on each piece of land taken, but some of the obfuscatory aspects might be cleared up if there were certain regulations based on footage, damage to irrigation, stock movement and so on.

Subjective value, mentioned above in the form of manager value, is given no place in appraisals: i.e., from the point of view of the landowner the value is considered from a purely objective standpoint, while for the appraiser the value is partly subjective. Measures should be taken to protect both the landowner and the department by objectivizing the appraisal procedure in all its aspects.

Relations between Bureau and state officials and the subjective element in the appraisal process are both potential sources of trouble. The following case study gives eloquent testimony to the necessity for clearer and more objective procedures.

The Werner Transaction: 1958-1967

In 1960 Harry Burns, Chairman of the Highway Commission, made a statement in defense of the R/W Division, which was reported as follows:

"You should see what they are paying for R/W in some other places. . . . I was in Boston not long ago and inspected a road site where the land cost was six million dollars for a mile and a quarter of highway." He said that in many cases the department is obtaining land for less than its appraised value through negotiations with owners, and he cited one instance near here where appraisals ran from $216,000 to $281,000 and the final purchase price was $200,000.15

The land which Burns mentioned is the well-known Werner parcel in Park County. Although not typical of R/W transactions to date, it was a good choice to illustrate his point, since, in the words of Lewis Chittim, the Werner settlement was exceptional because it was the

15Livingston Enterprise, August 23, 1960, pp. 1, 5.
David Werner owned two parcels of land in Park County, which he purchased in 1952 for $27,000. He planned to subdivide these parcels and build homes on lots which would average 75 x 105 feet. At the time the Highway Department sent appraisers to estimate the value of the land for R/W for Interstate 90, much of the land had been platted, several lots sold, and some homes were being built. The subdivision was to be "California style;" i.e., with winding streets and a view of the "Park Range" of mountains from each lot. The area itself is desirable, with a pleasant climate and the probability of at least normal growth. In their summaries, the appraisers were laudatory, and one of them mentioned that the Werner subdivision "is the only area left in the City of Livingston, available for nice homes."20

Given the above mentioned favorable circumstances, it could be expected that even in the short space of six years, Werner's property would have appreciated in value. However, almost immediately after the two original appraisals were submitted (one by Ivan Shaw, R/W Agent, the other by Curtis Phipps, an independent appraiser), dissenters came forth to protest their validity. It was at this point that the case became a matter worthy of study.


18Ivan Shaw, op. cit.

19Ibid.

20Ibid.
Fact and opinion have been strangely mixed in the nine years during which the case has remained open, and the realities have often been obscured. This chapter represents one of many attempts to untangle the web of controversy, and to straighten the threads that form the fabric of the Werner story.

The first appraisal of the Werner property was completed by Ivan Shaw, on April 14, 1958. In describing the land he noted that lots would average 75 x 105 feet, or 7875 square feet per lot. In the section pertaining to utilities, he wrote: "Sewer_ yes_ City Water_ yes." His estimate of market value before taking was $489,000 (rounded off), and the after-taking value he placed at $198,000 (rounded off). So the estimated total damage would have been $291,000.

In the explanation which followed these figures, Shaw stated that "each lot is level and is complete with sewer and water facilities... The sewer and water lines are all in place..." The appraisal was accepted and approved by R/W Administrator Paul F. Reynolds.

Curtis Phipps submitted his appraisal on April 22, 1958. In his "Summary" he stated that "the subdivision is served by all city utilities, including water and sewer." His estimate of the before-taking value was $447,000; the after-taking value, figured according to the number of lots remaining, he set at $228,000. Adding other damages to the latter figure, his estimate of the sum to be paid to Werner was $275,000.

The following month two more appraisals were made, due to the large sums involved in the transaction. On May 28, Donald R. Lee, a fee appraiser from Billings, submitted an appraisal that was substantially lower than the others. His estimated value before taking was
$201,807.60, including $13,188.50 which was allowed for improvements in the form of sewers. The difference between these figures, $188,619.16, or the value of the land itself before taking, was figured using a deferred factor discount of 6 per cent. His estimated value after taking was $69,262.76, leaving a total of $132,590 (rounded off) to be paid to Werner.

The Highway Commission refused to accept the Lee appraisal as it stood, stating that the deferred factor discount was not acceptable as an appraisal method, and that their stand was supported by a legal opinion.

On the page giving Lee's "Summation Approach to Value," the $188,619.16 figure was crossed out, and below it was written, by a department employee, $285,750.00, or the sum of the parcels of value figured by Lee as sales in "per cent of a whole" over the period from 1958-1969. They accepted his land values, but discarded the 6 per cent discount. Then the after-taking value was subtracted (incorrectly, since there was a ten-dollar error in the figure copied from an earlier page), and the sum due Werner became $216,477.24. Figure III-A is a reproduction of the page showing the "Summation Approach to Value" in that appraisal.

BPR officials subsequently stated that the discount method was an acceptable appraisal approach to valuing property that was to be held

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21 This means that land is discounted in value for R/W acquisition, because it would, on the open market, sell piecemeal over a period of years, rather than as one sale.

22 In August, 1967, the research division of the commission's legal staff was unable to locate the pertinent opinion.
SUMMATION APPROACH TO VALUE

Based on comparative data for land, we arrived at a land valuation of $25.00 per front foot for raw land.

Werner Addition No. 1, Werner Addition No. 2 and also River Frontage Tracts have a total front footage of 12,912 feet and at $25.00 per front foot - Value is $322,800.00.

Adjusted front footage held by Werner in fee simple as of June 1, 1958 leaves a net front footage of 11,430 feet and this at $25.00 per front foot -- Value is $285,750.00.

Attached hereto is a projected sales schedule and percentage of the whole as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sale in % of a Whole</th>
<th>Parcel of Value</th>
<th>6% Deferred</th>
<th>Sale Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958</td>
<td>2%</td>
<td>5,715.00</td>
<td>.943</td>
<td>5,389.24</td>
</tr>
<tr>
<td>1959</td>
<td>5%</td>
<td>14,287.50</td>
<td>.890</td>
<td>12,715.86</td>
</tr>
<tr>
<td>1960</td>
<td>6%</td>
<td>17,115.00</td>
<td>.839</td>
<td>14,384.65</td>
</tr>
<tr>
<td>1961</td>
<td>7%</td>
<td>20,002.50</td>
<td>.792</td>
<td>15,840.41</td>
</tr>
<tr>
<td>1962</td>
<td>8%</td>
<td>22,860.00</td>
<td>.747</td>
<td>17,076.42</td>
</tr>
<tr>
<td>1963</td>
<td>9%</td>
<td>25,717.50</td>
<td>.705</td>
<td>18,130.84</td>
</tr>
<tr>
<td>1964</td>
<td>10%</td>
<td>28,575.00</td>
<td>.665</td>
<td>19,002.38</td>
</tr>
<tr>
<td>1965</td>
<td>11%</td>
<td>31,432.50</td>
<td>.627</td>
<td>19,708.18</td>
</tr>
<tr>
<td>1966</td>
<td>12%</td>
<td>34,290.00</td>
<td>.592</td>
<td>20,299.68</td>
</tr>
<tr>
<td>1967</td>
<td>13%</td>
<td>37,147.50</td>
<td>.558</td>
<td>20,728.31</td>
</tr>
<tr>
<td>1968</td>
<td>14%</td>
<td>40,005.00</td>
<td>.527</td>
<td>21,082.64</td>
</tr>
<tr>
<td>1969</td>
<td>3%</td>
<td>8,572.50</td>
<td>.497</td>
<td>4,260.53</td>
</tr>
</tbody>
</table>

VALUE OF LAND BEFORE TAKING ---------- $285,750.00

After Taking Value from Page 1. $63,772.76

Value of Taking $216,977.24

Not permissible, value must be paid on or date of appraisal —

- 19 -
for investment over a long period of time. However, at the time, the commission revision was apparently accepted, since the appraisal is on file in the Highway Department as a bona fide appraisal. Werner received $200,000 for his property, and full payment of the federal share of the money was made.

Revenue stamps on deeds which recorded sales of lots by Werner were used as the basis of figuring the sum owed Werner by the Highway Department. He was paid approximately $28,000 per acre for his land.

A final additional appraisal, made by Wayne Neil, R/W Agent, was submitted May 30, 1958. He noted that sewer and city water were "partially in." He suggested a before-taking value of $343,878; his estimate of the value after taking was $112,818. Werner, according to these figures, would have received $231,060.

When the report of the 1959 Investigating Committee was laid on the desks of the Senators in Helena, the Senator from Park County, Ben Stein, became interested in what he read. He began to conduct his own private investigation, in order to be certain that what he believed to be either incorrect or corrupt practices really existed. When he had convinced himself of the need for a renovation of the Highway Department, he began a campaign that continued for six years, and of which the reverberations are still felt today in the corridors of the highway building. There is little if any argument over the fact that Senator Stein has been the driving force behind most of the investigations since 1959; there is a great deal of disagreement regarding the propriety of his actions.

