

Oregon State Highway Commission & Relocation of Persons

Displaced by I-505.

I. Applicable Federal Law

The applicable Federal law is the UNIFORM Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereafter cited as the Relocation Act) enacted on January 2, 1971. Senator Edmund Muskie, in explaining the purposes of the bill on the Senate floor, stated that more than fifty Federal programs "quite literally, bulldoze hundreds of thousands of people each year from their homes * * * In almost every case, they are forced to leave an entire area in which they have spent their lives.* * *" Vol. 116 Cong. Rec. S 20459, Dec. 17, 1970. The Senate Report (91-488) on the Act in describing its objective asserts "most of their (displaced persons) entire lives and economic well being have centered around the property or neighborhoods which are being uprooted." The purpose as stated in the Act itself (Section 201) is: "* * * to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

The effective date of the Relocation Act is January 2, 1971. However, its full application to state agencies

is not effective until July 1, 1972, if existing state law precludes any such application. As will be shown subsequently, Oregon has sufficient statutory authority to comply with the Relocation Act and under similar legislation (Federal Highway Act of 1968) did not claim inability to comply.

The Relocation Act fulfills its stated purpose by setting forth conditions which must be met before any funds from the Federal government may be used on a given project, either directly or by grant. The requirements which must be met by both the Federal and state agencies when Federal funds are used are set forth in full by Sections 202, 203, 204, 205 and 210 and may be summarized as follows:

1. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons.
2. Relocation assistance programs are provided to assist displaced persons, including determination of need, providing current and continuing information, and assuring that replacement dwellings are available under specific standards.
3. Within a reasonable period of time prior to displacement, decent, safe and sanitary dwellings will be available to displaced persons.

The agency head, in this instance the Federal Highway Administrator, is required to withhold funds if these requirements are not met (Section 210, 23 CFR 1.36):

Section 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance

will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency.* * *

Section 205 (c) (3) makes provision for the head of the applicable Federal agency to prescribe, by regulation, standards or situations whereby these standards may be waived. However, no such regulations have been prescribed.

The provisions of the Act may also be enforced by challenging the Acts of the Federal agency by procedures under the Federal Administrative Procedure Act. See for example Citizens to Preserve Overton Park, Inc. v. Volpe, No. L066 October Term, 1970; 39 U.S.L. Week 4287. and Western Addition Community Organization v. Weaver, 294 F Supp 433 (1968).

It should be emphasized that the mandatory nature of compliance with these provisions is underscored by the fact that the precursor to Section 205 (c) (3), the Federal-Aid Highway Act of 1968, 23 U.S.C., Section 501-511 Supp IV, 1968 contained a provision that contained the words "to the extent that can be reasonably accomplished." However, Section 205 (c) (3), which is virtually identical to that provision, has the words deleted.

II. Applicable State Law

There are presently existing statutes, proposed statutes, and administrative practices applicable to the Federal Act and the present circumstances. ORS 366.323

provides for studies to aid in relocating persons by highway action, while ORS 366.324 provides for financial assistance to displaced persons whether matching Federal funds are available or not.

There has been introduced in the present legislature a measure to allow compliance with the Specific Act in question.

From the summary:

"Authorize state, county or other municipal or public corporation receiving Federal financial assistance in connection with any program or project resulting in the acquisition of real property to comply with the requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970."

ORS 366.340 gives the State Highway Commission authority to acquire real property deemed necessary for:

"(4) Any other use or purpose deemed necessary for carrying out the purposes of this Act."

Also ORS 366.370:

"(2) The resolution of the Commission is conclusive evidence of the public necessity of the proposed public improvement or project, that the real property, or interest therein, is necessary therefor and that the proposed improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury."

Also under state law the City has practical veto power over the actions of the State Highway Commission:

1. ORS 373.030, the Commission may not "change or establish any grade of any * * * street without the consent" of the City Council.

2. ORS 373.050, Precludes the closure of any City street unless the City enters into "a formal agreement" with the Commission granting permission.

3. ORS 374.060, No street may be closed, or overpass and underpass constructed, or service road constructed, without the "official approval" of the City.