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23 Statement made in interviews held in June and July, 1967.
24 See infra, pp. 101ff.
At the time of the appraisal and acquisition of the Werner property, no extensive investigation was made by the Highway Department. It was simply accepted that utilities were in. Shaw's and Phipps' unequivocal statements regarding sewer and water lines have been mentioned above. Neil was more cautious, noting that "The underground sewer lines are in both additions. Manholes are not in place in a portion of Addition 1 or in any of Addition 2. Eleven manholes will be required to complete the sewer installation." No proof was furnished of the presence of sewer lines, however, until 1960. At this time the Congressional Subcommittee headed by John Blatnik sent to Montana one of their investigators, Mr. Baron Shacklette. His inquiries produced startling results. On October 7, 1960, The People's Voice printed the following rather triumphant news flash:

The mystery of the "moonlighted sewers" will long be remembered in folklore surrounding the building of the Interstate highway in the Livingston area, where Dave and Vera Mae Werner were paid $200,000 for "improved lots" they sold to the state which were little more than pasture land.

Digging on the right-of-way this week, under the eagle eye of Baron Shacklette, special investigator for the Blatnik congressional committee, Highway equipment uncovered only unsealed sewer pipe, leading away from the city sewer system, beginning nowhere and ending nowhere.

... State law... requires that plans for sewage disposal must be filed and approved by the State Board of Health before installation can start on housing additions such as the Werner addition was supposed to be. According to the State Board no plans were ever submitted for the Werner addition that was sold to the Highway, and plans have never been finally approved for the addition presently being used as a housing development.

Besides the unusable sewer pipe, there is no water on most of the addition involving the Highway.  

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On the same day a local paper carried the story with the following comments:

When he [Shacklett] passed the question on to the highway department officials they immediately ordered the investigation to proceed.

... Trenches in the state-owned portion of Werner addition No. 2 located unsealed sewer pipe in four places and no sewer in a fifth cut, according to state right-of-way engineer Lewis Chittim.27

Of course the Highway Department could do little except allow the probe to proceed. But with the arousal of public and legislative ire that followed the publication of these findings, department officials waxed eloquent in their own defense (it will be observed shortly that their protests have not yet ceased, although they are somewhat less vehement at the present time).

The City Engineer in the city of Livingston at the time, Verne Reed, was quoted as follows with regard to the unsealed and absent pipes: "I've never put in unsealed pipe."28 He also stated that he would not have given approval to unsealed pipe. Reed's statements covered in the Livingston Enterprise, complemented and confirmed other reports, such as that mentioned above by the State Board of Health.

He noted that it is common practice for the contractor or subdivider to put the sewer pipe in place and then have it inspected by the city before covering it up.

He said the city has no record of a sewer in Werner No. 2. However ... the addition is outside the city limits as yet and work may have been done by the county or an independent contractor and not inspected by the city.

As far as the final portion of Werner addition No. 1, ... Reed said, "If there was a line extending from that manhole out here I would know it."29

28 Ibid., p. 8.
29 Ibid.
Note that this article appeared in 1960, and appraisals made in 1958 stated that "subject subdivision is located within the city limits of Livingston . . ." 30 "The Werner addition was plotted and accepted by the City of Livingston, Montana, and the Park County Commissioners on May 12, 1954," 31 "To properly appraise the Werner Additions, one must appraise the city of Livingston, Montana in which it is located;" 32 and "Werner's addition No. 1, part of the official plat to the City of Livingston, . . . Werner's addition No. 2, part of the official plat to the City of Livingston. . . ." 33

This evidence shows that the city would have inspected the sewer lines had such been properly recorded in the city records. It does appear, however, that a portion of the property was not yet incorporated at the time of the taking.

Somewhat later, in a deposition which he gave in the course of defense against a lawsuit, Senator Stein stated under oath:

In my presence the sewer on the Werner addition was dug up and Mr. Shacklette, who has had legal training, said to the highway officials at that time, "this is a case of defrauding the Federal Government." 34

Naturally, the Highway Department did not sit idly by and watch while such shocking discoveries were unearthed on the largest


31 Shaw, op. cit.

32 Neil, op. cit.


34 In the District Court of the Sixth Judicial District of the State of Montana In and For the County of Park, January 9, 1964, p. 45.
single R/W transaction in the department's history. About a week after
the sewer was exposed, the Enterprise reported that Harry Burns (Chairman
of the Highway Commission), Les Swanson, Otis Waters, Stan Halvorson,
Roy Sorrells (Highway Commission members), and Fred Quinell, Jr.
(State Highway Engineer), had journeyed to Livingston to inquire into
the Werner purchase. "Burns emphasized that the meeting is not a
formal session of the Commission nor is it a public hearing, but he
promised that all information adduced during the gathering would
be made public." The meeting was called to determine the status of
the additions as parts of the city of Livingston, which was in doubt
(and which would alter the value of the land, lowering that part which
was not in the city), and to evaluate the problem of the sewers. It
is interesting to note that only one of the four appraisers was present,
although the appraisals necessarily dealt with the matters under dis-
cussion, and would have been materially affected by them.

An interesting partial account of the meeting was reported,
again in the Enterprise, and is of sufficient importance to be reviewed
at some length here.

Records read at the meeting, including a lengthy report to the
Commission by Paul Reynolds, R/W chief in June, 1958, indicated
that officials of the bureau of public roads doubted the value
placed on the land by the appraisers and were at first reluctant
to go along with the right-of-way department on the $200,000 offer
to Werner.

At least a part of the reluctance was due to doubt of the
existence of a sewer. Hence, after the State had bought the
property, which was in June, 1958, an excavation was made in
December, 1958, to determine whether the sewer was in place.

The excavation revealed the sewer, and this was reconfirmed
last week when other digging was done at the suggestion of Baron
Shacklette, investigator for a congressional committee.

Chittim explained that the sewer in the portion of the

35 Livingston Enterprise, October 12, 1960, p. 1.
subdivision which is closest to the city leads to the city sewer system. That which is near the Yellowstone river slopes toward the river and away from the city. It is all on proper gradient and evidently properly installed except that the joints in the pipe are not caulked. He said this is the practice in some installations. 36

There are several interesting discrepancies in this account. First, when the investigation was made in December, 1958, the sewer that was found must have been unsealed in some places, and in others not there at all, as it was in 1960. It is very doubtful that lines which had been properly installed and sealed would subsequently have been either unsealed or removed. Therefore, both the BPR and the state must have known in 1958 the condition of the installations. Yet they were approved, and the appraisal values were considerably boosted as a result.

Secondly, the statements of Chittim and Verne Reed are in conflict. Chittim may have been correct in his assertion that some installations are covered before the pipes are sealed (what method would be used to seal them at that point has not been ascertained), but this apparently is not true of the Livingston area: the city engineer, whose knowledge of such procedures in his territory would be more precise than that of Mr. Chittim, stated that he never approved unsealed installations.

With all the diverse testimony surrounding the Werner property, a few facts stand out: the land was appraised on the basis of available city sewer and water; 37 the sewer was dug up in 1958, but no attempts

36 Ibid., October 13, 1960.
37 It should be noted in fairness to the appraisers, that in addition to Don Lee's $13,188.60 allowance for sewer improvements, Wayne Neil mentioned a possible alternate appraisal of $221,640, rather than
were made by the state to alter the previous payment of $200,000 to the Werners, nor did the BPR make any complaint at that time; in 1960 the sewer was again exposed at the direction of Mr. Shacklette, and the State Board of Health and a city official of Livingston announced that no records could be found of a sewer on that property.

Werner's part in convincing the officials that the sewer was in has not been completely ascertained, but the Livingston Enterprise did report one interesting bit of information regarding Werner's part in the transaction:

A letter from Werner to Phipps was read [at the meeting of highway officials in Livingston] in which it was stated that utilities were in and paid for, and which Sorrells said Phipps interpreted to mean that the sewer was installed.38

During this unusual October, Senator Stein was campaigning for re-election to the State Senate, and his entire campaign was based on his allegations against the Highway Department, and his promise to work to clear up the mess he maintained existed. He made several five-minute radio addresses, and as a result of these David Werner filed suit against him for defamation of character. He asked $300,000 in damages, for three causes of action, on each of which he wanted $50,000 in actual and $50,000 in punitive damages.39 After the initial cross fire between the two men, which was dutifully reported by the press, no more was heard

$231,060, in the event of the nonexistence of sewer lines in certain areas. The appraisal stated, however, that "the existence [sic] of sewer lines, as described above, has been confirmed by District Engineer, Lewis Chittim, in a phone conversation with Ivan Shaw, May 29, 1958."38


39 Reported in ibid., October 26, 1960, pp. 1, 6.
for three years. Then, in November, 1963, Senator Stein moved to dismiss the action against him, and the motion was granted.

The motion of the defendant to dismiss the above entitled action David Werner vs. Ben Stein for lack of prosecution came on regularly for hearing on the 29th day of October, 1963. John Vance appeared for the defendant and no one appeared for the plaintiff. The Court heard argument on behalf of said Motion and took the same under advisement.

... Plaintiff was granted ten days in which to file any Memorandum they desired with the Court in opposition of said motion, and ten days having passed and no Memorandum having been filed with the Court...

IT IS ORDERED that the Motion of the defendant to dismiss ... is granted, ... and said case is hereby dismissed.

Werner's reasons for failing to prosecute are not known. At any rate, he subsequently moved out of the state, and the suit was forgotten.

After about a week of investigating, Mr. Shacklette left Montana, taking his files and opinions with him. The Blatnik committee has had no more dealings in this state to date. The Werner transaction, presumably was closed. The State Highway Department went on to other projects. Senator Stein, however, was not prepared to give up before the problem was solved, and all the rehashing of the case had revealed much but 'resolved nothing in his opinion. On September 4, 1962, the Senator wrote to Rex M. Whitton, who was then Federal Highway Administrator for the BPR. He mentioned that the GAO report to Congress on October 4, 1960 said that the Parcel I of the Werner acquisition would be reviewed before final settlement was made with the state. Stein, noting that the project was at the time almost complete, wanted to know "the status of the review of this R/W transaction." Whitton replied

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40 Minutes of the District Court, Sixth Judicial District, in and for the County of Park, November 13, 1963.
that "the final payment on the Federal share of the above project has not been made and will probably not be made until the final disposition has been made by the Supreme Court of five cases pertaining to the subject project." Stein also received news in a communication from Senator James E. Murray, Chairman of the Committee on Interior and Insular Affairs:

... re payments for rights-of-way in the amount of $200,000 in the summer of 1958 to David Werner of Livingston, I have had some checking done. I am advised that the BPR did agree to the voucher payment in that amount.
... I am taking the necessary steps to insure a further and careful review on this question.42

Still no definitive action had been taken. In the meantime, the Highway Department was becoming somewhat incensed at the dogged attempts to various groups to unearth illegal practices. Quinnell exploded mildly in April, 1963:

The News believes that certain negotiated payments several years ago for Interstate right-of-way in Park County were too high in relation to settlements made before and after. Yet, the investigators for the U.S. House of Representatives' Blatnik committee, the U.S. Bureau of Public Roads and the Highway Commission, not to mention Senator Stein's committee during the recent legislative session did not make a charge of graft and corruption in which any illegal payments were alleged.43

Quinnell was technically correct; no direct charges of illegality had been levelled publicly at any individuals in the department, except for charges made by Stein during his 1960 campaign. But the 1959 and 1963 investigating committees, the GAO in 1959, Shacklette in 1960, and Senator Stein consistently, all found areas deserving of criticism. The Highway Commission is a semi-autonomous agency, with a

41Letter from Whitton to Stein, September 13, 1962. The writer was unable to discover to which cases Whitton referred.
42Letter from Senator Murray to Stein, December 18, 1959.
great deal of control over its own activities. The extreme difficulty of establishing and pinpointing responsibility for actions such as the Werner transaction probably dictate caution in brandishing verbal weapons against the department.

Having survived everything from a State Senator's campaign speeches to a visit by a congressional investigator, highway officials were unpleasantly surprised when in 1964, almost six years after the purchase of the Werner parcel, $95,500 in federal money was declared nonparticipating. The BPR had called for another appraisal of the property, and it was made by Richard I. Hoover, a fee appraiser from Missoula.44 The new development was reported in the Enterprise:

The BPR says Montana's former method of property appraisal is the reason $95,000 [sic] in federal money is being reclaimed. Involved is a six-year-old transaction for a right-of-way settlement in Livingston.

In Helena, Lewis M. Chittim, right-of-way engineer for the Montana Highway Department, said that when the state bought the Werner property six years ago it was not appraising under the discount method. This method, which the BPR now says is proper, provides that when a number of lots conceivably could take a number of years to sell, they should be discounted when purchased outright.45

In an interview in July, 1967, a BPR official in Helena stated that there was nothing particularly strange about the fact that six years had passed between the R/W payment and the recalling of part of the federal funds. He noted that "it was one of those things. . . . The case was awfully confused, and it did not really get

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44 Specific information is not available concerning this appraisal and transactions surrounding it, since data which are being used in an incomplete case are confidential.

straightened out till then: This official stated that the Bureau was aware in 1958 that $200,000 was paid for land which had been purchased only a few years previously for about $27,000. However, he asserted that the appraisals which had been made for the state seemed to be in order, and that the state was usually not questioned on its R/W payments. Therefore the federal share was paid without any immediate question.

The State Highway Department is still fighting to retain the original share of $200,000 that was paid by the federal government. In a letter to Jack Crosser, Deputy Auditor, State Auditor's Office, from Paul Johnson, State Highway Engineer, on January 27, 1967, the withdrawal of funds was reviewed, and Johnson noted that state receipts on the May concurrent billing were reduced by $87,191.50.

A top official in the R/W Division of the State Highway Department recently said, "I maintain that to save face the Bureau got in on this thing." The question arises whether it would be necessary to "save face" if all the procedures had gone smoothly and correctly? It appears that perhaps the Bureau was remiss for not having objected to the condition of the sewer on the Werner land in 1958. At any rate, whether the present action was a face-saving gesture or not, it seems to be in order, since there is no statute of limitations on malfeasance in highway matters. This same official has also stated that rightfully the Highway Department should not lose any money at all, but that they probably would, although probably not more than about $35,000. The origin of this particular figure is unknown.

\(^{46}\) Statement made in an interview in July, 1967.
The final outcome of the Werner transaction is as yet unknown. However, it seems obvious that the entire controversy might have been avoided with a few precautions. Prior to the completion of any appraisals the condition of the sewers should have been ascertained with a surer method than a statement by the landowner. The methods of appraising should have been uniform, and all involved persons—appraisers, highway officials, and BPR officials, should have known and agreed upon the proper methods of appraising property of this type. Pertinent conclusions will be drawn on the basis of this case study, and these will be noted and discussed in the concluding chapter.

One more ramification of the Werner case deserves mention before turning to other related matters; that is the references made to the possibility of collusive sales by Werner in order to boost the value of his land, after he discovered that the Interstate highway was going to go through his property. Ivan Shaw, in his discussion of the appraisal which he made on this parcel, discussed the fact that the Northern Pacific Railroad had decided to make Livingston "the diesel repair center for all their equipment between Minneapolis and the West Coast."\(^\text{47}\) Shaw continued:

Due to this activity in Livingston, the L.P. Barney Construction Co., of Helena, Montana, has purchased sixteen lots from Mr. Werner, and are [sic] in the process of construction of residences. These lots were purchased on a contract wherein an undisclosed amount was paid down, and, as each two units are completed, another payment is made. After talking to the buyer and seller, your appraiser finds the price per lot to be approximately $3,000.00...

Your appraiser has not based his opinion of values on this sale due to the doubt that will naturally arise in the mind of anyone who checks this appraisal. A sale of this nature, coming so close to the time of right-of-way negotiations, could in many instances be a collusive sale made for the purpose of increasing

\(^{47}\)Shaw, op. cit.
I have checked this sale with several disinterested prominent people in Livingston, such as ... Mr. L.V. Swanson, Vice Chairman of the Montana State Highway Commission, and I am convinced that this is a bona fide sale between a willing buyer and a willing seller. 48

Mr. Shaw cited a high-ranking highway official as "disinterested;" it is doubtful that he could be detached in a case involving the Highway Commission.

Wayne Neil, in a list of comparable sales, made several pertinent comments regarding this transaction. In connection with the sale of "lots 21 and 23 in block two of Werner Addition No. 1," to "L.P. and/or Dora Barney," Neil commented,

When terms of this sale were discussed with Mr. Werner he stated the deeds carried $3.30 of revenue stamps and indicated the sale price to be $3000 per lot for above two lots. ... Mr. L.P. Barney, when consulted regarding the terms of these sales, stated that he had agreed with Mr. Werner not to divulge the terms of the sale, that the recorded deeds and attached revenue stamps indicated $3000 per lot and that $3000 per lot was what Mr. Werner hoped to receive. ... The manager for Mr. L.P. Barney in the Livingston enterprise indicated an unconfirmed price in the $2000 per lot range. Mr. Ray Yardley of a local real estate firm stated that L.P. Barney told him that Mr. Werner was asking $2500 per lot for the lots required by Mr. Barney. 49

Yardley's statement is confirmed in a letter to Senator Stein on November 17, 1959. He said that when Barney inquired about lots for sale, Yardley mentioned the Werner land and said that two lots which his wife had owned on that land had sold for $1250 each. Barney then, according to Yardley, said that Werner was asking $2000 per lot, but he said $1250 was closer to what he wanted to pay. Yardley stated that Barney said he did not think the Werner lots were worth $2000. Yardley then made the wry statement that "as shown on the

48 Ibid.
49 Neil, op. cit.
recorded deeds the revenue stamps would indicate that Barney paid Werner $3000 for each location after having made the statement to me that he thought $2000 was too much."

Deeds recorded in the office of the Clerk and Recorder of Park County show that on July 7, 1958, shortly after the purchase was made, L.P. and Dora Barney sold the following lots to the Werners: Lots No. 6, 7, and 22 in Block No. 2 of Werner Addition No. 1; Lot No. 14 in Block 3 of Werner Addition No. 1.