4. ORS 374.070, the City has the authority to designate which City streets shall have access to the throughways.

Therefore, it can be seen there exists sufficient legislative authority and practical authority to make state compliance with the Federal Act possible.

III. Oregon Constitution

As may have been noted in the preceding section, no discussion has been set forth as to the so called "dedicated provisions" of the Oregon Constitution. Article IX, Section 3 states in part:

"* * * every law imposing a tax shall state distinctly the object of some to which only it shall be applied* * * The proceeds from any tax levied on, with respect to, or measured by the storage, withdrawal, use sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles * * * shall after providing for the cost of administration * * * be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation, use and policing of public highways, roads and streets within the State of Oregon."

It is this provision that has occasioned the hesitance of the State Highway Commission to accept its responsibility as defined by the Relocation Act. This provision of the Oregon Constitution also exists in the constitutions of sister

states and has been judicially construed and defined in some of those states.

The motivation for such judicial action arose out of the enactment of the Federal Highway Act of 1956. That Act provided for Federal funds to be available to reimburse state agencies who gave financial assistance to utility companies who were required to relocate their facilities due to highway improvement and relocation. In order to take advantage of their Federal money, several states enacted enabling legislation. A majority of courts found that use of state highway funds derived from fuel taxes was in contravention of the "dedicated funds" provisions of their respective constitutions (See for example State of Idaho v. Idaho Power Company (1959) 81 Idaho 487, 346 P.2d 596)

In Oregon, prior to enactment of similar legislation, an opinion from the State Attorney General was sought. In 30 Ops. A.G. 366, it was "held" that use of state highway funds to reimburse utilities for relocation expenses would be in contravention of the Oregon State Constitution.

There are two factors which militate against giving too much weight to these holdings. First, a common thread of these cases was that the utility companies had no property right in the highway, but existed there only at the suffrance of the state and thus did not have a property right which would be properly compensated. The cases which did find the utility companies to have a property right also found that State

Highway funds could be used to reimburse relocation expenses.

Secondly, the Oregon Attorney General has on subsequent opinions, recognized a proper legal basis for a wider use of highway funds other than acquisition and construction. For example, 32 Ops. A.G. 202 found it would be proper for the State Highway Department to use its funds to purchase land, not to be used for highway road bed or access roads, but for exchange with utility companies which existed within contemplated right-of-way. In so finding, it said:

"As to use of dedicated funds, it seems clear that as long as the public purpose is to aid highway construction, there would be no objection to the use of state highway funds derived as pursuant to Article IX Section 3 of the Oregon Constitution."

A more exhaustive opinion, 32 Ops. A.G. 336, found that it was constitutionally permissible to use highway funds for removal of signs in junkyards from prohibited areas. It did so by assigning a broad meaning to the words "improvement," "operation," and "use" as they exist in the Oregon Constitution.

The Oregon court has also spoken as to the power of the State Highway Commission to decide as to the necessity for taking property. In City of Eugene v Johnson (1948) 183 Or 421, quoting from People v Milton 35 Cal App.2d 549, 96 P.2d 159, stated that when:

"the state highway commission, as did in the case at bar, adopts a resolution declaring that public interest and necessity require the acquisition of certain real property for public improvements, that resolution becomes conclusive of such facts recited therein,

and the same may not be disputed in the absence of fraud, bad faith, or an abuse of discretion."

The public necessity for the use of funds to assist persons displaced by the highway acquisition is recognized by the Oregon legislature in its enactment of ORS 366.323 and 366.324 which provides for assistance to such persons.

Therefore, all indications and opinions are that, subject to the limitations of Section 3 Article IX of the Oregon Constitution, the Commission has broad and virtually conclusive discretion in its use of funds at its disposal.

IV. Factual Analysis

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Section 205 (a) requires that whenever a relocation activity is undertaken by a Federal agency the head of the agency shall offer the services set out in Section 205 (c) (3). Section 205 (c) (3) requires that each relocation assistance advisory program include certain stated measure, one of which is to

"assure that, within a reasonable period of time, prior to displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their place of employment. * * *"

Section 206 of the same Act provides:

"(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of such Federal agency determines that such replacement housing cannot otherwise be made available he may take such action as necessary or appropriate

to provide such housing by use of funds authorized for such project."