All of this evidence is circumstantial, and no attempt is being made in this study to prove that Werner was involved in collusive sales: no significant proof could be found. However, the evidence above was sufficient to suggest something of this nature to some observers; and the dissatisfaction of citizens throughout the state, coupled with widespread support for Senator Stein's actions, seem to indicate a need for further investigation of the possibility of collusion.50

The problem faced by the Highway Commission in a case of this type is at least partially one of public relations. Collusion is a serious charge, and whether or not collusive sales were made, there should be no room for conjecture by observers regarding such a possibility. More sound procedures are indicated here at the appraisal stage.

It is true that land values vary, and the price per acre of one parcel will differ from the price per acre of another. The discrepancy, however, between $28,000/acre and $168/acre is tremendous, when both parcels are to be used for the same purpose, and manager value is

50 Citizen reactions will be discussed further in Chapter IV.
not being considered. Yet the latter figure was offered for thirty-
two acres comprising Sunset Farm, the county poor farm in Park County.
The People's Voice reported in June, 1960, that the original offer was
$115/acre, but that it was subsequently raised to $168/acre. Both
offers were rejected. Such inconsistency deserves closer inspection
than it has received.

More Trouble in Park County: Access for Dr. Crissey

The property of Dr. Crissey, not far from that of Werner, was
needed for R/W on Interstate 90. A negotiator worked out a settlement
with the Crisseys for $170,000, and for one access road. Dr. Crissey
wanted two avenues of access, but met steadfast refusal of this re-
quest, so he agreed to the one access point. At this stage two versions
of the succeeding events are insisted upon—one from the Crisseys and
one from the Highway Commission.

Dr. Crissey claimed that he received one registered letter
with a check for $170,000 shortly after the negotiations were concluded.
He was then out of town for two months, and when he returned home in
June of 1960 he found waiting for him a copy of the deed. The deed
had been altered by having the word "none" inserted, depriving him
of access at the point which he had been promised it originally, and
moving the access point to another location. Claiming no previous
knowledge of the change, the Crisseys sued the Highway Commission. The
case was appealed by the commission to the State Supreme Court from the


52 "Transcript of Testimony in the District Court of the Sixth Judicial District of the State of Montana In and For the County of Park," April 16, 1964, pp. 20-22.
District Court in the Sixth Judicial District.

The Highway Commission acknowledged the deed change, but claimed that it was done with the full knowledge of Dr. Crissey—that he had been told of the proposed change and had agreed to it. However, he had not signed a statement to that effect, and he denied that he had received a letter sent to him.\(^5\)

The Supreme Court decided in favor of the Crisseys, noting that the department had constructed on the basis of access control in the one place but not in the other, so they gave Crissey his originally promised access. The Montana Standard made the following statement:

The State Highway Commission has been found guilty of altering and amending a deed on property acquired for highway right-of-way without the knowledge or consent of the previous owners.\(^5\)

Recently a R/W official made the following statement:

In the deed which was negotiated in hurried fashion, . . . access control was quite a problem. It was explained to Crissey but the deed did not spell it out. I agree that this was not proper, but this was something of our way of having things these days, and we had hundreds like it.\(^5\)

The expense of a lawsuit could have been avoided by just one action: the registering of the letter which was sent to Dr. Crissey announcing the deed change. In this way neither party would have been ignorant of the expectancies of the other, and it is such practices as this which keep the wheels of a governmental agency running smoothly.

Whether Dr. Crissey got the letter or not, or whether one was really sent, is now immaterial: it was unnecessary that any trouble have

\(^5\)Ibid., pp. 33-34
occurred as a result of a lost letter.

An interesting footnote to the Crissey case is provided by the precedent which was laid down in 1962 by the New York Supreme Court, appellate division, in which the court ruled that a landowner could repudiate a settlement if "final" plans were subsequently revised by the state, depriving him of access or some other compensation that he might otherwise have received in the form of financial remuneration.\(^5\)

In the latter case the theatre owner received monetary relief. The Montana Supreme Court gave the Crisseys the access they wanted.

The Blatnik Committee in Montana

It was mentioned above in Chapter I that not everyone thought the Blatnik Committee was one of the better conducted committees in Congress.\(^5\) On May 26, 1960, James C. Wright, Jr., Dem-Texas and a committee member, made a passionate defense of the committee on the floor of the House. He declared, "the main course of the committee's inquiry has in my judgment been free of partisanship, as I believe a reading of the committee's hearings will disclose."\(^5\) However, a letter from Congressman James F. Battin to Senator Stein stated that

It may not surprise you to learn that I cannot secure any information from the investigating committee headed by Congressman Blatnick [sic] of Minnesota. As a matter of fact, Congressman Cramer of Florida found it necessary to secure a ruling from the House Parliamentarian in order to get information that he is interested in. As you know, he is a member of the committee.\(^5\)

\(^5\)See [Sheridan Drive-In v. State, 228 N.Y.S.2d 576 (May, 1962)].

\(^5\)See supra, pp. 37-38.

\(^5\)Congress, Record, Volume 106, Part 9, p. 11323.

\(^5\)Letter from Congressman Battin to Senator Stein, March 2, 1962.
Cramer is the ranking Republican on the committee.

Much, if not all of this political crossfire is probably normal with any congressional investigating committee. It is very true that the Blatnik committee has been hard at work in other states. But what have they done in Montana?

The Livingston Enterprise had this to say:

This newspaper was reliably informed that an investigator for the Blatnik [sic] congressional investigating committee had been in this vicinity, interviewed all who had anything to do with the Interstate highway, and had concluded that there was no evidence of any wrongdoing or corruption.60

This is in direct opposition to the statement of Senator Stein, made under oath.61 It would be helpful to know the name of the source of this "reliable information."

Robert E. Miller had asserted shortly before this that no irregularities of a major nature on the Interstate highway project in the Livingston area were uncovered by a federal investigator who has been in this area for several days. The Enterprise was told today by a reliable source.62

An admission, although severely qualified, that there did exist problems in Montana's highway program, was made by Fred Quinnell several years later: "... The Blatnik [sic] committee, as the investigator intimated, had problems in other states many, many times more serious than those in Montana."63

This statement might justify the failure of the committee to

60 Livingston Enterprise, September 2, 1960.
61 Supra, p. 79.
continue its investigation in the state, but it certainly is not justifi-
cation for the problems which do exist.

Luke Wright was more skeptical than were the highway officials:

Revelation of what, if any, irregularities may have been uncovered in connection with Montana's participation in the federal aid highway program as a result of investigations made here by a staff representative of a congressional committee probably will have to await resumption of final hearings in Washington, it was learned here Tuesday. 64

This somewhat different report from the two previously cited was confirmed two years later in a letter to Senator Stein from Walter R. May, Chief Counsel for the Blatnik Committee: "Due to the pressure of other work the Subcommittee will be unable to direct any attention to matters in Montana at this time." 65

One letter gives some indication of the opinions of the committee members themselves regarding the state of affairs in the Montana highway program:

Because of pressing matters currently receiving the attention of our Subcommittee, I do not see any possibility of making further inquiry into Montana conditions during this session of Congress.

... I do have the feeling, on the basis of what we know now, that further investigation in Montana seems indicated. There seems to be a feeling in Montana that the administration of the highway program in that State should be looked into. The possibility should be considered that such an investigation can be undertaken at the State or local level either by way of a legislative inquiry, or by activity on the part of local law enforcement officers. 66

The Blatnik Committee has not to this time returned to Montana. Since there have been two legislative investigations in the past eight

years, along with other reviews of the procedures of the Highway Depart-
ment by firms such as Roy Jorgensen and associates, and since the ques-
tions that were pertinent in 1959 have not been resolved in 1967, it
appears that perhaps the only effective aid will come from the federal
government.
CHAPTER IV

THE HIGHWAY COMMISSION: PUBLIC RELATIONS

The purpose of this chapter is to view the Highway Commission as it has been attacked by a multitude of critics, and to study its reactions, in the hope of suggesting how the situations which have arisen could have been dealt with more effectively. The attacks which have been parried, successfully or not, were: (1) at the national level, a documentary television program in 1962, and (2) at the state level, repeated criticisms by State Senator Stein. Both sets of occurrences have received the attention of the department officials, but of a type that has in some ways simply fostered further criticism. A third consideration will be an area which has not been publicly mentioned by the commissioners, but which is perhaps worthy of notice by them.

Misdirected or poorly handled public rebuttals may be more injurious to the public image of a government agency than no rebuttal at all. Early in October, 1962, David Brinkley presented a documentary in which he severely criticized the Interstate program, with particular reference to several states—among them, Montana. The reaction in other states is not known, but in Montana the highway officials were outraged. One anonymous highway employee declared, "Despite what Mr. Brinkley may believe, Montana never has been accused of having graft or corruption in its highway program".

\[\text{Great Falls Tribune}, \text{October 12, 1962.}\]
Even though it was made as early as 1962, this statement deserves scrutiny. The 1959 Special Investigating Committee and the GAO's 1959 investigation both found substantial amounts of poor, even sloppy administration. Senator Stein had made the statement in a radio speech in September, 1960, that one particular action of the Highway Commission was "big-league boodle--way beyond the peanut stage of corruption." Still, with at least one state legislator and a federal agency in substantial agreement with the Brinkley report, the highway officials insisted not only that no corruption existed, but that there had been no charges of corruption or graft.

Jack Marlow, the district manager for the Associated General Contractors of America, was also incensed that Montana was singled out for criticism on a nation-wide broadcast.

Marlow said he has invited Brinkley "to inspect any highway now completed or under construction in Montana. If he accepts, he will learn for himself that our highways are being built better, more efficiently and economically than ever before."

This is a natural and acceptable defense, given Mr. Marlow's professional position. However, with the evidence that has been cited in previous chapters of this study, the above statement gives some cause for an investigation of highway construction "before"--perhaps it was even less efficient and economical in the early 1950's than later in

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3Stein drew much of his support from his colleagues (infra, pp. 104ff.), but no specific mention of the Brinkley report was found among such statements; so it cannot be said with certainty that other state legislators were in agreement with Senator Stein on this issue.

Highway Commissioner Gosman said, of the Brinkley report, "No one is going to call me a thief and get away with it."  

So, over a period of more than two weeks, one official after another denied the validity of the program--at the same time that the Blatnik Committee was finding evidence in several states to support Brinkley's contentions.

Fred Quinnell released to the press a plan for a public repudiation of the Brinkley report. A fund would be raised by collecting a dollar or two from each employee in the department. With this money television network time would be obtained, and a film would be shown demonstrating the actual work accomplished on the highway program in Montana. Quinnell estimated that the undertaking might cost $150,000 to $200,000, but said the only sponsors would be the employees themselves.

This program was never broadcast--state highway officials felt that it was not necessary, according to one employee in the R/W Division. Also, $150,000 is a large amount to raise.

Perhaps denial of the existence of any dishonest practice at all was the only way highway officials felt they could handle the problem as it was raised by the Brinkley telecast. The point to be noted is that their denials were given very little credibility; besides, whether or not dishonest practice existed, there still was a definite administrative problem.

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5 Great Falls Tribune, October 24, 1962, p. 15.
6 Ibid.
The credibility gap is shown by the reaction of the electorate to Senator Stein's campaign for the Senate in 1960. He presented, during September and October, several five-minute radio speeches, in which he elaborated on the one topic of his campaign: malfeasance in the Highway Department. Excerpts from these talks follow:

The Chairman of this biggest spending agency in the State is Harry Burns, a Chinook lawyer. In my several years of government service, I have not observed any public official more unfit for his position than Harry Burns. By his own admission he knew more about liquor than highways, and would have preferred an appointment on the liquor board.\(^7\)

... I predict that, before too long, we will have exposed the shenanigans of the Mystic Knights of the Road, headed by the grand master of slander and slight-of-hand, Harry Burns. ... I claim that one honest and active man in the position of Highway Commission Chairman could make as much difference as between day and night. ... The Chairman and Vice-Chairman of the Montana Highway Commission, Harry Burns and L.V. Swanson, have violated the trust conferred upon them by the Governor. They have not kept faith with the people of the State whom they are supposed to serve. It is intolerable to have such men continue to hold high office when they persist in defending extreme misuse of public funds entrusted to their jurisdiction.\(^8\)

On the basis of the remarks made about him in these talks, Burns sued Senator Stein on October 13, 1960, for $200,000. In the slander suit he said that the Senator had falsely charged him with "having obtained money by corrupt means," and having impugned his honesty.\(^9\) Burns claimed that as an "attorney of thirty-seven years" in the State he had never been "found guilty of dishonesty or malpractice."\(^10\)

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\(^7\)Ben Stein, Transcript of radio speech, September 21, 1960, KFME Radio, Livingston, Montana.

\(^8\)Ibid., September 28, 1960.

\(^9\)Ibid., October 5, 1960.

\(^10\)Great Falls Tribune, October 14, 1960, p. 1.

\(^11\)Ibid.
Burns said his purpose was to "establish Stein was wrong and has no proof what [sic] he said. If I could just make him say he is wrong and shut him up—that is the only thing."\(^\text{12}\)

Stein's defense was that his remarks were privileged: i.e., "statements which could be slanderous under certain conditions are immune from claims for damage when issued on subjects of great public interest."\(^\text{13}\) The suit dragged on for five years, but its immediate importance in 1960 was the effect it might have on the reelection of Senator Stein.

The effect, if there was any at all, was favorable. The Senator did not shrink from mention of the suit; indeed, he sometimes mentioned it himself, to assure the electorate that he was free of worry about it. And the election results were a clear announcement of the inclination of the populace.

The contest resolved itself almost exclusively to a vote upon the validity of the charges made by Senator Stein. . . . [The electorate decided] that Senator Stein was right and that the Montana Highway Commission and its apologists were wrong.

Park County voters re-elected Senator Ben Stein. They gave him 3,582 votes for 2,229 for ex-Senator [Paul] Working.\(^\text{14}\)

Representative H.R. Nees had expressed a similar opinion a week earlier in a letter to Governor-elect Don Nutter:

The overwhelming victory of Senator Ben Stein of Park County clearly points out the feelings of Park County voters in regards to the Highway program.


\(^\text{13}\)Ibid., October 21, 1960, pp. 1, 8. Senator Stein stated in an interview in August, 1967, that this argument was made by his attorney; Stein maintained that he thought that the facts "should speak for themselves."

\(^\text{14}\)Miles Romney, "Ben Stein is Vindicated," The Western News (Hamilton, Montana), November 17, 1960.
Although Senator Stein was not running against the Vice-Chairman of the Highway Commission, it must be remembered that the Vice-Chairman is also a resident of Park County; therefore, Mr. Stein's landslide victory certainly is a repudiation of the present Highway Commission's policies.

... We sincerely hope that you will give top priority to the task of clearing up the present inefficient, poorly run department.  

It is noteworthy that Senator Stein was a Democrat at the time, running in a predominantly Republican county, and that he defeated a former Senator.

Slightly more than two months later, *The Western News* announced the resignation of Harry Burns. The tenor of the popular reaction, as expressed in the article, was one of delighted relief. Both Quinnell and Burns were said to be uncooperative with county road-building programs. The contention was made that the engineering department dispensed federal aid rather arbitrarily among the counties during Burns' administration.16

The sentiments expressed in these two instances provide the basis for an argument in favor of Senator Stein's stand. Additional support which he has received, as will be noted shortly, strengthens the argument.

In 1962 the Senator was interested in resuming the highway probe. At a commission meeting, Ted James, one of the commissioners at that time, commented, "more power to you. If somebody has been crooked, prosecute 'em and send 'em to jail."17

15 Letter from H.R. Nees to Mr. Don Nutter, November 10, 1960.
So he prosecuted. During the 1963 session of the Legislative Assembly Stein was chairman of the Special Committee on Highway Affairs. But his efforts, which had been encouraged a priori by a commissioner, were not appreciated when they materialized. In March, 1963, Governor Babcock called Stein's probe a "personal feud." He said,

Senator Stein has been making charges and threats against the Highway Department since 1959. Even though he has been a member of a special investigating committee, he has produced not one fact to support the claims he continues making.¹⁸

The Governor's defensive posture is understandable, since he is responsible for the appointment of Highway Commissioners. The statement, however, is false, as discussion of the Senator's work in previous chapters has shown.

Senator Stein had been warned of possible criticism from this source, during the administration of a former Governor:

It appears to me that you are approaching this in a very non-partisan and statesmanlike manner but that the Governor isn't reciprocating very much, nor are his cohorts.

... It is ... possible that if the Blatnik report doesn't incriminate anyone or doesn't look too bad that the Governor may throw the hooks into you for casting insinuations and half accusations and allegations against his Commission (for political reasons he might even say). So it might be well for you to have whatever you can muster ready for release if and when he takes the initiative.

... Well, I hope it all comes out O.K. and that we will have a better administration of the highway funds as a result. Good luck to you in the election and in this matter also.¹⁹

The newspaper which printed the Governor's remarks came out about two weeks later with its own indictment of the Senator:

Each investigation wastes much time of highway employees who


¹⁹Letter from Dave James, Senator from Joplin, President Pro Tem and Majority Floor Leader, to Senator Stein, September 19, 1960.
might well be accomplishing much more if they were left alone. . . . Montana's improved highway system is a sign of the times which overshadows the sign of Stein.20

No one had argued that the highways had not been improved: yet the editorials seemed on the whole more preoccupied with restating this fact, and with personal vendettas against Stein than with serious attempts to discuss the charges he had made.

Yet the defense continued in the same vein. Quinnell maintained in April, 1963, that in spite of all his efforts to be heard, "by the time the session was ready to end the Senate was ignoring Stein."21

This is one of the more ridiculous remarks of those made by highway officials to that time; in his reply to Quinnell two weeks later, Stein noted that the "last act of the Senate was unanimous passage of Senate Resolution 28 which asked for an investigation by the proper authorities of the allegations and charges which I made on the Senate floor."22 Far from ignoring him, the members of the Thirty-eighth Legislative Assembly thought his arguments sufficiently pertinent to call for a formal investigation.