"(b) No person shall be required to move from any dwelling on or after the effective date of this title on account of a Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with 205 (c) (3) is available to such person."

The conjunctive reading of Section 205 and Section 206 leads to the conclusion that Congress intended, through the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, to condition Federal project approval and the commitment of funds upon the availability of housing of the sort described by 205 (c) (3) prior to actual commencement of construction.

Thus, the existence of housing of the sort described in Section 205 (c) (3) is a precondition to actual construction. Accordingly, the inquiry must turn to the availability of existing housing as so specified in the concerned area.

Although the 1970 Census figures are not available, the information gleaned through existing studies, particularly the latest PGE vacancy survey, indicates what is conservatively described as a "tight market." The survey, reported in the Sunday Oregonian, March 7, 1971, shows a vacancy rate of 1.65% for single units and 3.87% for multiple units in the area involved. The study is useful, however, to see the respective vacancy rates in other Portland areas, and when so examined shows that the figure for apartment vacancies (3.87) is the lowest in the entire area surveyed. As the article explains,

apartment vacancies may reflect low quality units. The survey does not take into account the standard or substandard nature of housing considered, and a brief drive through the area concerned will disclose the existence of several substandard units, particularly some very old apartments in the area. If these were excluded, a more accurate figure, reflecting even smaller vacancy rates, would be revealed.

Further Congressional concern with replacement housing is seen in Section 215 of the Act. That section reads:

"In order to facilitate and encourage the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or any Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of such project, or to approve loans as a part of the cost of any such project receiving Federal financing assistance to non-profit, limited dividend or cooperative organizations, or to public bodies, for necessary and reasonable expenses, prior to construction for planning and obtaining federally insured mortgage financing for the rehabilitation or construction for housing for such displaced persons."

Thus, the statutory scheme, when read with an eye to divining congressional intent, seems to reveal Section 205 (c) (3) as the sine qua non of project commencement. Relocation housing must be considered as to the specific requirements of that section, as to each of the criteria listed in that section, and as to each of the prospective displacees. The only clear and direct means of complying with the new act is to provide, within the plan and as a part of it, the generation of housing units not now in the current inventory.

There are additional factors which militate for a one-for-one replacement of housing. Survey material derived from the I-505 relocation area by the Portland City Planning Commission indicates that a very high proportion of those who will be displaced are elderly and walk to work or nearby stores. Many have specialized living requirements requiring residence in the local area. Income levels are low and many are on social security. Most families pay rents under \$50 per month. Most employed persons work in the nearby Northwest Industrial area. It seems clear that under the standards set out in Section 205 (c) (3) nearly all persons to be displaced by I-505 will have to be relocated in Northwest Portland. In any other area of the City it would be virtually impossible to find decent, safe and sanitary housing that is as proximate to public and commercial facilities, within their financial means, and reasonably accessible to their places of employment as is housing in the Northwest area.

In short, the principles of one-for-one replacement must be adhered to under the circumstances. The remedy for failure to provide adequate housing would be directed at the termination of Federal funding until the letter and intent of the Act receive due compliance.

It should be kept in mind that, under the laws governing the Federal-aid highway program, final project approval authority concerning Federal participation in highway programs

has always been reserved to the Secretary of Transportation, and his authority has been consistently exercised by the administrator pursuant to a delegation of authority by the Secretary contained in Section 1.37 of Title 23 of the Code of Federal Regulations.

Finally, it is not contended here, nor is it perhaps even desirable, for the State Highway Commission to be in the "housing business." Other agencies and funds, as indicated by Section 206 of the Relocation Act, may be the answer to meet the replacement housing requirement. What is contended is that the State Highway Commission has broader powers to exercise disposal of highway funds than merely acquisition and construction of highways. Among these powers, but not necessarily limited to, is the ability to appropriate property to be used for such public housing and relocate persons displaced by the highway system.