Another outcome of Stein's activity in the Senate was an Attorney General's Probe, which, uneventful though it was, did take place, and was approved by the Senate in the passage of SR 29.

In 1963, before the case of Werner v. Stein was dismissed, the Senator was facing two lawsuits. In May a defense fund was started for him. The names of the sponsors, which appeared on the fund's

20 The Independent Record (Helena), March 27, 1963.
stationery, make an impressive list, one which further belies Quinnell's assertion that Stein was ignored by his colleagues. The sponsors who were members of the 1963 legislature were: in the Senate—Ed Carney (Daniels county), Robert Cotton (Valley), William Groff (Ravalli, and Majority Floor Leader), Dave James (Liberty, and President of the Senate), Gene Mahoney (Sanders), Dave Manning (Treasure, and President Pro Temp ad Interim), Frank Reardon (Silver Bow), and Arthur Jensen (Mineral). In the House were: Magnus Aasheim (Sheridan), Eugene Egan (Pondera), Tom Judge (Lewis and Clark), Allyn O'Hair (Park), Robert Raundal (Petroleum), and Ray Wayzynen (Silver Bow, and Minority Leader).

Stein received hundreds of letters supporting him. Eighty-three Northern Pacific Railroad workers signed a letter in 1960 giving him their "100 per cent" support in his highway probings. One county Democratic Central Committee in the state sent him a contribution. Several Senators and Representatives, both at the state and national level, wrote him of their support.

In a letter to the editor of the Billings Gazette, Mrs. Sid Fraser closed with a note of resounding support for Senator Stein:

Taxpayers and Americans, please stand up and voice your opinion on what is right and what is wrong! Or are we getting afraid to make our opinions known? One good citizen is already under a half million dollar law suit because he had the good old American spirit to stand up for what he thought was right. Let's not lose our right to voice our opinions.}

Finally, in 1965, Harry Burns dropped his suit against Stein.

The suit filed in the Sixth Judicial District Court here was dismissed by Paul T. Keller of Helena, Burns' attorney. . . . Stein said all legal costs were covered by contributions to the fund

\[23\text{Billings Gazette, November 2, 1960.}\]
established in his defense. 24

Senator Stein has been re-elected on his highway campaign; two lawsuits filed against him were subsequently dismissed without prosecution; his allegations with regard to the Werner property have been supported with documented evidence from state and federal investigations throughout the past eight years; yet the Highway Commission insists that not only has he never been able to prove that anything is wrong, there is nothing wrong to be proven. 25

In the past years Senator Stein has owned two different ranches in the Shields River Valley, in Park County. He has served five terms in the Senate, in 1957, 1959, 1961, 1963, and 1965. He had no connection with the Highway Commission prior to 1959, and has had none since then, except for those resulting from his actions with regard to commission activities. It should be noted that his ranches have in no way been affected by the Interstate construction. He has fought the irregularities in the commission as both a Democrat and a Republican (he changed his party affiliation from Democrat to Republican in 1964).

The reactions of the Highway Commission to both the Brinkley report and the events surrounding Senator Stein have been volatile, angry, and misdirected. One might well say to them, "Thou dost protest too much." The voice of the people is an important element in state politics, and the voice of the people, to the extent to which it is


25 Stein's allegations of corruption, and his accusations of dishonesty aimed at such men as Harry Burns, have not been proven, by Stein or anyone else. However, his findings concerning inept practice have been substantiated many times, as this study has shown.
heard in Park County elections, is behind Senator Stein. In addition, letters have come from all areas of the state supporting the Senator's stand. The Highway Commission, apparently backed verbally by the Governor, stands virtually alone amid the sea of criticism. Further investigation is warranted, and the need for change rests primarily with the highway officials: not only procedures, but attitudes must change.

While demonstrating their dislike for the type of publicity they have received in the last few years, members of the State Highway Department have failed to act in one area where bewildered anger has been exhibited by people throughout the state, including, of course, Senator Stein.

In 1961, Senate Memorial 3, signed by Stein and several of his colleagues, was sent to Washington, asking that consideration be given to changing Interstate construction standards so that those which are set for urban areas need not be used in rural areas with little traffic and small populations. The argument runs to the effect that it is strange to spend the money to build a road that would handle traffic in an urban center, across an area of flat land with few small towns and no large cities. In the Federal-Aid Highway Act of 1966 a change from previous practice was made, but in the opposite direction. It is provided in that act that all Interstate highways must be at least four lanes wide. Originally, about 3 per cent was to be two lane highway, 84 per cent four lanes, and the rest at least six lanes wide.26 Montana thus must retrace steps to add two lanes to much road that has already been

constructed, and must change many plans which were originally for two lane highway. It is contended, according to R/W officials, that such roads are safer: there is an unfavorable psychological reaction by a driver who must change from a four lane divided to a two lane undivided highway.

In the rather heavily populated areas of Western Montana, near Missoula, Butte, and so on, four lane highways are essential. But in Eastern Montana, in areas such as that east of Livingston, a four lane road is considered by many people to be a waste of money. Lee Metcalf wrote to Senator Stein, "I agree with you that the limited access concept is sheer stupidity in the wide open spaces. But so far no breakthrough with the BPR."27

In a conversation with Stein in 1960, Jack Brenner, State Senator from Beaverhead County, said with regard to the Interstate between Lima and Monida,

But the main thing . . . is the terrific expense we go to for an occasional car—maybe five, maybe ten an hour at the most, and the ones that come off and use the interchange probably would not average over one or two an hour. . . . If we just had a road built to that width, perhaps as heavy as that . . . without all the elaborate precautions to keep that four or five cars an hour from running over the cattle that go by there a couple of times a year, you'd have a very adequate system. . . .28

Here Senator Brenner was speaking of the interchange, built to serve the tiny town of Monida, and the culverts through which cattle are supposed to be moved to keep them off the road.

. . . They've pretty near stopped the boys in that country from

27Letter from Metcalf to Stein, February 14, 1959.

28Jack Brenner, Transcript of tape made at the home of Senator Brenner, former State Senator from Beaverhead County and former President of the Montana Stockgrower's Association, July 9, 1960.
moving anything on foot. That is, they built that frontage road or whatever they call it up there from Lima almost to Monida. A jeep couldn't get over it. It's rough, narrow, and it's rocky and your cattle are going to get so sorefooted, and they then come up with that silly metal underpass that they use for a stock drive and you are stuck. . . . You saw blood in there where somebody had tried to drag one through and she'd snagged herself on one of those open bolt heads or bolt ends that stick out in there. . . .

Another consideration mentioned by the Senator is the weather.

. . . I know a little bit about the topography of that country and they have enough trouble trying to keep that road open in the winter anyway when the wind starts to blow and it's been sitting up there on ridge and now they've got that Interchange kind of set down in a hole under a bridge there where the snow is going to blow into it and just plug, not only the underpass, but also the whole darned highway system.

Shortly after this interview, Stein spoke with Jim Patten, a representative of the Montana Petroleum Association, a trade association of oil companies in Montana. Patten's remarks agree with those of Brenner:

. . . About the BPR. The standards for construction that they are requiring in Montana . . . are ridiculous. . . .

This idea of limited access road is fine right outside Billings and right outside Great Falls even and certainly back in the East. . . .

I agree with the principle, but not when you get out in the sticks in Montana. . . .

Now in the second place, I have a tendency to agree with some of these farmers and ranchers that want to keep highways out of irrigated valleys. . . . We've got a lot of acres in Montana that are dependent upon irrigated areas that are not more than 400 feet wide. . . . And that's the R/W for an Interstate and when they go down the middle—they may only take ten acres away from somebody down in the bottom, but they may ruin 5000 dryland acres because he has to have the source of hay in order to keep cattle up on the hills in the summertime.

It appears that with the opinions of these and other Montana

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29 Ibid.
30 Ibid.
31 Jim Patten, Transcript of tape made in his office, Billings, by Senator Ben Stein, August 2, 1960.
residents, and with the efforts of the Senate through their Memorial, which passed with a vote of 49-3, 4 excused, the Highway Commission could direct some of its anger at the federal agencies which impose standards which are widely felt to be far too elaborate and expensive for many areas of the state. An attitude of willing cooperation with groups attempting to change methods of procedure in the Highway Department, and an attempt to either accommodate those who desire changes at both the state and national level, or to provide suitable justification for existing standards, would improve the image of the Highway Department and help dispel both charges of corruption, and actual corrupt practice where it exists.

This discussion of disagreement over national standards is not an attempt to either defend or condemn the standards. Rather, it is an attempt to show the need for recognition by highway officials that such dissension exists. Nor, given the autonomous position of the commission, can it be expected that improved public relations will automatically dispel inept or corrupt practices. However, the public relations picture is an important aspect of any administrative program, and no review of a government agency is complete without consideration of this factor.
The Montana Highway Commission occupies a position unique in the government of Montana. Its size, the scope and importance of its work, and its method of obtaining funds combine to give it a vital role and a semi-autonomous position in the state. Having reviewed the history and present structure of the department, and examined some cases illustrative of its procedures, several conclusions may be drawn to analyze the proposals presented in Chapter I and to complete the picture of one state agency.

Proving administrative inefficiency in the Highway Department is a difficult task; establishing the existence of corruption is an even more formidable one. It is almost impossible to trace responsibility for errors in highway administration, especially since the largest items now are 90 per cent federally sponsored. The State Highway Engineer is responsible for the appointment of his staff members; the commission itself, as was mentioned above, is appointed by the Governor, with the consent of the Senate. Once he has made the appointments, however, his authority is sharply curtailed.

No state highway commissioner shall be removed from office by the Governor before the expiration of his term [four years] unless for a disqualifying change of residence or for a cause based upon determination of incapacity, incompetence, neglect of duty and malfeasance in office.¹

Responsibility of most governmental agencies to the people,

¹Section 32-16, Revised Codes of Montana, 1947.
either directly by election or indirectly through responsibility to another elected body, is an important element of representative democracy in the United States. The Montana Highway Commission has developed into an agency which is virtually independent of outside control, by either the Governor or the legislature. No political authority responsible to the people really exercises effective control over the commission.

The legislature appropriates funds for the Highway Commission for each biennium. However, the commission has assured funding from two sources: from the federal government for all federal aid highways, and from the state in the form of gasoline taxes, which are earmarked for highway purposes and cannot be diverted to other uses. The one best way to obtain a legislative check on the activities of other agencies is to assure legislative control over the funds of those agencies. The Highway Commission is substantially free of such control. Therefore it can operate virtually as an independent body, safe in the knowledge that however unpopular it may become, it will still have funds, and will not be answerable to the electorate every few years. The taxpayers, in turn, must be content with the knowledge that their gasoline taxes are used by a group of men over whom no popular control may be exercised. A maxim of public administration dictates that employees should be given authority commensurate with the responsibility of the job. In the case of the Montana Highway Commission the reverse could be stated, with a slightly different meaning: they should be given responsibility to the people commensurate with their authority.

The present organization of the department is an improvement over that of the past. Officials in the department seem to feel that the existing scheme is satisfactory, and it does appear to be generally
well designed for effective communication and effective performance. However, communications have collapsed at times, as the studies discussed in previous chapters have shown. One reason for this has been the lack of policies and procedures manuals. Reliance on memoranda provides rather precarious assurance that directives will be implemented. The department has recognized this problem, and some attempt is now being made to remedy it. The R/W Division, for one, will soon have a manual to guide its activities. No judgment regarding this innovation can be ventured at this point; it remains to be seen whether or not efforts to streamline communications and to provide uniformity of action will be effective.

It was suggested at the outset of this study that carelessness by employees accounted for inefficient performance. The statement is probably not entirely erroneous, since some carelessness will appear in all but the most perfectly run agencies. However, as a generalization it was unfairly applied to the Highway Department. The great majority of department employees are conscientious and diligent. A generalization would more accurately stress the fine work and integrity which are seen, and which are manifested in many miles of well-built roads in Montana. However, careless practice does exist, and it extends far beyond that amount which might be expected in any large operation, especially since it is found most frequently in the upper echelons of the department and in the commission. The Springdale project and the Werner acquisition are illustrative of the waste and delay which result when a few officials who are in a position to see and correct irregularities let them pass, whether through ignorance or negligence. To remedy this situation, the positions of Highway Commissioners and State Highway
Engineer should be limited by statute or administrative order to qualified engineers; and all department members below the rank of State Highway Engineer, with the exception of the Chief Counsel and his legal staff, should be hired according to the merit system.

The commission and State Highway Engineer are responsible for hiring employees who will construct and maintain Montana's highway system. They make and supervise the implementation of policies which guide this work. To insure that all department employees will be fully competent to fulfill the roles for which they are hired, the person responsible ultimately for their employment should himself be cognizant of the technicalities of the jobs involved.

At the present time only clerical and stenographic personnel are hired under the merit system. To reduce the possibility of political appointments to jobs which require technical skill, and the performance of which will affect the entire populace of Montana and that of other states, the merit system should be introduced throughout the department, and the responsibility of obtaining personnel should be placed explicitly in the hands of the personnel department, subject to approval by the State Highway Engineer and/or the commission. (The personnel department has not functioned as an efficient employment division for some time).

In addition to these measures, there is a need for better federal enforcement of regulations in the state: more federal employees should be brought to the state's Bureau office. The BPR as it is presently designed is far too small a bureau to perform effectively in Montana. Spot-checking is not the best way to insure correct and uniform procedures. "If the Bureau were to check on every action of
the Highway Department, we would need a building as big as they have," commented one Bureau official during an interview. It is doubtful that a large federal establishment would be necessary; certainly, however, there is little reason for the Bureau's existence if it cannot perform effectively. The money that would be needed to finance an increased staff would not be wasted: indeed, all the time of Bureau officials and the money which is used to support them is wasted if their job is not done efficiently and completely.

The attitude of the State Highway Commission toward the Bureau is perhaps normal for a state agency which feels that its functions are being usurped by a federal agency. However, the Interstate System is 90 per cent federally financed, and some federal control is inevitable. The fact that the Bureau can do no more than spot check actions by the state, and that the latter is thus left to pursue its work largely at its own discretion, may create a situation in which it becomes difficult for state officials to accept any "interference" by a federal agency. However, in those instances in which the Bureau checks and finds sufficient reason to object to state practices (as in the Bitter Creek controversy and the Werner acquisition), a response by the state that the Bureau is overstepping its intended functions is out of order.

Another proposal set forth in Chapter I related to public relations. It has proven to be an erroneous supposition that the Highway Department ignores public relations. It does not. However, they are conducted from the point of view of an autonomous agency. In their publicity, officials seem to be trying to convince the people that they are always unjustly accused, rather than facing criticism and endeavoring to correct it when it is justified. Dismissing all criticism
as political maneuvering is not good public relations. Yet "politics"
has been the cry of highway officials to all the official criticism
levelled at the department since 1959.

There should be more consideration given by the R/W Division
to the landowners; it is painful for ranchers, farmers, and other citi-
zens to see their land broken up and in many cases their livelihoods
injured or destroyed for the purpose of building an Interstate highway.
The necessity of the takings and the authority of the Highway Depart-
ment to pre-empt this land should not lead the highway officials to
ignore the opinions of the landowners. Consideration should be given,
in the early planning stages, to the relative damage that will be
wrought by each of the routes considered. Then later, but before the
final choice of route is unequivocally made, the public hearings should
be conducted, and the opinions aired there should be given grave consi-
deration. Also, the people who come to these hearings should be assured
that their ideas can really make a difference in the plans. Otherwise,
the hearing is an empty ritual, nothing more than a publicity and pro-
paganda instrument for the Highway Department. Cost surveys should cer-
tainly be made before hearings are held, and information on all the
proposed routes should be presented. The highway officials might be
prepared to suggest one route that seems the best to them, but final
selection should be reserved until after all hearings have been held;
the citizens of the state should have as much power to influence routing
as they are professed to have. This is not the case presently, and cir-
cumstances surrounding public hearings for Interstate highways should
be changed.

Limited access is probably a necessary element throughout the
Interstate System. However, the need has often been questionable for destroying valuable irrigable lands in eastern Montana for R/W takings. If greater pains are taken to build roads where the land damage will be least, and to listen to the pleas of the citizens of the state, not only will the image of the Highway Department improve, but they might come closer to meeting the time schedule for construction, since much time has been lost in court actions that would otherwise have been spent in building highways. The public hearings seem to be the best available medium for making such changes.

Certain changes are desirable in the appraisal procedure itself. These have been implied in previous chapters, especially with regard to the Werner settlement. Steps could be taken to regulate the methods used for appraising—presently, several appraisers working on the same parcel can each use a different method. Some kind of regulations should be applied to the factor of severance damage; it is almost entirely a subjective matter now. Measures should be taken to protect both landowners and the department by removing the inconsistencies that are still extant today in this procedure.

Allegations of both administrative ineptness and corrupt political maneuvering have come from various sources: a State Senator, legislative investigating committees, consulting firms, and federal agencies. Probably the most credible and unimpeachable of these is the General Accounting Office: its report in turn lends credence to the others, since all follow much the same arguments. There should be an impartial investigating committee set up to make a new report, one that would be heeded with respect by all concerned. Such a committee might be chosen by a combination of legislators and Highway Commissioners, or
it might be a federal committee. The important point is that its disinterested position be recognized by all concerned parties.

The attitude of Highway Department officials to interview questions often left much to be desired. The general attitude of all employees was one of cooperation, but at times they were reluctant to give requested information, although it was always tendered after some discussion. Questions asked and information requested always dealt with events in the past, and at no time were confidential data demanded. Yet with regard to one set of written documents, it was asserted that they would have to be purchased to cover the cost of duplication. (This was agreed to, but the documents were subsequently supplied at no cost by another official).

A willingness to cooperate was generally evident, but in several cases, particularly with regard to the Werner parcel, the attitude was defensive—a "we could not help it" stance. One wonders who else could have.

In an interview with a top R/W official in July, 1967, appraisal methods were discussed, and a comparison was made with the methods used by other states. One of these methods is the necessity hearing, employed in Vermont. The official expressed his approval of this method, and indicated that he would like to see it instituted in Montana. It would provide some assurance that the route which is finally chosen by the highway officials will not be contested. Such a hearing should follow the public hearings, and should be required for every mile of Interstate highway to be constructed in the state. According to Vermont law, the Highway Department must prove in court

the necessity of building a highway project to a certain line and
grade and within certain limits left and right of the established center line.

That necessity phase is begun by petition by the State Highway Department to the Superior Court in the County in which the project is to be located, setting forth the description of the project center line and the limits left and right of that center line beyond which we will not go in constructing the project. This petition is submitted to the Superior Court and either the Chief Superior Justice or one of the Justices determines and decides on what day, what place and hour this Necessity Hearing will be held. Once that is determined and incorporated in the petition papers, we have these petition papers served on each and every property owner, each and every landowner, lessee, tenant, mortgagee, and anyone who in any way will be affected by the construction of that highway project. The service on these people is made in accordance with the law by a sheriff or his deputy.

The Necessity Hearing is held in County Court and those that are listed and cited in the petition attend. The State engineers and personnel explain the project to the judge by plans and descriptions, and, before the court is adjourned, a decision is made by the court. The judges ask any affected property owner to express his objections to, or his being in favor of, the project. After the Necessity Hearing is concluded and all the testimony and information has been submitted to the court, they, in due time, prepare and issue what we call a Judgment Order on Necessity that definitely describes the center line of the project and sets the left and right limits of construction.

An arrangement similar to this, if it were instituted along with the changes in the public hearings that have been recommended above, would provide a manifold increase in efficiency in the highway program. Many times the landowners who are familiar with the territory being examined can provide valuable information that might be overlooked by officials from outside the area. In addition, and equally important, the citizens would be satisfied that the procedures of the Highway Department were fair and equitable.

A necessity hearing would be expensive and time-consuming, but in the long run, would provide the basis for a more efficient highway program.

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The following recommendations have been included as suggestions for improvements in Highway Department procedures, in order to provide greater consistency of performance than has been the case in the past. If implemented, they should promote some saving of tax monies, smoother road construction schedules, and a better image of the department among the people of the state.

In addition to competitive bidding for the original construction contracts for highway projects, there should be a regulation requiring competitive bidding on all additional work orders if the amount of estimated increase or decrease exceeds a stated amount, perhaps around 25 per cent of the original contract. Also, extensive land surveys should be made prior to construction of any project.

All possible measures should be taken to insure that the taxpayers' money is utilized in the most efficient way possible. The additional time needed to renegotiate a contract would be well repaid in economy and good will. An explanation frequently offered by highway officials for not conducting extensive subsurface explorations before commencing construction, and for not requiring competitive bidding on additional work orders, is that such actions will cause a delay in the highway schedule. However, the schedule has already been altered to allow more time for the completion of the Interstate System, and as has been seen in the cases discussed in this study, much time has been lost because proper preconstruction surveys have not been made. Another excuse proffered is that if federal monies are not used within a certain specified time, they are retracted. However, the time needed for additional competitive bidding should not preclude the utilization of federal funds, and might result in great savings to the taxpayers of
the state.

Secondly, distribution of funds among the state's twelve financial districts should be altered. Such distribution is regulated by state law, and has been for some time a topic of general dissatisfaction. There should be a legislative committee appointed to investigate the situation, together with a number of highway officials. Changes in this method of financing would increase the speed of progress on the road-building programs.

Federal assistance in this matter was requested by the state several years ago, but by 1967 the method had not changed. Another effort should be made to provide a better distribution of funds, in order to ensure a smoother and steadier road-building schedule.

The Outlook for the Future

In 1967, during the Fortieth Montana Legislative Assembly, ExHB 14 was passed, "an Act appropriating monies from the earmarked revenue fund, . . . for an interim committee to conduct a comprehensive study of the administration and operation of the Montana Highway Department in cooperation with the Highway Commission. . . ." The People's Voice discussed the reaction of the Highway Department to this piece of legislation.

Publicly, Highway Department spokesmen are saying they welcome any help the Legislature desires to give them, but as the disagreement (over the bill) developed on the floor it was difficult not to gather the impression some political forces were less than eager to have legislative probers around.³


On the House floor, however, the bill had powerful support. Francis Bardancuwe (D), Harlem, mentioned a $3,000,000 "loose end," "found single handedly" by Great Falls Senator William Bertsche. "With a $150,000,000 budget and $3,000,000 they can't account for it is time somebody took a closer look at their figures," he said.

Opposition to this study is reminiscent of a statement made in 1960 by Fred Quinnell, with reference to another investigation: "We have been constantly harassed by a small, highly audible minority, that seems to want to hamstring the road-building program in Montana." Of course the object of the investigating committees is not to "hamstring" the highway program. Until changes are made in the department's policies and procedures, however, such investigations are likely to continue, at frequent intervals.

In 1959, a highway spokesman asserted, "The highway department does not consider it ethical to become involved in politics. Road building and politics are not conducive to overall excellence in Highway planning." Yet, in one way or another, the Highway Department is often involved in politics. The appointment of the Highway Commissioners is a political task. The hiring of employees below them is in many cases, if not governed outright by political considerations, at least open to considerations of patronage, since the merit system is used only at the lowest staff levels. Much of the polemic that has occurred in the past decade has been purely political. It is probably impossible for any

5 Ibid.
6 "Quinnell Says Comptroller's Criticism Wholly Political," The Livingston Enterprise, October 8, 1960, pp. 1, 8.
7 "Highway Department Version of House of Representatives Investigation," The Center Line, Ill, April 8, 1959, p. 4.
government agency to remain completely free of "politics;" however, the Highway Department could avoid political issues to a much greater degree than it does, and it is certainly true that the highway program would not suffer with the institution of stricter regulations and greater objectivity. The program is inconsistently carried out, in many cases, as has been shown in this study. Much fine work has been done, and much praise is deserved. However, problems which exist, be they great or small, should be alleviated, not ignored. The Montana State Highway Commission and the department under it would do well to attempt some innovations in the direction of greater consistency, objectivity, efficiency, and economy.

"The primary objective is to bear in mind that our major responsibility is to the Montana highway users to spend this money in a careful and prudent manner."\textsuperscript{8} As this study has shown, many inadequacies in the administration of the Highway Department have in the past hindered the effective execution of this responsibility.
APPENDIX

TABLE OF CASES


Northern Pacific Railway Company v. McAdow et al., 44 Mont. 547, 554, 121 P. 473 (1912).


State et al. v. Whitcomb et al., 94 Mont. 415, 424, 22 P.2d 823 (1933).
BIBLIOGRAPHY

Books


Articles and Periodicals


Public Documents


Executive Budget for the Biennium July 1, 1965-June 30, 1967.

Executive Budget for the Biennium July 1, 1967-June 30, 1969.

Legislative Budget of the State of Montana, 1959.

Deposition before the District Court of the Sixth Judicial District of the State of Montana In and For the County of Park, Harry L. Burns v. Ben Stein, January 9, 1964.

Laws, Resolutions and Memorials of the State of Montana. Passed by the Thirteenth Regular Session of the Legislative Assembly, 1913.

Laws, Resolutions and Memorials of the State of Montana. Passed by the Fifteenth Regular Session of the Legislative Assembly, 1917.

Minutes of the District Court, Sixth Judicial District, In and For the County of Park, David Werner v. Ben Stein, November 13, 1963.

Section 32-16, Revised Codes of Montana, 1947.

Section 32-24, Revised Codes of Montana, 1947.


Transcript of Testimony in the District Court of the Sixth Judicial District of the State of Montana In and For the County of Park, Verle v. Grissey vs. State Highway Commission, April 16, 1964.


*Congressional Record*, Vol. 106.


*Statutes at Large*, Vol. LXIV.

Reports


Other Sources


Brenner, Jack. Transcript of tape made at the home of former Senator Brenner, Grant, Montana, July 9, 1960.


Champion, Robert. Letter from Mr. Champion, Chief R/W Agent for the Montana Highway Commission, to the writer.


May, Walter R. Letter from Mr. May, Chief Counsel for the Blatnik Committee, to Senator Ben Stein, March 29, 1962.


Montana Highway Department. Interviews with selected officials, June-August, 1967.

Murray, James, E. Letter from U.S. Senator Murray to Senator Stein, December 18, 1959.

Nees, H.R. Letter from State Representative Nees to Governor-elect Don Nutter, November 10, 1960.


Patten, Jim. Transcript of tape made in the office of Mr. Patten by Senator Ben Stein, Billings, August 2, 1960.

Special Committee on Highway Affairs. Transcript of Hearing. 1963.

Transcript of Meetings. 1963.

Special Committee to Investigate the Highway Department. Transcripts of Hearings. 1959.

